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IN SUPERIOR COURT STEVENS COUNTY
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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:

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

For the Defendant:

ROBERT A. SIMEONE
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VOLUME 16 of 17
February 16, 2001
(Pages 1906 through 2096)

Transcript prepared by:
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February 16, 2001

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1 A. If you want to count them that way.

2 Q. Now, you agree that nobody saw the gunshots being fired

3 that killed these boys, isn't that correct?

4 A. They actually saw them being fired?

5 Q. Right.

6 A. No. Nobody saw them being fired.

7 Q. Nobody has specif-- a specific account to give you of

8 what allegedly happened at the moment these boys were

9 killed, isn't that correct?

10 A. No.

11 Q. Now, you agree that there was another .22 owned by Dane

12 Williams, right?

13 A. That's what I was informed.

14 Q. Well, I want to go back to the questions I was asking your

15 fellow deputies and fellow detectives. Did you do

16 anything in follow-up of that to find out about that .22,

17 whether or not that was the one that may have been used in

18 the killings?

19 A. No. Sergeant Caruso and I were on another detail with

20 this homicide. The officers that remained here in the

21 Colville area were following up on that.

22 Q. But did you ever actually get the gun in your hand and

23 hold it or test it or anything?

24 A. No.

25 Q. No fingerprinting of it or anything?

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

1907.

1 A. We never recovered it, that I know of.
2 Q. I mean the Dane Williams . 22.
3 A. We never recovered that.
4 Q. Never-- Did you ever follow up on it, that you know of?
5 A. I didn't, no.
6 Q. Well, don't you think that's something that maybe should
7 have been done?
8 A. I believe the detectives that followed up on that ran it
9 as far as they could.
10 Q. But you're not even sure that a .22 rifle killed these
11 boys, are you?
12 A. I'm not a forensic scientist, no.
13 Q. As a result of any information you've obtained in this
14 investigation, do you know that .22 bullets were found in
15 those boys, in their heads, or that they killed them?
16 A. No.
17 Q. The very first interview of Dane Williams was October
18 13th, wasn't it?
19 A. That sounds correct.
20 Q. So you still have those transcripts before you?
21 A. Yes.
22 Q. Could you look at page 915? Do you have that before you?
23 A. Is this a Dane Williams statement?
24 Q. That's correct.
25 A. Yes.

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

1908.

1 Q. I'm looking at the first-- his first response after Dave
2 Baskin's comment, okay. What does he say there to you?
3 A. Mr. Williams replied,
4 But they left out that-- But--
5 Excuse me.
6 But I left out that--
7 Q. Again.
8 A. I left that out of my previous statement.
9 Q. What previous statement would that be, if this was his
10 first statement?
11 A. This is the very first one? Well, what-- What he's
12 referring to there is not--excuse me--an actual statement.
13 It was a interview that we did previous to the recording.
14 Q. Yeah, so there was some kind of question and answer, I
15 assume, in that interview?
16 A. Sure.
17 Q. And that was never transcribed?
18 A. It was-- The results of it were transcribed. The tape
19 recorded statement. We do a-- We do an interview before
20 we actually put it all on tape.
21 Q. And how long does that last?
22 A. Oh, I don't know. It went-- I don't know how long that
23 one lasted.
24 Q. More than five minutes?
25 A. Oh, yeah. Yeah.

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

1909.

1 Q. And he talks of things of substance in those interviews,
2 doesn't he?
3 A. Sure.
4 Q. I mean he talks about the details of whatever it is that
5 he finally mentions to you in the transcribed report,
6 doesn't he?
7 A. Sure.
8 Q. So there's information that we don't have available to us
9 from Dane Williams as we stand here today, isn't that
10 right?
11 A. It's just cumulative. The tape recording statement is
12 cumulative of what we took down.
13 Q. Okay. Now, you were also present at the interview that
14 was conducted in Agent Hart's presence on October 18th.
15 Is that right?
16 A. Repeat that again, please?
17 Q. You were present when Agent Hart, the DEA agent, he did an
18 interview on October 18th. Do you remember that one?
19 A. Yes.
20 Q. There were two, actually, on October 18th?
21 A. Yes.
22 Q. And Agent Hart was involved in the latter of the two? Is
23 that right?
24 A. Yes.
25 Q. Okay. And that took place with a couple of other people

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

1910.

1 in the room? Is that right?

2 A. Yes, it was-- I believe it was Phil Hart, Sean Cummings
3 and myself. And Dane Williams.

4 Q. And you asked Dane at that time about the incident under
5 discussion? Do you remember?

6 A. Right.

7 Q. Of course. I mean that was the subject of the whole
8 thing, right?

9 A. Sure.

10 Q. There were aspects about what had happened when they
11 returned to the house after having driven away the first
12 time? That is, they left the Crown Creek cabin, what
13 happened there. You remember that?

14 A. (No audible response)

15 Q. You mentioned in that conversation that John had asked
16 Jeff for his flannel shirt. Is that right?

17 A. I don't have that-- Do I have it in front of me here?

18 Q. Look on page 806. It'll help you.

19 A. Where are we at on here?

20 Q. Look on page 806, Detective.

21 A. Okay.

22 Q. Does he say there that he asked Jeff for a blood-stained
23 shirt?

24 A. It says:

25

1 Chewy asked Jeff for his-- his flannel. It
2 was blood-soaked. It was covered in blood.

3 Q. That interview, that was-- Correct me if I'm wrong. That
4 was October 18th, and that was the second interview of
5 that day, and that was at the Gresham Police Department?
6 Is that all right?

7 A. Yes, that's correct.

8 Q. Okay, and you were asking about him-- Well, was there any
9 evidence of that flannel shirt at the place where it was
10 allegedly burned?

11 A. There was some fabric samples in that-- recovered from
12 that fire pit, but they were-- All we could tell was that
13 they were fabric. We couldn't tell what they were from
14 there.

15 Q. Couldn't tell they were flannel, right?

16 A. No.

17 Q. From your investigation, did they tell you that they had
18 a blazing-- Did they tell you that they had a blazing
19 fire or a smoldering fire ____?

20 A. I believe it was a smoldering fire.

21 Q. And isn't it your experience in your-- in your past that
22 flannel is a hard material to burn in a smoldering fire?

23 A. Never tried it.

24 Q. Don't you have to stir flannel quite a bit to get it to
25 burn, and that it really doesn't disintegrate very fast?

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

1912.

1 A. I have never tried it.

2 Q. Well, at that same time you asked Mr. Cunningham what--

3 I'm sorry, Mr. Williams--what clothes John was wearing at

4 the time, didn't you? He told you John had changed his

5 clothes, isn't that right?

6 A. Yes.

7 Q. That appears on that same page of that interview?

8 A. Yes.

9 Q. And you took place in the interview that occurred on

10 January 14th with Jeff Cunning-- or January 4th with Jeff

11 Cunningham? Is that right?

12 A. Yes.

13 Q. And that was his second and last interview. And you asked

14 him about the clothes that John was wearing as well,

15 didn't you?

16 A. I believe so.

17 Q. In that interview, he was pretty clear that-- Well, you

18 had a good opportunity at that time to review Dane-- Dane

19 Williams' October 18th interview, didn't you?

20 A. Yes.

21 Q. At that time he said that when he met John that John was

22 wearing the-- the same clothes, isn't that right?

23 A. You got a page to reference on here?

24 Q. I'm sorry, I don't. Do you remember?

25 A. Repeat the question one more time.

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

1913.

1 Q. Isn't it correct that Jeff would have said that John was
2 wearing the same clothes?
3 A. Yes, I believe he did,
4 Q. So those two things are in conflict with one another,
5 their two positions there?
6 A. Sure.
7 Q. I think my reference for that is page 2650, if you want to
8 look it up, Jeff Cunningham's statement.
9 A. Okay. It's on the top part of that page.
10 Q. Very-- Very top, after you asked him the question or--
11 I'm sorry, that would have been Deputy-- or Loren Erdman
12 who asked him the question.
13 A. Right.
14 Q. So he was wearing the same clothes?
15 And that was correct, is what he said, right?
16 A. Yes.
17 Q. As far as he knew? You'll agree with the rest of your
18 cohorts that there are numerous discrepancies in the
19 versions--
20 A. Oh, sure.
21 Q. --given by the one and the other. Well, there's really no
22 way to fit the two or three hours of Play Station that Mr.
23 Williams claims he had with his brother, Jake, into this
24 picture on Sunday, is there?
25 A. No.

1 Q. Is there anything inherently illegal about the Family?
2 A. Family?
3 Q. I mean to be the Rainbow Family, is that an inherently
4 illegal thing?
5 A. I guess I don't understand your question. Being-- Just
6 being a member of the Rainbow Family?
7 Q. Right.
8 A. No.
9 Q. If I'm a member of the Rainbow Family myself, can I get
10 arrested for that?
11 A. No.
12 Q. Because that would be a violation of my freedom of
13 association, wouldn't it?
14 A. Sure.
15 Q. In fact, to your understanding, it's been around for about
16 30 years or so?
17 A. I have no idea.
18 Q. Now, Mr. Williams has testified that he went to the fair
19 Saturday. That would be June 10th. Did you hear his
20 testimony to that effect?
21 A. Yes.
22 Q. And you-- You interviewed him on November 8th--right?--
23 and asked him that question, didn't you? I'll address
24 your attention to page 1754.
25 A. Okay.

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

1915.

1 Q. Did you ask him about that weekend at that time?

2 A. Yeah, I believe we did.

3 Q. And you asked him:

4 Were they--

5 And you're talking about, at that time, Janell, a friend
6 of his mom's.

7 Were they-- Were they running back and
8 forth several times during the day to get
marijuana to sell at the barter fair?

9 Who were you talking about that-- about there? Jeff
10 Cunningham?

11 A. I believe we were referencing to Jeff Cunningham, yes.

12 Q. Okay, and his answer to you about the reference whether or
13 not they were running back and forth several times during
14 the day, what did he say there, Detective?

15 A. He says,

16 I'm not sure. I didn't-- I was hanging
17 around with them--

18 Q. Was there-- Is that I wasn't hanging around?

19 A. I wasn't hanging around with them at all that
20 weekend. They were staying out there, I be-
21 lieve, the majority of the weekend.

22 Q. But?

23 A. But I was just at my house.

24 Q. Okay.

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

Thank you.

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MR. BASKIN: Sure.

THE COURT: Mr. Wetle, any cross exam?

MR. WETLE: No, your Honor.

WITNESS STEPS DOWN

COURT REQUESTS COUNSEL TO MEET WITH HER IN CHAMBERS

COURT RECESSED

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COURT RECONVENED WITH THE JURY SEATED

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

MR. SIMEONE: Your Honor, the defense would call Mr. Grange.

THE COURT: All right, Mr. Grange, if you'll come forward, please?

WITNESS IS SWORN

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

MR. GRANGE: John Douglas Grange.

MICROPHONE IS ADJUSTED

THE COURT: Mr. Grange, just for the record, if you'd spell your last name, please?

MR. GRANGE: G-R-A-N-G-E.

THE COURT: Thank you. And your current permanent address, Mr. Grange?

MR. GRANGE: 1107 Northeast Humboldt, H-U-M-B-O-L-D-T, Portland, Oregon 97211.

THE COURT: Thank you. Mr. Simeone?

MR. SIMEONE: Thank you, your Honor.

1 JOHN DOUGLAS GRANGE

Being first duly sworn, on
oath testified as follows:

2
3 DIRECT EXAMINATION

4 BY MR. SIMEONE:

5 Q. Good afternoon, John. How are you?

6 A. Doing all right.

7 Q. A little nervous?

8 A. Definitely.

9 Q. Could I ask you to pour a glass of water for yourself,
10 take a deep breath. There are 12 people who need to hear
11 what you have to say now.

12 MR. WETLE: Objection, your Honor. We'd ask that all
13 those remarks be stricken as they're not question format.

14 MR. SIMEONE: I'll stipulate to striking those, your
15 Honor.

16 THE COURT: All right.

17 Q. What's your address, John?

18 THE COURT: We already went through that.

19 Q. What's your occupation at this time?

20 A. My last job I had, up until about two weeks before I was
21 arrested for this, I was working at a group home for
22 mentally disabled children.

23 Q. And where was that?

24 A. Portland, Oregon.

25 Q. How old are you, John?

John Douglas Grange - Direct (by Mr. Simeone)

1919.

1 A. Twenty-six.

2 Q. Have you ever been convicted of a crime in your life?

3 A. No.

4 Q. Ever been charged with a crime in your life before this?

5 A. I was arrested one time, two counts of reckless endangerment of a minor. It was a hot August day. I had the
6 mini-van, sliding door open, I didn't think that it'd be
7 any different from having doors off of a Jeep. And there
8 were two minors in the back of the vehicle, so I was
9 ticketed and arrested for that.
10

11 Q. Is that a misdemeanor level crime?

12 A. Yes, it was.

13 Q. Yet-- Did you get convicted of that crime?

14 A. It never even got to court. It was basically a booking
15 issue for the Portland police. The charges were dropped
16 before I even went to court.

17 Q. Thank you. I want to work up to the more prominent parts
18 of your story here slowly. Do you know Jeff Cunningham,
19 and how so?

20 A. I do know Jeff Cunningham. I first met him January or
21 February of 1999. I was living with my girlfriend at the
22 time, Melanie, and him and his girlfriend, Maija Soucie,
23 were friends of hers.

24 Q. Okay, Maija is the one who testified before us here a
25 couple of times now during this trial?

John Douglas Grange - Direct (by Mr. Simeone)

1920.

1 A. Yes.

2 Q. What was your involvement with them from that point?

3 A. Shortly after that they left, they went to, I believe--
4 I guess now I know they went to Northport. All I know is
5 they left town a couple months after I met them. I broke
6 up with my girlfriend, and at that time I had gotten a new
7 job working at Tough Shed. We go out and build sheds in
8 people's backyards.

9 Q. Do you have any--

10 A. And they--

11 Q. --any kind of accolades or any kinds of-- any kinds of
12 awards or recognition you were given at Tough Sheds as a
13 result of your work there?

14 A. Yeah, I-- There was two records that I achieved--

15 MR. WETLE: Objection, your Honor, as to character
16 evidence.

17 MR. SIMEONE: Your Honor, I think I'm allowed to go
18 into a little of his background here in a murder trial.

19 MR. WETLE: Specific format.

20 THE COURT: I have to sustain the objection, Mr.
21 Simeone.

22 MR. SIMEONE: Okay.

23 Q. Again, you said that they went and they left, and now
24 you're aware that they went to Northport, probably, and
25 you said a couple months after you met them?

John Douglas Grange - Direct (by Mr. Simeone)

1921.

1 A. Yes.

2 Q. Okay. Did-- How long did they stay there?

3 A. I don't know how long Maija stayed. I know that Jeff came
4 back to Portland around November of '99. I was still
5 living at the same apartment that I'd had with my girl-
6 friend before he left, so he was able to go to that
7 apartment and find me there.

8 Q. How long did he live with you there?

9 A. He was there with me for about a month and a half.

10 Q. Okay.

11 A. He'd come down from Northport, didn't have a place to
12 stay, so I let him stay there.

13 Q. What next happened with you and Jeff so far as your
14 acquaintance?

15 A. He left again. The New Year's he-- he left to come back
16 up here to Northport on New Year's. He brought his new
17 girlfriend, Jacqueline, with him to basically spend New
18 Year's out in-- in the wilderness. She was kind of a
19 city girl. He came back, I think, February. Around
20 February--

21 Q. That would be--

22 A. Two thousand.

23 Q. February, 2000?

24 A. Yes.

25 Q. Okay, who, then, if anyone, did you meet with-- who are--

John Douglas Grange - Direct (by Mr. Simeone)

1922.

1 people who are affiliated or people who have been dis-
2 cussed in this trial so far?

3 A. He called me, gave me directions to his house, or his
4 friend's house in Portland. I went over there. His
5 friend that I met then was Rob Schultz. Shadow was there.
6 And I also met his neighbor from up here in Northport,
7 Dane Williams, that had come into town.

8 Q. And you met those people, you say, at Rob's apartment?

9 A. Yes, I did.

10 Q. And you said that Dane Williams was in town that weekend
11 too?

12 A. Yes, he was.

13 Q. Okay, and you met him at Rob's apartment?

14 A. Yeah.

15 Q. So far as you can tell, was he a friend of Rob's?

16 A. I'm not really sure. I was there to visit with Jeff.

17 Q. I see.

18 A. We were only there for a short time, and then me and Jeff,
19 I think, went and had dinner, and then they left the next
20 day. Being Dane and Jeff.

21 Q. I see, so that acquaintance on that occasion was rather
22 brief, wasn't it?

23 A. Yeah.

24 Q. Okay. Anything happen after that point of significance
25 between you and Jeff?

1 A. I know right around late March, early April, he called me
2 at my mother's residence, which is where I was staying.
3 I don't think he was aware of that, but he did have my
4 mom's phone number so he was able to contact me through
5 her. I happened to be living there at the time. He
6 invited me up to a barter fair up in the Northport area.
7 I'd never been to a barter fair, so I thought, you know,
8 that'd be something interesting to do.

9 Q. Have you ever been up to this area before?

10 A. No. Jeff had to give me directions to get up here.

11 Q. Okay. How did you get up here? Or did you-- Let me ask
12 you that question first. Did you actually take him up on
13 his invitation?

14 A. Yes, I did.

15 Q. And you came to Northport then?

16 A. Yes.

17 Q. How did you get here?

18 A. I drove my own vehicle.

19 Q. Okay. Did you meet any of the individuals that Jeff
20 introduced you to there at Rob's apartment in February of
21 2000, up here?

22 A. Yes. Rob and Shadow were here with some other friends.
23 I believe it was Noel, their girlfriends, Annie. I met
24 their friends. I-- It was Nick. I didn't know it was
25 Nick's name. It was Echo, was the name that was told to

1 me, and his girlfriend, Loki.

2 Q. And Nick turns out to be Nick Kaiser?

3 A. Yes.

4 Q. Okay. And the Rob that you saw up here again, that was

5 Rob Schultz, right?

6 A. I don't-- As far as I know, that's his last name, yes.

7 Q. Okay. Okay, now, how did they get up here? Do you know?

8 A. They all came in a school bus. Actually, I think Echo and

9 Loki brought their own Bronco. I think they were from the

10 Seattle area at the time.

11 Q. I see. You didn't ride up in that bus, though? Correct?

12 A. No, I brought my own car. I wasn't familiar enough with

13 them to go on a big school bus to come up here.

14 Q. Sure. Sure, I understand. Did you get familiarized or

15 did they introduce you to any of the other people up here

16 at a party at that time?

17 A. Yes. Jeff was hanging out with Dane, and Dane had invited

18 me to a large party that they were having at his cabin

19 afterwards. After the April barter fair.

20 Q. How many people attended that?

21 A. I couldn't tell you. Fifteen, 20.

22 Q. Pretty many people though?

23 A. Yeah.

24 Q. Where was that held, again?

25 A. That was at Dane's cabin on Hamlet Road.

1 Q. That's the one that we've been talking about here as one
2 of the cabins involved in this story?

3 A. Yes.

4 Q. Okay. Did your relationship with the man you met, known
5 as Rob, did that-- Did that continue after that, or what
6 happened?

7 A. Actually, after we left the fair, their bus, school bus,
8 wasn't running very well, and they asked me to follow them
9 in my car back to Portland, just in case it broke down
10 somewhere along all these back roads which you guys have.
11 We could go and get a mechanic or-- or seek help, so yes,
12 I followed them to Portland. I got back to Portland, Rob
13 was leaving to go to New York, I believe about a week
14 after the fair, and he had asked me to watch out for his
15 apartment in Portland. So no problem, you know, free
16 rent. It was a full refrigerator and whatnot, so he went
17 to New York, came back, and subsequently-- I'd been
18 selling weed in small amounts before that. Between all
19 this running around with these people, I learned that they
20 were dealing--

21 MR. WETLE: Objection, your Honor. I'd ask that there
22 be a question.

23 MR. SIMEONE: Okay.

24 THE COURT: All right.

25 Q. What happened next in your relationship with Mr. Schultz?

1 A. I found out that these people were dealing high volumes of
2 drugs. Mostly, I believe, marijuana. I know they were
3 dealing with some LSD too. Since I had already had some
4 people that I-- We kind of had this group thing going.
5 If somebody found a good price on something, and they
6 would get it so we could all kind of share it together.

7 Q. You're not--

8 A. So--

9 Q. You're not trying to disguise the fact, then, that you
10 have smoked pot in your life?

11 A. Oh, no. I do smoke weed, yeah.

12 Q. Okay. So did you work out any kind of an agreement there
13 where-- with Rob about pot at that time?

14 A. Yeah, because they were dealing in such a high volume--

15 Q. When you say high volume, what are you talking about
16 there, John?

17 A. I know that they're at least in the pound level. I don't
18 know how many pounds. Quite a few pounds.

19 Q. Pound level, though?

20 A. Yeah.

21 Q. That's a larger amount of marijuana, right?

22 A. Yeah.

23 Q. Okay, so you worked out some kind of an agreement with
24 him, with the marijuana?

25 A. Yeah, because he-- Because I was aware of the fact that

1 they were dealing in these higher volumes at this time,
2 they agreed to go ahead and sell to me, and I was able to
3 get my little small amounts that I normally got and we
4 shared amongst my friends at a much, much lower cost,
5 because of the fact that they were dealing in such a
6 higher volume.

7 Q. So basically was your involvement with pot, was it a money
8 making thing, or were you trying to get your own marijuana
9 for a lower price? What was that?

10 A. It-- It wasn't a money making thing. I pretty much
11 always had a job. I really supported myself. It was a
12 matter of-- of sharing amongst me and my friends that do
13 smoke marijuana. I'm just basically getting us a lower
14 price, since we all pretty much work day jobs where we
15 don't really have the money to afford the higher prices
16 that are out there right now. So--

17 Q. You ever try to talk people into smoking pot?

18 A. No, absolutely not. There's a-- I have a lot of friends
19 that don't smoke pot, and-- and they definitely speak
20 more to us about not smoking it than we speak to them
21 about smoking it.

22 Q. Okay. Now, what are the-- What was your understanding
23 about any work-- work opportunities up here, if you were
24 to come back up here with Jeff?

25 A. One of the-- One of the things that Jeff had invited me

1 up for, he knew that I pretty much spent most of my life
2 working in construction, and he-- One of the things he
3 had invited me up to the April barter fair for was to
4 check out this cabin that he'd been living in. He was
5 expecting to be able to do some work on it, and he just
6 didn't have the mentality to really work on-- he didn't
7 have the knowledge. So he had me come up and look at it.
8 Came up, looked at it, went back to Portland. He came
9 into Portland and we had talked about the possibility of
10 me coming back up here and Lou Ash paying me to work on
11 his cabin.

12 Q. How did the prospect of coming up here and living in the
13 country go over with you?

14 A. I had always pretty much lived in Portland. I thought it
15 would be nice to see what it would be like to live out in
16 the country. Plus I have this opportunity to work on--
17 and make money while I'm living way out in the country.

18 Q. Were any prices discussed as to how much you'd make
19 working for Lou?

20 A. Jeff told me \$10 an hour. I don't know how we were going
21 to substantiate that with Lou, but that was what Jeff told
22 me.

23 Q. Sure. So the cabin we're talking about now in your
24 conversation, this is the Crown Creek cabin, or Lou Ash
25 cabin? Is that right?

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1929.

1 A. Yeah.

2 Q. Okay. And when did you finally get here, then, following
3 up on Jeff's lead?

4 A. I got here the middle of May. Came up here. I was
5 planning on attempting to work on the cabin at that time.
6 It never really crossed my mind the fact that here's this
7 cabin, it has no electricity, you can't really use power
8 tools or whatnot to work on the cabin, so I called my dad,
9 let him know that I needed supplies, a generator and
10 whatnot to be able to actually work on the cabin and to
11 make my money up here.

12 Q. What did your dad do in response to your S.O.S.?

13 A. He came up here a couple weeks after I got up here. I
14 think I'd been up here for about a week before he called,
15 or before I called him, and then he got up here about a
16 week after that.

17 Q. So that would have been the first week in June or so, as
18 he testified to?

19 A. Yeah. First week of June.

20 Q. Okay. Did he buy you the supplies?

21 A. Yeah. He brought a generator and--

22 Q. He also bought a gun, didn't he?

23 A. Yes, he did buy a gun. He bought a gun-- We went in
24 Tuesday afternoon to-- to put in an application for it.
25 I was kinda hesitate-- Dane-- Or Jeff already had a

1 rifle at the cabin. I didn't think that we needed another
2 one. My dad kinda said well, you know, if Jeff takes off
3 and takes his gun, then you're stuck up here with-- with
4 no food or anything.

5 Q. So you-- You acquiesced then. You gave in to his
6 request.

7 MR. WETLE: Objection, your Honor, as to leading.

8 THE COURT: Sustained.

9 Q. What did you do in response to his suggestion that you get
10 the gun?

11 A. I agreed with him. I finally broke in-- It actually came
12 down to it, yeah, I was going to get it in my name--

13 MR. WETLE: Objection, your Honor. It's not respon-
14 sive.

15 THE COURT: Sustained. If you'll wait for a particular
16 question.

17 MR. GRANGE: Okay.

18 Q. Okay, was there anything unusual about the arrangement
19 there for the purchase that resulted in a little bit of a
20 stutter step there at first?

21 A. Yeah. I went in to get the rifle on the day that they
22 told me that I'd probably be approved for it. I was
23 approved on it. We were going to buy it on my dad's
24 credit card. I guess you can't purchase a weapon for
25 somebody else, so he had to then get it in his name. I

1 told him, you know, just forget about it, but he still
2 wanted to go ahead and get it.

3 Q. Okay.

4 A. So he went ahead and put it in his name.

5 Q. Did he get you the other things you needed, too, like any
6 tools or anything else?

7 A. Yeah. What'd he get? He got a Bunson burner. He got
8 some-- He got a chainsaw, and he bought some pots and
9 pans. He got some silverware. Got quite a few things.
10 I think he-- he got an axe for me, as well.

11 Q. Uh-huh. That was toward the time that the-- the fair was
12 coming around, I guess, wasn't it? Close?

13 A. Yeah.

14 Q. Not quite-- Not quite that point, though?

15 A. No. We got the rifle, I believe, the latter end of the
16 week, Thursday or Friday. It must have been Thursday,
17 because we went to the barter fair. Me and my dad and
18 Jeff Cunningham went to the barter fair Thursday night.
19 We were there for a couple hours. They were still kinda
20 setting up, and we left and my dad left for Portland
21 Friday morning, so it must have been Thursday that we got
22 the rifle. A couple days before the fair.

23 Q. I see. Did you meet any of the-- Anybody else there at
24 that time that you'd met through Rob?

25 A. Where?

- 1 Q. Well, around the-- Would that be-- I don't know, around
2 the fair or so?
- 3 A. Oh, the fair? Yeah. Me and Jeff went to the fair Friday
4 afternoon, ran into Dougie and Amy. I'd met them kinda
5 through Rob in Portland in the-- in the time that I'd
6 spent with him. Like he-- he comes up and he has an
7 actual booth that he takes to all the fairs. He sells
8 different hand-blown objects. Mostly he sells hand-blown
9 glass pipes.
- 10 Q. What did you mostly do when you were at the fair there?
- 11 A. I spent some time with them Friday. Friday evening I went
12 over and started hanging out at the main gate.
- 13 Q. Why--
- 14 A. Probably around 6:00.
- 15 Q. Why were you at the main gate?
- 16 A. There was a girl that-- that runs the fair. I kinda had
17 a crush on her. I wanted to get to know her a little bit
18 better.
- 19 Q. Okay.
- 20 A. And so I figured I'd spend a little time, see what her
21 personality was, compared to how good looking she was.
- 22 Q. Okay. Where did you stay Friday night?
- 23 A. Slept in my truck by the main gate.
- 24 Q. Was that a Bronco?
- 25 A. Yeah. Bronco 286.

John Douglas Grange - Direct (by Mr. Simeone)

1933.

1 Q. Nineteen-eighty-six, you say?

2 A. Yeah.

3 Q. Okay. Describe the events that occurred Saturday as
4 they're pertinent here. In the morning.

5 A. Woke up Saturday morning. Didn't really do anything too
6 much. About 1:00 o'clock a fellow came up to the main
7 gate. He was looking for firearms and whatnot. They're
8 not allowed at the fair, so I had-- I--

9 MR. WETLE: Your Honor, it's not responsive and calls
10 for a narrative.

11 THE COURT: It does call for a narrative.

12 MR. SIMEONE: Okay.

13 Q. You woke up that morning and you stayed the night in your
14 Bronco. Is that right?

15 A. Yes.

16 Q. Okay, after that, did you then return to the main gate
17 area?

18 A. Actually, I slept in my Bronco at the main gate.

19 Q. Oh, you stayed right there at the main gate?

20 A. Yeah, I did. I was at the main gate pretty late, till
21 about 2:00 or 3:00 in the morning. We had a fire going.

22 Q. How many people did you know at the fair?

23 A. Oh, at the most, ten.

24 Q. Uh-huh. How many people were there?

25 A. Two hundred, I would say. Two, 300 people.

John Douglas Grange - Direct (by Mr. Simeone)

1934.

1 Q. What kind of things are done at the fair, John? You heard
2 some discussion about the Rainbow Family as strictly a
3 drug tribe and, oh, they're basically criminal-- crimi-
4 nals and they're crime oriented in terms of drug transac-
5 tions. What kind of people were at the fair? Is that how
6 you would typify all of them?

7 A. Oh, no, not at all.

8 Q. Describe what goes on at the fair for the jury.

9 A. A lot of items that are homemade. A lot of people make
10 homemade items, specially sew-- hand-sewn clothes,
11 different items. A lot of handmade jewelry. They
12 basically go to the different fairs and set up booths to
13 sell their items, and that's, I believe, how most of the
14 people in the Rainbow Family actually make their money, is
15 hand-crafted items.

16 Q. Okay. Now, you've heard testimony at this trial that
17 almost everybody in the Rainbow Family is a drug related
18 individual. What would you say in response to that
19 proposition?

20 A. No, that's not even close.

21 Q. Okay.

22 A. That's not even-- I mean there was 23,000 people at the
23 last Rainbow gathering, and that would be a pretty big
24 drug syndicate if that was true.

25 Q. Okay. What kinds of goods are bought and sold besides

1 those hand-crafted items that you're talking about? Do
2 people also buy and sell musical instruments? Do they buy
3 and sell other things?

4 A. Yeah, pretty much anything. It's a barter fair. It's
5 pretty much open. If you're setting up a booth, they
6 charge you a little bit more. There's a lot of people
7 that just walk around and sell just items that they have.
8 It-- It can be referred to as a big garage sale, I guess.

9 Q. I guess I just have to ask you the question directly.
10 Isn't it true that there are some drugs that are sold at
11 the barter fair?

12 A. Yes, there are.

13 Q. Okay.

14 A. Usually that's in the night time. Kids that come up and
15 party there over-- over night.

16 Q. Okay. What, if anything, happened to your gun or with
17 your gun that weekend?

18 A. Like I was saying, about 1:00 o'clock, this fellow came up
19 to the main gate, was wondering if they-- if the main
20 gate staff knew if there was anybody selling firearms
21 around the fair, and they're not allowed at the fair. I
22 just happened to be there at the time. I said well, you
23 know, you can check out my .22. I didn't want it, told my
24 dad I didn't want it. I was pretty much broke, had no
25 money, was looking at going back to Portland. I had tried

1 to get a job working in a garlic field for the Youngs that
2 were just down Crown Creek Road from me, but that job
3 wasn't starting until July, so I was pretty much looking
4 at going a whole month without being able to eat. So I
5 was looking for gas money to get back into town. I ended
6 up selling it to him for about sixty bucks, which is-- my
7 dad had paid two-- a hundred bucks for it a couple days
8 before, so he got a pretty good deal on it.

9 Q. So why did you sell the gun before you sold any of the
10 other things?

11 A. It was in my Bronco. It was there, and he had requested
12 to look at firearms. I knew he wasn't going to be able to
13 find any anywhere else at the barter fair.

14 Q. Okay. You ever see the gun again after that point?

15 A. No.

16 Q. Okay. Did you see Jeff Cunningham that day?

17 A. Saturday, I did, yeah.

18 Q. About what time?

19 A. It was around 6:00 or 7:00 o'clock. He came, told me that
20 Nick was there. I was kinda surprised. I had heard that
21 Nick was a nark, and I had warned some people around the
22 fair not to deal with him.

23 Q. How did you hear that, John?

24 A. Rob's apartment. There was a big rumor going around that
25 he had been arrested, he'd gotten out a couple days later,

John Douglas Grange - Direct (by Mr. Simeone)

1937.

1 so everybody was just saying kinda disassociate yourself
2 with him, stay away from him, just in case he's trying to
3 get anybody set up or whatnot.

4 Q. And you've heard a great deal of discussion in this trial
5 that there was some kind of a hit on Nick, or something to
6 that effect, planned for him. What did you know about
7 that up through the time you went to the barter fair in
8 the summer of 2000?

9 A. At the barter fair-- Up to the barter fair. As far as
10 I know, there was no discussion of that before the barter
11 fair. That came afterwards.

12 Q. Well, what is-- What was your general way of dealing with
13 the problem that Nick was an informant? What do you--
14 What was your planned way of handling that particular
15 situation?

16 A. My plan? I didn't have a plan to deal with it at all. It
17 wasn't my deal. He didn't really know me, so he couldn't
18 get me in trouble.

19 Q. What were other people doing that you're aware of at the
20 fair?

21 A. As far as I know, nothing. We were wanting him to leave,
22 as far as the people that did know him and did know
23 exactly who he was. We were wanting him to leave. It
24 wasn't a threatening warning. We were warning him 'cause
25 we were worried that other people at the fair might be

1 planning on doing harm to him.

2 Q. So you wanted to just get him out of there, basically?

3 A. Yeah. We were just warning him, letting him know, hey,
4 you know, people have been saying that you might be a nark
5 and there might be some people out here that really want
6 to do you in.

7 Q. Okay, so you were trying to do something for his-- his
8 safety, it sounds like. Is that correct?

9 A. Oh, yeah.

10 MR. WETLE: Objection, your Honor, as leading, and ask
11 it be stricken.

12 THE COURT: Well, you need to ask-- make your objec-
13 tions before the answer comes in. If you'll be mindful of
14 the form of your questions, please, though, Mr. Simeone.

15 MR. SIMEONE: Certainly. Certainly, your Honor.

16 Q. What, if anything, did Nick say in response to your
17 warnings, or your attempts to warn him, or care for him,
18 or watch out for him?

19 A. He said it wasn't a problem. He said that he had worked
20 it out and-- and-- and he didn't have any problems. He
21 said he was going to be taking off, and he wasn't going--
22 he wasn't worried about the Family, he was worried about
23 the law.

24 Q. Okay. What did you know of Nick, basically, at that time,
25 as an entity or as a quantity? Did you know that he was

1 related with drug sales or drug-related activity?

2 A. I knew that the rumor was he had gotten busted with LSD,
3 but I had never had any dealings with him.

4 Q. Okay. So you saw Jeff that evening, I guess. That was
5 about 6:00 or 7:00, I think I heard you say?

6 A. Yeah.

7 Q. Did you leave the fair at all at that time?

8 A. We did leave. We left for about an hour to go get a load
9 of firewood.

10 Q. Was that as Mr. Cunningham indicated, at a slash pile
11 close by?

12 A. Yeah, it was pretty close. We just ran down there and
13 got, basically-- I have a little Bronco, so we got a
14 little Bronco full of firewood, came back to the fair. I
15 brought that back for the main gates. Since I'd been
16 spending so much time there, I figured hey, you know, I
17 might as well spend some warm time there.

18 Q. About how long did that take? Was his hour estimate about
19 right on that?

20 A. Yeah, it's pretty close. It's about a 15 minute drive.
21 Probably a half hour to cut the wood and get it loaded,
22 and 15 minutes back.

23 Q. And what was the-- Where was that wood used that night?

24 A. At the front gate. I parked my Bronco there and unloaded
25 it. Pretty much the same place I'd slept the night before.

John Douglas Grange - Direct (by Mr. Simeone)

1940.

1 Q. How was the weather at the fair that weekend?
2 A. It was pretty rainy, pretty muddy.
3 Q. Firewood came in handy?
4 A. Oh, yeah.
5 Q. I want to go on to Sunday morning. Did you stay the night
6 there at the fair then? Saturday night?
7 A. Yes, I did. I spent the night there, pretty much--
8 almost the exact same place I did before, and then slept
9 in my Bronco. Sunday morning came around, woke up around
10 10:00 or so.
11 Q. Did you see Jeff then?
12 A. Not right then. I went and got some breakfast. Jeff, I
13 think, came up to the main gate around 11:00 o'clock,
14 11:30, somewhere in there.
15 Q. Did he fill you in on any plans he had with regards to
16 mushrooms?
17 A. Yeah. He said that they were going to go get five pounds
18 of mushrooms up by the cabin, then take off. He didn't
19 say where they were going. He just said they were going
20 to take off.
21 Q. Is that a pretty big amount of mushrooms?
22 A. As far as I'm concerned, yeah.
23 Q. Okay. Do you agree with him that that's about \$3,000
24 worth or so of it?
25 A. I wouldn't know. I-- I would guess somewhere around in

John Douglas Grange - Direct (by Mr. Simeone)

1941.

1 there.

2 Q. Okay, you don't disagree with him on that point?

3 A. No.

4 Q. Who did he say he was going to go-- Or what did he say he
5 was going to do with the mushrooms?

6 A. Him an-- and-- and Echo and his friend were going to
7 take off. He said they were going to go get the five
8 pounds out by the cabins. Jeff was going to grab the
9 stuff and they were going to take off.

10 Q. Okay, just for jury clarification, you're talking about
11 Echo, you're talking about Nick Kaiser, right?

12 A. Yeah. Well, that's how I knew him.

13 Q. What was your response, if anything?

14 A. I told him that I didn't think it was a good idea to be
15 doing a five pound mushroom deal with somebody that might
16 be a nark. I thought maybe Echo had been setting him up.

17 Q. So you were then again-- You're looking out for your
18 friend, Jeff, a little bit at that point?

19 A. Oh, yeah.

20 Q. What did he think about whether or not that was a problem?
21 That is, Jeff?

22 A. He said that it wasn't a problem. He said he-- he'd been
23 hanging out with Nick. He said they talked about it quite
24 a bit, and the way he understood it, Nick had worked
25 everything out and he didn't have any problems.

John Douglas Grange - Direct (by Mr. Simeone)

1942.

1 Q. Did you change your mind on the point?
2 A. I still thought it was kinda sketchy, but, you know,
3 Jeff's going to do what he wants to do. That's his deal.
4 Q. Did you see him again after that?
5 A. When he left.
6 Q. Okay. How about Dane? Did you see him at all?
7 A. Yeah. Saw him about 12:30. Showed up. I saw him and
8 Janell coming, pull into the parking lot.
9 Q. So you-- you remember that that was Janell, then, who
10 took him to the fair?
11 A. Yeah, it was. She was in her little blue, I think, Volvo
12 stationwagon.
13 Q. What did they-- What did they do, if anything, or what
14 did they say, if anything, when you first saw them?
15 A. I didn't talk to Janell. Dane kinda jumped out of the
16 vehicle and came over and wanted to know where Jeff was.
17 Wanted to--
18 Q. How did he--
19 A. Wanted to collect from him.
20 Q. Wanted to collect from him?
21 A. Yeah, Jeff had been selling weed for him all weekend.
22 Q. And did you know how much that was or anything about the
23 quantities involved?
24 A. It was-- It was quite a bit. It was a pretty good sized
25 plastic bag in a backpack that Jeff had.

John Douglas Grange - Direct (by Mr. Simeone)

1943.

1 Q. Did you tell him where he could find Jeff?
2 A. I said he was planning on taking off with Nick. He said,
3 Is he with Nick now? I said yeah.
4 Q. Okay, did you tell him where they were?
5 A. Did I tell who--
6 Q. Did you tell Dane where they were?
7 A. I told him they were at the fair. They were in Nick's
8 Bronco.
9 Q. How did he react to that?
10 A. He just said he didn't want to see Nick at the fair. He
11 didn't want to be in contact with him at the fair. Didn't
12 want to be seen by anybody. He asked me if he could
13 borrow my Bronco to go catch them at the cabin so he could
14 collect from Jeff before they left.
15 Q. Did you lend him the Bronco?
16 A. Yeah.
17 Q. Did you do that willingly?
18 A. Yeah. I didn't see any problem with it. I figured, you
19 know, well, Dane needs to catch Jeff, and he doesn't want
20 to see Echo at the fair--
21 Q. So far as--
22 A. --so I figured--
23 Q. Okay. So far as you know, did Jeff take off after that?
24 A. Yeah. Jeff took off about 1:00 o'clock. Dane borrowed my
25 Bronco about 12:30.

John Douglas Grange - Direct (by Mr. Simeone)

1944.

1 Q. How do you start your Bronco?
2 A. You got to push-start it.
3 Q. Okay.
4 A. The starter was out at that time. Works now, though.
5 Q. Okay. When's the last-- When's the next time you saw
6 Jeff?
7 A. The next time I saw Jeff?
8 Q. Right.
9 A. On Crown Creek cabin that night.
10 Q. Do you remember when Jeff left?
11 A. When Jeff left the fair?
12 Q. Right.
13 A. One. It was around 1:00. I can't say it was 1:00 o'clock
14 on the dot.
15 Q. When did he leave, relative to when Dane left?
16 A. About a half hour afterwards.
17 Q. Half hour after Dane left?
18 A. Yeah.
19 Q. Okay. When did your truck get back?
20 A. Dane showed up around 6:30 with it. I would-- Like I
21 said, I can't say exactly 6:30. Between 6:00 and 7:00,
22 somewhere in there.
23 Q. That how long you expected it to be gone?
24 A. No. I thought he was just going to run up there and meet
25 with Jeff and run back. I didn't expect him to be gone

John Douglas Grange - Direct (by Mr. Simeone)

1945.

1 for five hours.

2 Q. How did Jeff appear to you when he returned?

3 A. Jeff wasn't with him. It was just Dane.

4 Q. How did Dane appear?

5 A. Kinda nervous. I think-- I figured he was more nervous

6 about the fact of how I was going to react to him having

7 my Bronco all day.

8 Q. Uh-huh. Did he offer to do anything in exchange for being

9 out with your Bronco all day?

10 A. Yeah, he offered-- I had me and my friend-- well, not my

11 friend, my acquaintance, Bill, lives up on Moore (?) Road,

12 which is right on the other side of Flat Creek Road. Both

13 of us were there at the fair together for part of the day.

14 Dane offered-- Once we started heading back towards

15 Northport, he offered to buy me dinner for having my

16 Bronco all day.

17 Q. Okay, you went to the Whitebird then?

18 A. Yeah, we went to the Whitebird for dinner.

19 Q. And this is consistent with what Troy Phillips said the

20 other day about your trip over there?

21 A. Yeah.

22 Q. Okay.

23 A. Jeff wasn't with us though.

24 Q. Right. You and Dane and Bill?

25 A. Yeah, it was me and Dane and Bill.

John Douglas Grange - Direct (by Mr. Simeone)

1946.

- 1 Q. Okay. What did you ask, if anything, about-- What did
2 you ask Dane, if anything, about Jeff at that time?
- 3 A. It was on the ride back after we had gone to the bar, I
4 asked him if Jeff had gotten off all right with-- with
5 Nick. He said no, he said Nick had left him behind. So
6 I was--
- 7 Q. Nick-- Nick left Jeff then at the Crown Creek cabin?
- 8 A. Yeah.
- 9 Q. In other words, their plan to sell mushrooms in California
10 disintegrated somehow?
- 11 A. The way I understand it at the time, I was led to believe
12 that Echo had gotten the mushrooms and-- and had basical-
13 ly ditched Jeff after completing the transaction, that
14 deal.
- 15 Q. Well, what did you do after that?
- 16 A. We went over and picked up Jeff from the Crown Creek
17 cabin.
- 18 Q. You drove from the Whitebird over to Crown Creek, you saw
19 Jeff there?
- 20 A. Yeah.
- 21 Q. Okay. Now, we heard some discussion about what happened
22 at that point, to Maija Soucie and others, and you saw
23 the-- you saw Jeff at that time. Did he ask you any--
24 to borrow your Bronco at that time?
- 25 A. Not at the Crown Creek cabin. We picked him up and went

1 over to Dane's, and that's when we ran into Maija.
2 Q. Okay. Did you lend it to him?
3 A. I-- Yeah. I mean, I did, yeah. I didn't really want to.
4 Q. But you-- Did he prevail upon you to borrow it, or what
5 happened there?
6 A. Yeah. I was kinda upset that Dane had had my Bronco all
7 day, and Jeff was kinda messed up. He-- He looked like
8 he was pretty drunk, pretty wasted, and I was kinda
9 worried about him actually driving my vehicle. After I
10 considered and he'd asked me a few times, I figured okay,
11 you know, stay on the back roads, 'cause you can cut
12 through on the Camerons' property. So I told him stay on
13 the back roads, don't crash it, don't wreck it, go ahead
14 and go over to the Crown Creek cabin. I said just have it
15 back early in the morning. I had made plans to have
16 dinner with some of the people from Portland--
17 MR. WETLE: Objection, your Honor.
18 THE COURT: Well--
19 MR. WETLE: Non-responsive narrative _____.
20 THE COURT: Sustained.
21 Q. Okay. Did you make plans for that evening at all at the
22 barter fair that day?
23 A. I made plans for Monday evening at the fair Sunday
24 afternoon.
25 Q. Okay, what were those plans?

1 A. I had planned to have dinner with some people that were at
2 the fair from Portland Monday evening, so I was planning
3 on leaving Monday morning.

4 Q. And being in Portland then?

5 A. Yeah, I wanted to be in Portland by dinner time.

6 Q. Okay, so that you could have your dinner with them?

7 A. Yeah.

8 Q. Okay. How long was Jeff promising-- How long was Jeff
9 planning or what was your understanding about how long
10 he'd be away with your Bronco?

11 A. He was supposed to be back 9:00, 10:00 o'clock in the
12 morning. Pretty-- Early enough for me to be able to pack
13 it and to get into town by dinner time.

14 Q. Well, we all know the story about what happened on his
15 return. How long was it-- How long did it take him to
16 return with the truck?

17 A. He didn't. I ended up having to go find it.

18 Q. Where was it?

19 A. It was stuck in the creek. You got to drive down through
20 a creek to get up to Crown Creek cabin, and he had stalled
21 it out in that creek there.

22 Q. Okay, explain that whole transaction about how that
23 occurred, if you would, John. As I understand it, you
24 were at the Hamlet Creek cabin.

25 A. Right.

1 Q. Is that correct?

2 A. Right.

3 Q. You loan them--that is, Jeff and Maija--the truck?

4 A. Right.

5 Q. They left to go--

6 MR. WETLE: Objection, your Honor. It's all narrative
7 and leading, and ask the question so he can--

8 THE COURT: Sustained.

9 Q. What happened at the point after you-- How did you
10 finally get to a point where you met them physically, that
11 is Jeff and Maija, that next day? What were you doing?
12 Were you going to retrieve your truck?

13 A. Yeah. I figured if they had-- if something had happened,
14 they would have walked back. Monday morning went by,
15 hadn't come back. Starts getting 1:00 o'clock, 2:00
16 o'clock. Somewhere between 2:00, 3:00 o'clock, somewhere
17 around in there, I was finally-- told Dane, I said, Let's
18 just go see. I waited that long. I figured that maybe
19 Echo had gotten Jeff busted for the mushroom--

20 MR. WETLE: Objection, your Honor.

21 A. --deal--

22 MR. WETLE: He's rambling again and non-responsive.

23 THE COURT: Overruled. Go ahead.

24 Q. Go ahead, John, if you would.

25 A. I thought that Echo might have gotten Jeff busted for the

1 mushroom deal they had done before, so I was kind of
2 hesitant to just run over there in the morning. Got--
3 Getting pretty antsy. Me and Dane finally walked over
4 there around 2:00 or 3:00 o'clock.

5 Q. Okay, let me stop you there for a second.

6 A. Okay.

7 Q. You thought that perhaps that Nick Kaiser then got Jeff in
8 some trouble, and that's why he was gone so long?

9 A. Yeah. I thought maybe Echo had gotten Jeff busted for the
10 mushroom deal.

11 Q. How long will it generally take you to get from-- How
12 long would it take you to get from here to Portland?

13 A. About eight hours.

14 Q. And you were preparing to be in Portland that Monday night
15 at about 6:00 o'clock?

16 A. Yeah.

17 Q. So what-- What would have happened to your plans then to
18 be in Portland at 6:00 at that time?

19 A. They were shot.

20 Q. They were shot.

21 A. Yeah.

22 Q. So you left and you went to find them?

23 A. Yes.

24 Q. And you found them basically stuck in that ravine there as
25 it crosses--

1 A. They were-- Right before you get to the Crown Creek
2 Road, they were walking down-- Or right before you get to
3 the Crown Creek cabin, they were walking down Crown Creek
4 Road. Me and Dane came up on Jeff and Maija heading back
5 towards Dane's cabin.

6 Q. Did you get the Bronco out?

7 A. I was kinda yelling at Jeff. I was a little bit upset.
8 It was late in the afternoon, he hadn't brought it back.
9 There was no obvious reason except for the fact he got it
10 stuck. I was pretty much yelling at him:

11 Hey, you got the Bronco stuck, you should
12 have just gotten your butt up early in the
13 morning and walked over and told me, and
14 then we could have come over and dealt with
15 it instead of just leaving me hanging until
16 late afternoon.

17 Q. Were you mad at him?

18 A. Oh, yeah.

19 Q. Did you yell at him?

20 A. Yeah.

21 Q. When did you finally leave to Portland?

22 A. Well, we got the Bronco unstuck. Me and Jeff walked to
23 get the Bronco unstuck.

24 Q. You had to get your stuff loaded first, didn't you?

25 A. Well, we had to get the Bronco unstuck first.

Q. Right.

A. And once we did that, we packed-- We drove up to the

1 Crown Creek cabin, packed up all our stuff. Did that
2 pretty fast. I was-- It was already looking at 4:00
3 o'clock, somewhere around in there, so I knew it was going
4 to be late night before I got into Portland, and so I was
5 trying to get things done and get out of there.

6 Q. Right. Did you have to load stuff and find your dogs?

7 A. My dog was there at the time. Actually got him in the
8 vehicle, had the windows rolled up, had him locked down.
9 He's just a little terrier dog. Drove over to Dane's.
10 Dane decided he wanted to go with us to Portland, so it
11 was kind of: Okay, let's repack everything. Ended up
12 having to repack stuff, get stuff on the roof so we could
13 get Dane's actual physical body in the vehicle, plus all
14 this-- all this gear that he was taking.

15 Q. What did Jeff say about the mushroom deal that went awry,
16 or Nick's leaving or anything like that? Did he discuss
17 it with you at all?

18 A. No.

19 Q. Did he seem dejected as a result of that?

20 A. He- He seemed-- He was pretty drunk. He continued to be
21 drunk from the time I got back Sunday night and--

22 Q. Was there even very much discussion about it?

23 A. No, none at all. He was just pretty blitzed. Pretty out
24 of it.

25 Q. How did both of those guys appear to you, Jeff and Dane?

John Douglas Grange - Direct (by Mr. Simeone)

1953.

1 A. Dane seemed pretty antsy. I thought it was just because
2 Jeff had been hanging out with-- with Echo, with a whole
3 backpack full of weed at the fair, and I knew that Dane
4 knew that-- that Echo was supposedly a nark, and Echo
5 knows who Dane is, and Dane's a big marijuana supplier out
6 of Northport, so I figured he was pretty antsy about that
7 whole thing happening right there where he lives.

8 Q. Uh-huh.

9 A. So he was antsy, Jeff was drunk.

10 Q. I see. You finally leave for Portland, then?

11 A. Yeah. We left for Portland. Probably got out of here
12 around 6:00 o'clock, finally.

13 Q. What time did you get back?

14 A. To Portland?

15 Q. Yeah.

16 A. Went to Rob's about 2:00 A.M. Got there, woke them up,
17 told Jeff and Dane--

18 Q. How long did you stay at Rob's?

19 A. Just long enough for Jeff and Dane to unload their stuff
20 out of my Bronco.

21 Q. And where did you go from there?

22 A. Went over to my mom's.

23 Q. You hear from Jeff at all after that?

24 A. Jeff called me Thursday.

25 Q. So that would be two days after that, or--

John Douglas Grange - Direct (by Mr. Simeone)

1954.

1 A. Well, I dropped them off late night Monday, Tuesday
2 morning.

3 Q. Okay.

4 A. So two days, three days. Yeah.

5 Q. However long that is, right?

6 A. Yeah. Thursday.

7 Q. What, if anything did Jeff ask you at that time?

8 A. He said that him and his friends were getting ready to
9 take off on tour, wanted to know if I wanted to go along.
10 I just come there from Northport, didn't have a job,
11 wasn't anything holding me down. All these people had
12 been talking about how great tour is and how fun it is and
13 all the people you meet, so I said sure, I'll go on tour,
14 no problem. It was pretty much all expense paid for me,
15 so--

16 Q. Hear anything from your dad at that time?

17 A. Yeah. Dad came up on Friday, I think it was. Kinda the
18 same deal. He came up to buy me a sleeping bag for tour,
19 give me some more stuff.

20 Q. Uh-huh. What, if any, conversation did you hear among
21 your acquaintances at that time about Nick Kaiser and his
22 informing activity?

23 A. That's when I heard that there was supposedly a hit out on
24 Nick. Jeff and Dane and Rob were kind of arguing about
25 that. I'm not sure what the entire conversation was. I

1 know I told my dad, I said I don't know about killing
2 anybody, but I was going to kick Nick's butt if he came to
3 Portland, for leaving Jeff behind in Northport. Jeff
4 seemed to have taken it pretty hard.

5 Q. Okay. You heard all the discussion about all of the very
6 heinous activities that occurred in the cabin, John. I'm
7 not going to go into detail about that. Beginning at
8 about whatever time you want to believe it began now, from
9 the testimony, 1:00 o'clock in the afternoon until 4:00 or
10 5:00 o'clock in the afternoon. Did-- Were you even in
11 the vicinity of the Crown Creek cabin during the time any
12 of these alleged events occurred?

13 A. No. I couldn't even have gotten there.

14 Q. Did you have any involvement whatsoever in the deaths of
15 these boys?

16 A. No. I would-- I would have stopped it if I would have
17 known that was the plan.

18 MR. SIMEONE: Thank you, John. I have no further
19 questions.

20 THE COURT: All right, Mr. Wetle?
21
22
23
24
25

1 JOHN DOUGLAS GRANGE

2 CROSS EXAMINATION

3 BY MR. WETLE:

4 Q. So, Mr. Grange, in April you came up to Crown Creek area
5 for the party?

6 A. Yeah.

7 Q. And that was the first time you've ever been up there?

8 A. Yes.

9 Q. And at that time you were going to check out the cabin?

10 A. Yes.

11 Q. And kinda look into whether or not you wanted to come back
12 up there?

13 A. Yeah.

14 Q. So you saw what the cabin was. Did you stay at the cabin
15 when you were there then?

16 A. No. I stayed at Dane's. I went over there. We left the
17 barter fair Sunday night, went to Dane's. On Monday,
18 during the day, I went over and looked at the Crown Creek
19 cabin. Monday night, stayed at Dane's, then we all left
20 Tuesday morning. I think probably half the people from
21 the party actually left on Monday. There was just a few
22 of us left Tuesday morning.

23 Q. So anyway you check it out, and-- and then you go back to
24 Portland?

25 A. Yeah.

John Douglas Grange - Cross (by Mr. Wetle)

1957.

1 Q. And then in so, what, mid-May you're then coming back to
2 the Crown Creek cabin?
3 A. Yeah. Jeff and Dane had come into town. They took the
4 bus or the train or something, and they said hey, come
5 back up with us and give us a ride. So they paid for gas,
6 so I thought it was good timing.
7 Q. So you're going to go up there and work for Lou Ash?
8 A. Yeah.
9 Q. For \$10 an hour?
10 A. Yeah. I don't know how we were going to substantiate how
11 we were going to get paid, but yeah.
12 Q. You never talked to Lou Ash?
13 A. Jeff did.
14 Q. Yeah. As far as you know. You think--
15 A. I was actually present for the phone calls when Jeff
16 talked to him.
17 Q. Okay.
18 A. And he was relaying the information to me at the time.
19 Q. And what were you going to do?
20 A. Basic repairs. The sheetrock all needed to be redone.
21 Needed new doors. Most of the windows were out, needed
22 new windows in. Needed new carpeting, needed to be
23 painted, needed to be re-insulated. The decks needed to
24 be re-built. The foundation needed to be supported on the
25 south end. The A-frame was completely destroyed. The

1 base structure of that needed to be all reconstructed,
2 if-- if at all. Reconstructed or just tore down.

3 Q. So that's a lot of work.

4 A. A lot of work, yes.

5 Q. So you're going to go up there and start working on it?

6 A. Yeah. And Jeff was supposed to help me, but he had broken
7 his foot, so--

8 Q. And so you move up there, and what'd you bring?

9 A. What I had. I had a few handtools. That's about it.
10 Handsaw, hammer, nail belt, couple tape measures, a few
11 odds and end handtools.

12 Q. Handtools--

13 A. Yeah.

14 Q. For all this work?

15 A. That's what I was going to start on. I figured if I start
16 with the handtools, and Lou ends up sending money for the
17 other stuff, with the time that I had spent that I could
18 slowly build up my tools to get the major work done.
19 Yeah.

20 Q. So you have a hammer and a saw and a toolbelt.

21 A. Yeah.

22 Q. And you come up there about mid-May. Now, your dad gets
23 up there June 2nd, and he says you got about a hundred
24 start plants, so you're growing a little on the side?

25 A. No, we hadn't started any plants yet. Actually, yes, we

1 were planning on growing marijuana. Rob had asked me to
2 do that. He said:

3 You're living up there, you know, go ahead
4 and try to do this. I can kick you some
5 extra money for the weed that you're going
6 to sell to us.

7 My dad, when he was up there, bought the supplies to do
8 that, but we never got 'em started.

9 Q. So he said he saw a hundred start plants. A hundred for
10 you and a hundred for Jeff?

11 A. That's what we were preparing for. We had-- We had about
12 200 seeds, and we had the fertilizer, and we had the way
13 to start them, but we had not started them, no.

14 Q. So you're up there, you're going to grow a little for Rob?

15 A. Yes.

16 Q. And were you going to make any contacts for Rob with cheap
17 pot up there?

18 A. That was Dane's deal. Dane had already made the contacts.
19 I had no reason to.

20 Q. Okay, were you going to be a presence for Rob up there at
21 the Northport area?

22 A. A presence for who? There's nobody that lives up there.

23 Q. A presence for Rob as a representative up there?

24 A. No.

25 Q. You weren't going to be his representative?

A. No.

1 Q. You weren't taking Jeff Cunningham's place?
2 A. I didn't know Jeff Cunningham had a place.
3 Q. With Rob?
4 A. As far as I know, there was no place there. That was--
5 Northport's Dane's deal. Dane's the supplier out of
6 Northport. He was Rob's supplier.
7 Q. Okay, and you heard Jeff Cunningham say he's the one that
8 introduced Dane to Rob.
9 A. Yeah. I didn't know that.
10 Q. So your dad gets you some supplies.
11 A. Yeah.
12 Q. And he gets you a generator.
13 A. Yeah.
14 Q. 'Cause there's no power there.
15 A. No power.
16 Q. And that generator was used to put up one light bulb in
17 the kitchen?
18 A. Put up the light bulb, run a generator. We did have a
19 small radio, didn't work, being where we were at there was
20 no reception. We were trying to attempt to-- And there
21 is a water pump up there. We were trying to attempt to
22 get electricity hooked up to the water pump so we could
23 have running water in the cabin as well.
24 Q. Is this your dad? When he got there?
25 A. Yeah. My dad was helping me with that.

John Douglas Grange - Cross (by Mr. Wetle)

1961.

1 Q. Yeah, 'cause you didn't have any generator until he got
2 there. Is that correct?

3 A. Right.

4 Q. So when you say that you were going to work on the house,
5 you just making that up, or is that something you really
6 truly planned on doing?

7 A. No, actually, your detectives talked to Lou Ash, and he
8 agreed with that.

9 Q. That some people were going to make some work on the
10 house?

11 A. Yes.

12 Q. And you were there with your hammer and your saw?

13 A. Yes.

14 Q. For--

15 MR. SIMEONE: Objection. Asked and answered. He's
16 getting on that subject two or three times and I've let it
17 go.

18 THE COURT: Sustained.

19 Q. So on June 4th you go down to try to buy a gun?

20 A. Yeah. Early-- that early first week, yeah.

21 Q. Okay, and didn't work.

22 A. I was approved for it. It's just my dad couldn't buy it
23 for me on his credit card.

24 Q. No, on June 4th it was delayed, wasn't it?

25 A. Oh, yeah. It was delayed. Just-- They just needed to

1 run it. They-- I guess they sometimes get busy where
2 they actually run the transactions, is what I was told
3 from Wal-Mart.

4 Q. Or could that have been because of the prior reckless
5 endangerment?

6 A. I doubt it.

7 Q. Okay, do they run a check on you?

8 A. Yeah.

9 Q. So possibly?

10 A. I suppose. I don't know the mechanics of it, yeah.

11 Q. All right, so it got delayed from the 4th, and then on the
12 7th you get another call that it's been okayed?

13 A. They told me to come back in two or three days. We don't
14 have a phone for them to call us. They said come back, so
15 we ran back into Colville on the 7th.

16 Q. On the 7th.

17 A. Yeah.

18 Q. So the 7th, about 5:30 or so, you try to purchase it
19 again?

20 A. I don't remember what time of day, but yeah, we did try to
21 purchase it. I was approved for it.

22 Q. Okay, and that was when we got into the credit card issue.

23 A. Exactly.

24 Q. Okay. And at that time how much ammunition did you buy?

25 A. My dad bought a big box of shells. I don't know how many.

John Douglas Grange - Cross (by Mr. Wetle)

1963.

- 1 Q. About 550?
- 2 A. I suppose somewhere around in there.
- 3 Q. So on Thursday, at 5:30, you-- the gun is purchased?
- 4 A. Sure. I know it was Thursday evening.
- 5 Q. Did you come back and shoot the gun Thursday night?
- 6 A. I think we went to the barter fair first, 'cause we were
7 already in Colville so we were out running around with
8 the-- the barter fair for a couple of hours, and then
9 went back and did quite a few clips of-- of target
10 practice shots, yeah.
- 11 Q. That night, or Friday?
- 12 A. That night.
- 13 Q. Thursday night.
- 14 A. Thursday night. My dad was there when we were doing that.
15 He left Friday morning.
- 16 Q. So basically, then, you stayed at the barter fair for the
17 rest of the time?
- 18 A. After Friday morning?
- 19 Q. Uh-huh.
- 20 A. Yeah, till-- Well, I left to get firewood with Jeff, but
21 I didn't leave the fair again then till 6:30 on Sunday.
- 22 Q. So you were there from Friday morning till 6:30 Sunday
23 night?
- 24 A. Except for to get the firewood, yes.
- 25 Q. And you slept in your truck?

1 A. Yes.

2 Q. And you never went back home to the Crown Creek cabin?

3 A. No.

4 Q. And you never went to Camerons to talk to Rob Schultz?

5 A. No. I didn't have any gas money to run around to do that.

6 I was broke.

7 Q. So your testimony is your dad bought the gun for you on

8 Thursday and you sold it on Friday or Saturday morning?

9 A. Saturday afternoon. Early afternoon.

10 Q. And to a stranger?

11 A. Yeah.

12 Q. For sixty bucks?

13 A. Yeah. I figured that would be enough to get me back into

14 Portland--

15 Q. That's all right.

16 A. --on Monday.

17 Q. Sorry I haven't asked any question, but let me continue

18 on. So you talked to Nick?

19 MR. SIMEONE: When?

20 Q. At the barter fair?

21 A. Yes, I did. Saturday evening, briefly.

22 Q. Saturday night?

23 A. Yeah. It was around 8:00 o'clock or so.

24 Q. Is that when you were getting Jeff out of the rig?

25 A. I never got Jeff out of the rig. Jeff showed me where

1 Nick's Bronco was, and then we left together, back into
2 the fair.

3 Q. Never went over to the rig and got him out of the rig to
4 come out and talk to Dane?

5 A. No. Dane was never at the fair.

6 Q. Think-- So you say Dane never came to the fair Saturday
7 night?

8 A. No, Dane did not come to the fair.

9 Q. And never--

10 THE COURT: Let's see. Are we there Friday night or
11 Saturday night?

12 MR. WETLE: Saturday night.

13 A. At least I didn't see him. If he did, I didn't see him.

14 Q. So at that time you say Nick is worried about the law, not
15 about the Family?

16 A. That was my understanding, yes.

17 Q. So now Jeff Cunningham is going to take Nick and Josh
18 Schaefer up to get five pounds of mushrooms?

19 A. Yeah.

20 Q. And they were going to go to the cabin to do it?

21 A. They were going to-- When I say they were going to go up
22 to the cabins, they were going to go in that area. I
23 believe there's somebody up there that is a mushroom
24 supplier that Jeff was going to go see.

25 Q. And so you saw them leave? You saw them leave?

1 A. Uh-huh.

2 Q. Jeff and Nick and--

3 A. Yes.

4 Q. --Josh.

5 A. Yeah.

6 Q. And then you tell Dane Williams that they left?

7 A. No. Dane borrowed my Bronco before they left.

8 Q. And what did he borrow it for?

9 A. He want-- I had informed him that Jeff was with Nick, and
10 he said he didn't want to be seen with Nick at the fair
11 'cause he knew he was an informant and he knew that Echo
12 knew who he was.

13 Q. So he's going to borrow your truck and go back to the
14 cabin?

15 A. He borrowed it to catch up with Jeff, 'cause I told him
16 that Jeff was planning on taking off; and he wanted to
17 catch him at his cabin collecting his personal belongings
18 before they left.

19 Q. Okay, but he left before Jeff left?

20 A. Yeah. About a half hour.

21 Q. Dane did?

22 A. Yeah.

23 Q. So you told him you think he's leaving for California?

24 A. I didn't say California. I don't know where they were
25 going. I told him--

1 Q. You just said they were going to leave.

2 A. --that they were taking off.

3 Q. And so in your mind, Jeff-- or Dane Williams goes to catch
4 Jeff Cunningham?

5 MR. SIMEONE: Your Honor, I'd ask for that sentence to
6 be clarified, that question. He said Jeff or Dane
7 Williams. I want to know what he's talking about.

8 THE COURT: I didn't quite get it either.

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

10 Q. Jeff-- Dane Williams leaves to catch up with Jeff
11 Cunningham?

12 A. Yes.

13 Q. And that was about noon on Sunday?

14 A. Who?

15 Q. That they all left?

16 A. Dane left at-- Dane borrowed my truck about 12:30. Jeff
17 left about 1:00 with Echo and Josh.

18 Q. And then you're stuck there until 6:30 at night or so?

19 A. That's about when-- Between 6:00 and 7:00, that's about
20 when Dane brought my Bronco back.

21 Q. Who were you talking to at the barter fair?

22 A. Dougie and Amy.

23 Q. I'm sorry. And what was the plan? Did you make plans for
24 them for dinner?

25 A. Yes, I did.

John Douglas Grange - Cross (by Mr. Wetle)

1968.

- 1 Q. And it was going to be at their house?
- 2 A. Actually, I was-- I believe I was going to call them when
3 I got into town. We were going to go out to dinner was
4 the plan.
- 5 Q. So the plan was you were going to have dinner with them
6 Monday?
- 7 A. Yes. Not many good restaurants up here, so I was kinda
8 looking forward to a nice dinner.
- 9 Q. So you've been-- You've been to Crown Creek cabin for
10 three weeks, and then you were going to leave and go to
11 Portland on Monday?
- 12 A. Yeah.
- 13 Q. And you're going to have dinner with your friends?
- 14 A. Yes.
- 15 Q. And that was the plan?
- 16 A. That was the plan.
- 17 Q. And your dad has just been there for a week, and he's
18 brought a bunch of supplies for you to live with?
- 19 A. That's right.
- 20 Q. And that was a generator and an axe--
- 21 A. Yes.
- 22 Q. --and pots and pans and things for you to be there for the
23 summer.
- 24 A. Chainsaw. Yeah.
- 25 Q. And so he leaves on Friday, and on Monday you're leaving

1 for Portland.

2 A. Yes.

3 Q. And you never came back.

4 A. No, I didn't. I went on tour. I thought I explained
5 that.

6 Q. So you were going to be there the whole summer and you
7 were going to work and you were going to-- He left all
8 these supplies on Friday and between Friday and Monday you
9 decided to never come back to Crown Creek?

10 A. Because I realized that I'm broke, the work that is around
11 there I-- isn't until July when the garlic season is.
12 I'm looking at being up there for an entire month with no
13 food. What would you do?

14 Q. I'm just tell-- I'm asking you what you did, and you're
15 telling me that in three days you were telling your dad
16 you're going to be there, and he's bringing you a genera-
17 tor.

18 A. I told my dad I was going back to Portland.

19 Q. Isn't he surprised to see you when you got back?

20 A. He was not surprised to see me. I did tell him; he just
21 forgot.

22 Q. You saw that he testified in front of the jury that he was
23 surprised you came back to Portland.

24 A. I-- I heard he was disappointed and he was not expecting
25 me to come back, but I did tell him before he left.

1 Q. That you were coming back?

2 A. I said I was planning on coming back into Portland. I did
3 not tell him that I was planning on staying in Portland,
4 so he might have believed that I was coming back to
5 Northport, but I did tell him I was coming into Portland
6 on Monday. That had been my plan for a couple weeks.
7 That's why Maija knew that we were going into Portland on
8 Monday.

9 Q. But when you leave on Monday, you're not coming back to
10 Crown Creek, are you?

11 A. No, because Jeff wasn't going to come back, and I wasn't
12 going to live up there by myself.

13 Q. So you bundle up your generator and everything else you
14 had and head to Portland?

15 A. Well, if I'm not planning on coming back at that point,
16 yes, I'm going to take all of my stuff, especially the
17 generator, which is-- I would say was very expensive.

18 Q. Now, you said that Nick Kaiser had ditched Jeff Cunningham
19 in the-- when they went up to the cabins?

20 A. That's what I was led to believe, yes.

21 Q. And at the same time, after you picked Jeff Cunningham up
22 and took him over to the Hamlet Creek Road that evening?

23 A. Is that when I found out?

24 Q. I don't know. You said that you--

25 A. Dane informed me. I asked Dane if Jeff had gotten off all

1 right, and he said no, Nick left him behind. I said,
2 Where is Jeff at?

3 Q. When did Dane inform you of that?

4 A. On the drive from the Whitebird in Northport back on Flat
5 Creek Road and heading towards the cabins.

6 Q. Okay, so you had been at the Whitebird before you picked
7 up Jeff Cunningham up at the Crown Creek cabin?

8 A. Yes.

9 Q. So he's up there by himself?

10 A. Yes.

11 Q. And then you went up there and picked him up and took him
12 down to the Hamlet cabin?

13 A. Yes.

14 Q. And so you would have driven down the Flat Creek Road and
15 up to the Hamlet Road, and did you see anybody coming up
16 there on the way?

17 A. I didn't drive down the Flat Creek Road. The Hamlet Road.

18 Q. I mean the Crown Creek Road.

19 A. Yes.

20 Q. And did you see anybody coming up on the way?

21 A. No.

22 Q. No cars?

23 A. No cars.

24 Q. Okay, and then you got down to the Hamlet cabin?

25 A. Yes.

1 Q. And who's there?
2 A. Maija was there.
3 Q. And at that point you've been talking to Jeff. He's okay,
4 he hasn't been arrested?
5 A. No, he hadn't been arrested.
6 Q. And--
7 A. I won't say he was okay. He was pretty drunk, but--
8 Q. But he's-- He's--
9 A. He's not harmed by the law, no.
10 Q. So then he takes your rig and goes back to the Crown Creek
11 cabin?
12 A. Yes. With Maija.
13 Q. And you think he doesn't come back in the morning because
14 he got busted?
15 A. I thought that was a possibility, yes. I thought maybe
16 Echo had set up a sting operation, did the buy, left, and
17 when Jeff either went back Sunday night or Monday morning
18 they came in and busted him. Either marked bills or
19 whatnot. I don't know how the law works.
20 Q. They don't usually wait that long, do they?
21 MR. SIMEONE: I'm going to object to--
22 A. I wouldn't know.
23 Q. Okay.
24 A. I've never been busted for drugs.
25 Q. And so after being there three weeks, you went on tour.

1 Is that correct?

2 A. After being in Northport and then going back to Portland,
3 after I got to Portland, yes, I was invited to go on tour
4 by Jeff.

5 Q. Who's Bill?

6 A. Bill is somebody that lives with Poppa Smurf, I believe,
7 up Moore Road, just on the other side of Flat Creek Road
8 from the Hamlet Road. That would probably be the person
9 that Dane--

10 Q. I'm sorry. No--

11 A. --described to you.

12 Q. Just let me ask a question, Mr. Grange.

13 MR. SIMEONE: Your Honor, he was trying to answer a
14 question.

15 THE COURT: Well, if you'll just wait until you have a
16 question directed to you, Mr. Grange, it'd be easier to
17 follow.

18 MR. GRANGE: Yes, ma'am.

19 Q. So your testimony is that when you leave Sunday you packed
20 up your generator and you know you're not coming back.

21 A. When I leave Sunday?

22 Q. On Monday.

23 A. Monday, yes. Monday, late afternoon. I didn't know I
24 wasn't coming back. I was pretty much suspecting yes, I'm
25 not coming back. That's why I took all my stuff.

1 Q. All right. And left your dogs?

2 A. I had my dog in my vehicle when we were repacking the
3 stuff over at Dane's--

4 Q. Did you- Did you leave your dog?

5 MR. SIMEONE: He's trying to answer the question, your
6 Honor. That's discourteous.

7 MR. WETLE: I asked him if he left his dog, your Honor.

8 THE COURT: Hold on.

9 A. Dane let my dog out of my truck twice, and my dog ran
10 away.

11 Q. Did you leave your dog there?

12 MR. SIMEONE: Your Honor, he's answering the question.

13 A. Yes, I did. Dane said he was going to borrow my truck to
14 go find my dog, and he ended up coming back with a whole
15 bunch of weed, and he tried to lie and says he took his
16 mom's vehicle, when he took my vehicle to go find my dog
17 that he had let out of my vehicle twice.

18 Q. How many dogs did you leave?

19 A. I left one. My dog, Drexler, that I brought up there from
20 Portland.

21 Q. Did you pick any other dogs up at the barter fair?

22 A. No. Jeff collected a whole bunch of dogs from the barter
23 fair. A bunch of puppies that were running around. I
24 wouldn't abandon a bunch of puppies.

25 Q. So you're short on cash.

1 A. Yes, I am.
2 Q. You've had a .22 for two days, and--
3 A. Before I-- Before I sold the .22, I had no cash.
4 Q. And you didn't think about taking it back to Wal-Mart and
5 just getting some money for it?
6 A. It was bought on my dad's credit card. I don't see how
7 that would be possible. I didn't think about it.
8 Q. Who's going to pay for that nice dinner in Portland when
9 you got there?
10 A. Doug and Amy were.
11 Q. They're going to take you?
12 A. They were going to use the funds that they had made over
13 the weekend at the barter fair.
14 Q. Okay.

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

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

17 MR. SIMEONE: No redirect.

18 WITNESS STEPS DOWN

19 THE COURT: Mr. Simeone, any further witnesses?

20 MR. SIMEONE: I want to call Detective Baskin for a
21 second.

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WITNESS IS REMINDED HE IS STILL UNDER OATH

DAVID C. BASKIN

REDIRECT EXAMINATION

BY MR. SIMEONE:

Q. Detective, as the laws are presently written, is there anything illegal about selling a gun at the barter fair?

A. Well, the black and white of it, you're still supposed to fill out all the proper forms that the ATF would require. Most persons selling guns privately don't do that, but the black and white of the law is yes, you're supposed to sell out-- or fill out the forms just like any other dealer would have to.

Q. It's common practice, though, for people to sell their weapons from one-- or to one another, isn't it, without doing that?

A. Private parties do that all the time, yes.

MR. SIMEONE: No further questions. Thank you.

THE COURT: Anything else, Mr. Wetle?

MR. WETLE: No, your Honor.

WITNESS STEPS DOWN

THE COURT: And you may call your next witness.

MR. SIMEONE: The defense rests.

THE COURT: All right. Mr. Wetle, do you have any rebuttal testimony?

MR. WETLE: If I could have a moment, your Honor?

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THE COURT: Sure.

JURY IS ADVISED THEY MAY STAND AND STRETCH THEIR LEGS

THE COURT: Mr. Wetle, have you decided whether you're going to--

MR. WETLE: Yes, your Honor. We'll call one more witness.

THE COURT: And that will be?

MR. WETLE: Dane Williams.

THE COURT: All right, is he handy?

MR. WETLE: They're--

THE COURT: They're fetching him?

MR. WETLE: --on the way.

1 **DANE MATTHEW WILLIAMS**

2 **CROSS EXAMINATION ON REBUTTAL**

3 **BY MR. SIMEONE:**

4 Q. Is it the Crown Creek cabin this time or is it the Hamlet
5 Creek cabin, Mr. Williams?

6 A. It's the Crown Creek cabin.

7 Q. You're sure about that now?

8 A. Positive.

9 MR. SIMEONE: No further questions.

10 THE COURT: Mr. Wetle, anything further from this
11 witness?

12 MR. WETLE: No, your Honor.

13 **WITNESS STEPS DOWN**

14 THE COURT: Mr. Wetle, any further rebuttal testimony?

15 MR. WETLE: No, your Honor.

16 THE COURT: And, Mr. Simeone, any surrebuttal?

17 MR. SIMEONE: No surrebuttal.

18 THE COURT: All right, ladies and gentlemen, the-- We've
19 ordered some dinner for you, as you know, and that will be
20 here at about 6:00 o'clock, and so you'll have time for a
21 quick walk around the block, get some fresh air, run an
22 errand, if you wish, make a phone call or two. The case has
23 not been submitted to you, you're still under the instruction
24 of the court not to discuss the case among yourselves. The
25 remaining proceedings here are twofold. Number 1, the

Dane Matthew Williams - Cross on Rebuttal (Mr. Simeone)1980.

1 instructions on the law, and the attorneys and I have met
2 about those over the noon hour and they're just about final-
3 ized. And Number 2, the-- the closing arguments of the
4 attorneys. And once those are completed and we do a couple of
5 other housekeeping matters, swearing in the bailiff, et
6 cetera, then we'll be ready to submit this matter to you for
7 your deliberations. So what I'm going to do is send you folks
8 on your dinner break, have you be back at 6:00, please, for
9 your dinners, and then you will be on your own between now and
10 then. No discussion about the case, et cetera, until it's
11 finally submitted to you.

12 And I'll ask Mr. Grange and counsel to remain and-- Well,
13 actually, I'm going to take a quick recess. I've got to go
14 grab the paperwork on the instructions.

15 Okay, the bailiff will meet you at the back door. Let's
16 see-- Yeah, we're being reminded that the back door is the
17 only entrance and exit for the building, and we will need to
18 keep the courtroom open, so we'll have to make arrangements
19 for that while the trial's still in session, and so we'll make
20 sure the back door's open for everybody, including the
21 spectators. So court will be at recess until some time after
22 6:30, at least. All right?

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24 **COURT RECESSED**

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1980-A

1 COURT RECONVENED WITHOUT THE JURY

2 THE COURT: All right, on the jury instructions, let's
3 just go through them one by one and on the record see if there
4 are any objections.

5 State's Number 1, Mr. Simeone, any objection?

6 MR. SIMEONE: No, your Honor, I don't have any objection
7 to it.

8 THE COURT: All right. Actually, maybe we could kind of
9 cut through-- State's Number 1 through--

10 MR. SIMEONE: Four.

11 THE COURT: Four? No objection, then?

12 MR. SIMEONE: Right.

13 THE COURT: All right, then, those will be Court's 1
14 through 4.

15 MR. SIMEONE: Number 5 seems redundant.

16 THE COURT: Number 5 is what I see to be the expert
17 witness instruction, WPIC 6.01.

18 MR. SIMEONE: Oh, I was thinking of 5 that we had reject-
19 ed.

20 THE COURT: Oh, you're right, I'm sorry. Number 5, are
21 you withdrawing that?

22 MR. WETLE: I thought we threw it out. Yes, your Honor.

23 THE COURT: Okay, Mr. Wetle's withdrawing that, so Number
24 6, any problem with that being Court's Number 5, Mr. Simeone?

25 MR. SIMEONE: No, that's fine.

1 THE COURT: Okay, that'll be Court's Number 5. State's
2 proposed Number 7, that's the limitation instruction on prior
3 convictions of a witness.

4 MR. SIMEONE: I have no objection.

5 THE COURT: Okay, that will be Court's Number 6. State's
6 Number 8?

7 MR. SIMEONE: Your Honor, we don't want that instruction.

8 THE COURT: You're not requesting that instruction?

9 MR. SIMEONE: We're not requesting it.

10 THE COURT: And you're not requesting any alternative to
11 it?

12 MR. SIMEONE: No alternative. That's right.

13 THE COURT: Okay, any objection to just leaving it out,
14 counsel?

15 MR. SIMEONE: That's what I prefer to do.

16 MR. WETLE: That's--

17 THE COURT: Mr.--

18 MR. WETLE: I do not object to leaving it out.

19 THE COURT: All right, then, Number-- State's Number 8 is
20 withdrawn. As Mr. Simeone doesn't wish a similar one, we'll
21 pitch it.

22 And State's Number 9, a separate crime charged in each
23 count. Any objection to that one, Mr. Simeone?

24 MR. SIMEONE: No, your Honor.

25 THE COURT: Okay, that will be Court's Number 7. And

1 State's Number 10, the shorthand definition of murder first
2 degree. Any objection to that, Mr. Simeone?

3 MR. SIMEONE: No, I do not.

4 THE COURT: Okay, that's WPIC 26.01. That'll be Court's
5 Number 8.

6 The Court's Number-- or State's Number 11, any objection
7 to 26.02, Mr. Simeone?

8 MR. SIMEONE: No objection.

9 THE COURT: Okay, and that's as to Count I. State's--
10 That'll be, by the way, Court's Number 11, if I'm not mistak-
11 en. No, it's not, it's Court's Number 9.

12 State's proposed Number 11, which is WPIC 26.02. Any
13 objection, Mr. Simeone?

14 MR. SIMEONE: Where are we, your Honor? Is that the to
15 convict?

16 THE COURT: That's the elements 1, 2, 3--

17 MR. SIMEONE: Four.

18 THE COURT: I see we have a typo there on the first
19 paragraph.

20 MR. SIMEONE: Is that for Kaiser?

21 THE COURT: That's on Joshua Schaefer.

22 MR. SIMEONE: I thought that was State's proposed 12.

23 THE COURT: You're right, it is. Thank you. Yes, State's
24 proposed 12. I'm going to correct the first numbered para-
25 graph. There's two paragraphs two's and no paragraph one, so

1 I'll just change that to a 1. Any other problems with it that
2 you can see, Mr. Simeone?

3 MR. SIMEONE: No. I see no problems, your Honor.

4 THE COURT: All right, that'll be Court's Number 10.

5 And then State's proposed Number 13, the definition of
6 intent or intentionally.

7 MR. SIMEONE: No objection.

8 THE COURT: Any problem with that?

9 MR. SIMEONE: No objection.

10 THE COURT: Okay. That'll be Court's Number 11. State's
11 proposed Number 14, definition of premeditated. Any problem
12 with that, Mr. Simeone? That's WPIC 26.01.01.

13 MR. SIMEONE: No, there's no objection to that.

14 THE COURT: Okay. And that will be Court's Number 12.

15 Now, we have these proposed lesser inclusions. Mr. Wetle,
16 my understanding is you don't really have any objection to
17 their coming in. You're not necessarily proposing them,
18 either.

19 MR. WETLE: That's correct, your Honor.

20 THE COURT: And, Mr. Simeone, what is your request?

21 MR. SIMEONE: We're not going to request any lesser
22 included instructions, your Honor.

23 THE COURT: All right, and you've discussed this with Mr.
24 Grange, I assume?

25 MR. SIMEONE: That's right, your Honor.

1 THE COURT: All right. And I don't think that there's any
2 particular-- Does anyone believe that there's any particular
3 evidence in the record that would support a rational inference
4 of the lesser degree, inferior degree, crime, to the exclusion
5 of the first degree?

6 MR. SIMEONE: I do.

7 THE COURT: You do?

8 MR. SIMEONE: I do because I--

9 THE COURT: And what is that, Mr. Simeone?

10 MR. SIMEONE: Well, I don't believe that the State has
11 shown premeditation, but I think, moreover, there's ample
12 testimony from their witnesses that they never thought that
13 John was going to kill anybody in the first place, if that's
14 what they're saying happened; that there's no eyewitnesses to
15 the effect that this happened. That comes from almost all of
16 their witnesses. Nobody agrees that they had seen it actually
17 occur, and Mr. Grange is testifying that he was not there.

18 THE COURT: All right. Any comments you'd like to make,
19 Mr. Wetle?

20 MR. WETLE: Yes, your Honor. It's just a circumstantial
21 case. It's been a circumstantial case from the start, still
22 is, and we think it's sufficiently proven.

23 THE COURT: The first degree--

24 MR. WETLE: Yes.

25 THE COURT: --you're talking about?

1 MR. WETLE: First degree.

2 THE COURT: And what about second degree? Is there any
3 evidence that second degree to the exclusion of first degree,
4 to your way of thinking?

5 MR. WETLE: Well, he argues that there's no premeditation,
6 then there is some argument for a second degree murder charge.

7 THE COURT: All right. So you don't have any particular
8 feeling about it one way or the other? Preference whether it
9 comes in or stays out.

10 MR. WETLE: No.

11 THE COURT: Okay. Mr. Grange, you've discussed this
12 matter with your attorney, is that correct?

13 MR. GRANGE: Yes, your Honor.

14 THE COURT: And he's indicated your options in regard to
15 this matter?

16 MR. GRANGE: Yes, your Honor.

17 THE COURT: And is it your decision to go ahead with
18 this-- this-- without having the instruction--

19 MR. GRANGE: Yes, your Honor.

20 THE COURT: --for the lesser degree of crime included?

21 MR. GRANGE: Yes, your Honor.

22 THE COURT: All right, then, I'll go ahead and omit those
23 from the packet, and I will then not be using-- You can have
24 a seat, Mr. Grange. Thank you. I will be omitting from the
25 packet the State's proposed 15, 16, 17 and 18.

1 Now, we've got to revamp the final instruction, Mr. Wetle.
2 Do you happen to have one handy with just two counts and a
3 special verdict finding, or I think we can get some assistance
4 in the other room and get that solved over the next half hour.
5 I asked the Court Administrator to stay late. Is your
6 secretary still here, Mr. Wetle?

7 MR. WETLE: I could go down and check. I was wondering if
8 I had a--

9 THE COURT: I thought you had a packet without the lesser
10 includeds in it.

11 MR. WETLE: I think I do here, your Honor.

12 THE COURT: Okay. I think that I saw a version of that at
13 some point. Did Mr. Simeone ever see this?

14 MR. SIMEONE: What is that now, your Honor? I'm sorry.

15 THE COURT: You saw the packet here-- Let's see, we've
16 got-- These have the WPIC cites on them, but I guess that's
17 correctable. We have a standard-- Well, this is missing the
18 special verdict part of the instruction, Mr. Wetle, so why
19 don't I work on that and you folks can work on your closing
20 arguments. I can pull out the Pattern instruction, bring it
21 in and have you folks take a look at the draft, and we'll let
22 you get on with preparing your closing arguments instead of
23 worrying about that kind of a thing, and we'll get that
24 solved. We'll also re-letter the verdict forms to omit the
25 lesser includeds, and so we'll have a Verdict Form A as to

1 Count I, a Verdict Form B, the firearm special verdict form as
2 to Count I, which will be identical, except for the letter on
3 it in the title, to what Mr. Wetle proposed as Verdict Form C.
4 Any other objections to those two verdict forms, Mr. Simeone?
5 Verdict Form A and what used to be Verdict Form C now changed
6 to B?

7 MR. SIMEONE: No, your Honor.

8 THE COURT: Okay. Wait, there is a separate instruction
9 for the special verdict form, so I guess we can use the one
10 out of this packet here. Let me back up just a second. We're
11 going to pitch the long-winded one that has the lesser-- or
12 the inferior degree instruction in it. We're going to
13 substitute in-- Why don't I quit wasting you folks' time out
14 here and I'll just go work on this and come back with what I
15 think we're going to need. Okay?

16 MR. SIMEONE: Thank you, your Honor.

17 THE COURT: All right, we'll recess court then and be
18 ready to roll.

19 COLLOQUY REGARDING LENGTH OF RECESS

20 COURT RECESSED

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1 COURT RECONVENED WITHOUT THE JURY

2 THE COURT: Counsel, I took the liberty of going ahead and
3 finalizing Court's Instructions 13 and 14, and, Mr. Wetle, any
4 objection to those two proposed instructions?

5 MR. WETLE: No, your Honor.

6 THE COURT: And Mr. Simeone?

7 MR. SIMEONE: No objection here.

8 THE COURT: All right. Also, the verdict forms, those are
9 acceptable to you, Mr. Simeone?

10 MR. SIMEONE: That's right, your Honor.

11 THE COURT: And Mr. Wetle?

12 MR. WETLE: Yes.

13 THE COURT: Okay. All right, I've provided each of the
14 jurors with a copy of the instructions and each attorney with
15 a copy of the instructions. It is, of course, required that
16 I read them, so we'll have the jury brought in.

17 Anything else to cover? Oh, I know. How much time are we
18 needing in closing argument, Mr. Wetle?

19 MR. WETLE: I'm thinking an hour at the most.

20 THE COURT: Okay. Do you want a warning to save some
21 rebuttal?

22 MR. WETLE: Yes. I would want-- I would probably go 25
23 minutes and--

24 THE COURT: Twenty-five minutes remaining, or 25 minutes
25 into it?

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MR. WETLE: Into it.

THE COURT: Okay, so you want a 25 minute warning?

MR. WETLE: Yes.

THE COURT: Okay, and is an hour going to be adequate for your, Mr. Simeone?

MR. SIMEONE: I don't rally think so, Your Honor. I don't-- I don't want to overstay my welcome, but at the same time I don't want to be limited as to what I have to say here in my close.

THE COURT: Okay.

MR. SIMEONE: I can see that I would go over that. I would just ask that I not be pulled out with a hook here prematurely, just because I'm over my time limit.

THE COURT: Okay. Well, I certainly think on a case like this you would be entitled to more time, if you need it. So would an hour and a half suffice, you think?

MR. SIMEONE: Yeah.

THE COURT: Okay.

MR. SIMEONE: Yes.

THE COURT: Mr. Wetle, then, if-- I'm sorry?

MR. SIMEONE: Hour and a half.

THE COURT: Hour and a half. Mr. Wetle, if you need that much then you can use that much. You still want me to warn you at 25 minutes?

MR. WETLE: Probably 30.

1989-A

1 THE COURT: Thirty?

2 MR. SIMEONE: And then how would his argument be divided
3 in terms of--

4 THE COURT: He--

5 MR. WETLE: I'm planning on an-- probably 30/30, but I
6 may go-- May go 30 and an hour. It-- I'm not anticipating
7 that.

8 THE COURT: So he can have a total of an hour and a half.
9 If he wants to save the lion's share of it for rebuttal, he'd
10 be able to, but a total hour and a half, and you can have a
11 total hour and a half, Mr. Simeone, as well.

12 MR. SIMEONE: That will be bona fide rebuttal, I assume?

13 THE COURT: Oh, yes. I would be sustaining anything
14 that's not rebuttal.

15 MR. SIMEONE: Okay.

16 THE COURT: An objection to anything that's not rebuttal.

17 MR. WETLE: Rebuttal, Your Honor?

18 THE COURT: Rebuttal argument. When you-- When your--
19 When you reserve rebuttal time, you have to be rebutting the
20 arguments that have been made. You can't make new arguments
21 at that time. That's a-- That's a solid point. So you
22 can't just save all of your ammunition until the end.

23 MR. WETLE: I better--

24 THE COURT: You have to be responding to what has been
25 said, if it's true rebuttal.

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MR. WETLE: You better give me 45 then.

THE COURT: Okay. All right, so 45 and-- A 45 minute warning and then you'll reserve the other 45 for rebuttal.

And, Mr. Simeone, do you want a particular warning time?

MR. SIMEONE: Oh, if you landed a 747 here tonight, Your Honor, so I would say 20 minutes.

THE COURT: Twenty minute warning? Okay.

MR. SIMEONE: Yeah.

THE COURT: And I'll give you another warning at five minutes and I won't cut you off.

MR. SIMEONE: That'll be fine. Thank you.

THE COURT: If it comes to that. All right, let's go ahead and bring the jury in, please.

JURY IS SEATED

THE COURT: All right, please be seated. I hope everybody had a pleasant meal, and we will proceed.

Mr. Simeone, you were indicating you were going to need the easel when you reach your argument? Mr. Simeone? You said you were going to need the easel. Is that what you--

MR. SIMEONE: I'll need the easel, I'll need the cork-board, Your Honor. I'll probably need one chair there.

THE COURT: We'll get it set up when your time comes then.

1 THE COURT: All right, ladies and gentlemen, you will
2 notice that we have a packet of jury instructions in front of
3 you. The law requires that I read these out loud, but I also
4 make a copy of them for you. The lawyers are probably going
5 to be referring to some of these instructions during their
6 closing arguments, so these are your personal copies. You can
7 feel free to mark them up. They'll go in your note pads if we
8 don't finish tonight. I think we will with the trial, and
9 we'll probably have you deliberate at least for a time this
10 evening, and they'll go into the jury room with you at that
11 point. But you may want to make any notations that you feel
12 inspired to make throughout the arguments.

13 So I will read through these, and we'll start with
14 Instruction Number 1.

15 It is your duty to determine which facts have been proved
16 in this case from the evidence produced in court. It is also
17 your duty to accept the law from the court, regardless of what
18 you personally believe the law is or ought to be. You are to
19 apply the law to the facts and in this way decide the case.

20 The order in which these instructions are given has no
21 significance as to their relative importance.

22 The attorneys may properly discuss any specific instruc-
23 tions they think are particularly significant.

24 You should consider the instructions as a whole and should
25 not place undue emphasis on any particular instruction or part

1 thereof.

2 A charge has been made by the Prosecuting Attorney by
3 filing a document called an Information informing the defen-
4 dant of the charge. You are not to consider the filing of the
5 Information or its contents as proof of the matters charged.

6 The only evidence you are to consider consists of the
7 testimony of witnesses and the exhibits admitted into evi-
8 dence.

9 It has been my duty to rule on the admissibility of
10 evidence. You must not concern yourselves with the reasons
11 for these rulings. You will disregard any evidence that
12 either was not admitted or that was stricken by the court.

13 You will not be provided with a written copy of testimony
14 during your deliberations. Any exhibits admitted into
15 evidence will go to the jury room with you during your
16 deliberations.

17 In determining whether any proposition has been proved,
18 you should consider all of the evidence introduced by all
19 parties bearing on the question. Every party is entitled to
20 the benefit of the evidence, whether produced by that party or
21 by another party.

22 You are the sole judges of the credibility of the witness-
23 es and of what weight is to be given to the testimony of each.
24 In considering the testimony of any witness, you may take
25 into account the opportunity and ability of the witness to

Jury Instructions are Read by the Court

1991.

1 observe, the witness' memory and manner while testifying, any
2 interest, bias or prejudice the witness may have, the reason-
3 ableness of the testimony of the witness considered in light
4 of all the evidence, and any other factors that bear on
5 believability and weight.

6 The attorneys' remarks, statements and arguments are
7 intended to help you understand the evidence and apply the
8 law. They are not evidence. Disregard any remark, statement
9 or argument that is not supported by the evidence or the law
10 as stated by the court.

11 The attorneys have the right and the duty to make any
12 objections that they deem appropriate. These objections
13 should not influence you and you should make no assumptions
14 because of objections by the attorneys.

15 The law does not permit a judge to comment on the evidence
16 in any way. A judge comments on the evidence if the judge
17 indicates by words or conduct a personal opinion as to the
18 weight or believability of the testimony of a witness or of
19 other evidence. Although I've not intentionally done so, if
20 it appears to you that I have made a comment during the trial
21 or in giving these instructions, you must disregard the
22 apparent comment entirely.

23 You have nothing whatever to do with any punishment that
24 may be imposed in case of a violation of the law. The fact
25 that punishment may follow conviction cannot be considered by

Jury Instructions are Read by the Court

1992.

1 you except insofar as it may tend to make you careful.

2 You are officers of the court and must act impartially and
3 with an earnest desire to determine and declare the proper
4 verdict. Throughout your deliberations you will permit
5 neither sympathy nor prejudice to influence your verdict.

6 Number 2: As jurors you have a duty to discuss the case
7 with one another and to deliberate in an effort to reach a
8 unanimous verdict. Each of you must decide the case for
9 yourself, but only after you consider the evidence impartially
10 with your fellow jurors.

11 During your deliberations you should not hesitate to
12 reexamine your own views and change your opinion if you become
13 convinced that it is wrong. However, you should not change
14 your honest belief as to the weight or effect of the evidence
15 solely because of the opinions of your fellow jurors or for
16 the mere purpose of returning a verdict.

17 The defendant has entered a plea of not guilty. That plea
18 puts in issue every element of the crime charged. The State
19 is the plaintiff and has the burden of proving each element of
20 the crime beyond a reasonable doubt. A defendant is presumed
21 innocent. This presumption continues throughout the entire
22 trial unless during your deliberations you find it has been
23 overcome by the evidence beyond a reasonable doubt.

24 A reasonable doubt is one for which a reason exists and
25 may arise from the evidence or lack of evidence. It is such

1 a doubt as would exist in the mind of a reasonable person
2 after fully, fairly and carefully considering all of the
3 evidence or lack of evidence. If, after such consideration,
4 you have an abiding belief in the truth of the charge, you are
5 satisfied beyond a reasonable doubt.

6 Evidence may be either direct or circumstantial. Direct
7 evidence is that given by a witness who testifies concerning
8 facts that he or she has directly observed or perceived
9 through the senses.

10 Circumstantial evidence is evidence of facts or circum-
11 stances from which the existence or non-existence of other
12 facts may be reasonably inferred from common experience.

13 The law makes no distinction between the weight to be
14 given to either direct or circumstantial evidence. One is not
15 necessarily more or less valuable than the other.

16 A witness who has special training, education or experi-
17 ence in a particular science, profession or calling may be
18 allowed to express an opinion in addition to giving testimony
19 as to facts. You are not bound, however, by such an opinion.
20 In determining the credibility and weight to be given such
21 opinion evidence, you may consider, among other things, the
22 education, training, experience, knowledge and ability of that
23 witness, the reasons given for the opinion, the sources of the
24 witness's information, together with the factors already given
25 you for evaluating the testimony of any other witness.

1 Evidence that a witness has been convicted of a crime may
2 be considered by you in deciding what weight or credibility
3 should be given to the testimony of the witness, and for no
4 other purposes.

5 A separate crime is charged in each count. You must
6 decide each count separately. Your verdict on one count
7 should not control your verdict on any other count.

8 A person commits the crime of murder in the first degree
9 when, with a premeditated intent to cause the death of another
10 person, he or she causes the death of such person or of a
11 third person.

12 To convict the defendant of the crime of murder in the
13 first degree as charged in Count I, each of the following
14 elements of the crime must be proved beyond a reasonable
15 doubt.

16 1. That on or about the 11th day of June, 2000, the
17 defendant did shoot Nicholas Kaiser in the body and/or head;

18 2. That the defendant acted with intent to cause the
19 death of Nicholas Kaiser;

20 3. That the intent to cause the death was premeditated;

21 4. That Nicholas Kaiser died as a result of the defend-
22 ant's acts; and

23 5. That the acts occurred in Stevens County, Washington.

24 If you find from the evidence that each of these elements
25 has been proved beyond a reasonable doubt, then it will be

1 your duty to return a verdict of guilty.

2 On the other hand, if, after weighing all of the evidence,
3 you have a reasonable doubt as to any one of these elements,
4 then it will be your duty to return a verdict of not guilty.

5 To convict the defendant of the crime of murder in the
6 first degree as charged in Count II, each of the following
7 elements of the crime must be proved beyond a reasonable
8 doubt:

9 1. That on or about the 11th day of June, 2000, the
10 defendant did shoot Joshua Schaefer in the body and/or head;

11 2. That the defendant acted with the intent to cause the
12 death of Joshua Schaefer;

13 3. That the intent to cause the death was premeditated;

14 4. That Joshua Schaefer died as a result of the defend-
15 ant's acts; and

16 5. That the acts occurred in Stevens County, Washington.

17 If you find from the evidence that each of these elements
18 has been proved beyond a reasonable doubt, then it will be
19 your duty to return a verdict of guilty.

20 On the other hand, if, after weighing all of the evidence,
21 you have a reasonable doubt as to any one of these elements,
22 then it will be your duty to return a verdict of not guilty.

23 A person acts with intent or intentionally when acting
24 with the objective or purpose to accomplish a result which
25 constitutes a crime.

1 Premeditated means thought over beforehand. When a
2 person, after any deliberation, forms an intent to take human
3 life, the killing may follow immediately after the formation
4 of the settled purpose and it will still be premeditated.
5 Premeditation must involve more than moment in point of time.
6 The law requires some time, however long or short, in which a
7 design to kill is deliberately formed.

8 For purposes of a special verdict, the State must prove
9 beyond a reasonable doubt that the defendant was armed with a
10 firearm at the commission of the crime. A firearm is a weapon
11 or device from which a projectile may be fired by an explosive
12 such as gunpowder.

13 Upon retiring to the jury room for your deliberation of
14 this case, your first duty is to select a presiding juror. It
15 is his or her duty to see that discussion is carried on in a
16 sensible and orderly fashion, that the issues submitted for
17 your decision are fully and fairly discussed, and that every
18 juror has an opportunity to be heard and to participate in the
19 deliberations upon each question before the jury.

20 You will be furnished with all of the exhibits admitted in
21 evidence, these instructions, and a verdict form for each
22 count. You must fill in the blank provided in each verdict
23 form the words not guilty or the word guilty according to the
24 decision you reach.

25 Since this is a criminal case, each of you must agree for

1 you to return a verdict. When all of you have so agreed, fill
2 in the verdict forms to express your decision. The presiding
3 juror will sign each verdict form.

4 You will also be furnished with special verdict forms for
5 each count. If you find the defendant not guilty on a
6 particular count, do not use the special verdict form for that
7 count. If you find the defendant guilty on a particular
8 count, you will then use the special verdict form for that
9 count and fill in the blank with the answer yes or no accord-
10 ing to the decision you reach.

11 In order to answer a special verdict form yes, you must
12 unanimously be satisfied beyond a reasonable doubt that yes is
13 the correct answer. If you have a reasonable doubt as to the
14 question, you must answer no. Once again, the presiding juror
15 will sign each special verdict form and notify the bailiff,
16 who will conduct you into court to declare your verdict.

17 And I want to take a minute. You've got, attached to your
18 copies, sample verdict forms. The official verdict forms are
19 here and will come into the jury room with you with the
20 exhibits here after all of the arguments are completed, but I
21 want to walk through these. And you'll see Verdict Form A
22 pertains to Count I, and it reads:

23 We, the jury in the above entitled cause, do find the
24 defendant, John D. Grange, and then you write in the words not
25 guilty or guilty, of the crime of murder in the first degree

Jury Instructions are Read by the Court

1998.

1 as charged in Count I as to Nicholas Kaiser. And then you'll
2 notice there's a place for the presiding juror to sign.

3 Verdict Form B, Count II, reads: We, the jury in the
4 above entitled cause, do find the defendant, John D. Grange,
5 and there's a blank to write in the words not guilty or
6 guilty, of the crime of murder in the first degree as charged
7 in Count II as to Joshua Schaefer. And again, the presiding
8 juror would sign that.

9 Then we have the Special Verdict form for the firearm
10 question as to Count I, and it reads:

11 We, the jury, return a special verdict by answering as
12 follows: We-- Was the defendant, John D. Grange, armed with
13 a firearm at the time of the commission of the crime in Count
14 I as to Nicholas Kaiser?

15 Now, you'll recall from the previous instruction, this
16 verdict form is only used if there is a guilty verdict on
17 Count I as to the guilt, so-- And then you only answer yes if
18 all of you agree beyond a reasonable doubt that the defendant
19 was armed with a firearm. Otherwise, you answer no and date
20 it and the presiding juror signs it.

21 Special verdict form for the firearm as to Count II reads:

22 We, the jury, return a special verdict by answering as
23 follows. And again, this is only used if there is a guilty
24 finding on Count II. And the question is, Was the defendant,
25 John D. Grange, armed with a firearm at the time of the

1 commission of the crime in Count II as to Joshua Schaefer.
2 And there's the yes or the no and the date and the signature
3 line for the presiding juror.

4 All right, now, ladies and gentlemen, I'm going to ask you
5 at this time to give your attention to Mr. Wetle, who will
6 give the closing argument on behalf of the State of Washing-
7 ton. He has reserved a portion of his time for rebuttal
8 argument, and so he is entitled to do that, and we'll ask that
9 you give him your attention at this time. We may need to
10 rearrange some furniture here briefly.

11 MICROPHONES ARE MOVED
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1 hard to follow, but you did get to see the witnesses talk
2 about what they did and how well they remembered and how well
3 they didn't remember.

4 The first element talks about on the 11th day of June,
5 2000, the defendant with premeditated intent to cause the
6 death of another person did shoot, and I'll put Josh Schaefer
7 and Nicholas, in the body and/or head.

8 Well, when we look at June 11th, there's ample evidence
9 for you to come up with a date. Josh Schaefer's in constant
10 contact with Kim Kerpin, and that ends on June 10th. A new
11 baby, in love, not a situation where all of a sudden contact
12 would be terminated.

13 Nick and Josh leave the barter fair at 12:00 o'clock, to
14 1:30, according to Danny Percival. So we know that they're
15 alive on June 11th at around noon. We know that they're
16 supposed to be back in Seattle Monday, on June 12th, to see
17 Brian Murphy, his roommate, and we know they don't make it.

18 We know that Jeff Cunningham says they were killed Sunday
19 afternoon on June 11th, and we know that Dane Williams says
20 they were killed on Sunday, June 11th, in the afternoon. The
21 sentence says the defendant. That'll be the issue. Who did
22 it? That's the one the jury gets to work on. And that'll--
23 I'll discuss that later.

24 Then it talks about premeditated intent to cause the
25 death. There's an instruction on premeditated intent, and

1 it's Instruction 12, and I think you all have instructions
2 that you can refer to in the jury room, which is convenient
3 when you're talking about the case. And the judge read it to
4 you, and we can talk about it slowly. It means thought over
5 beforehand. Heat of passion, spur of the moment, get in a
6 fight, somebody gets killed. Yeah, they may intend to kill
7 them, but they really never thought about it. So what you
8 have to do is look at the thought over beforehand. Talks
9 about when a person with any deliberation forms an intent to
10 take a human life. The killing may follow immediately after
11 the formation and it will still be premeditated, so you're not
12 looking at a long period of time, but there must be some
13 period of time.

14 Premeditation must involve more than a moment in point of
15 time. The law requires some time, however long or short, in
16 which a design to kill is deliberately formed. So by the time
17 you get through looking at that, it's sometimes difficult for
18 people that are not used to the law to pick up the jury
19 instruction and work your way through the meanings of these
20 instructions. But you have to use your common sense and your
21 common language to determine what it means. But you know,
22 you feel, and it means more than a moment in time. It has to
23 be some time to form that intent. Not a week, not a day, but
24 more than a moment in time.

25 So with that in mind, we go to the fact that rumor has it

1 that the people in-- some people in San Francisco want him
2 dead. Rob Schultz says Kaiser was a snitch for the feds.
3 Uncontroverted. Common knowledge. Kaiser will not be
4 breathing any more. Kaiser was an important person in the
5 drug world on the west coast. He won't be breathing any more.
6 The Family will take care of him. And finally, he--Kaiser--
7 was dead, meaning, for all practical purposes, he was a goner.

8 For a Stevens County jury, this may be a first. Never
9 been a case quite like this for a long time. The doors got
10 opened and you got to see a side of society that we haven't
11 seen here very often. It may be here, but it's not one that
12 we normally see. Today and this week you've got to see it.

13 Family members went down because of Kaiser's involvement
14 with the feds. Some debate on whether or not anybody in San
15 Francisco went down. Clearly, somebody in Seattle went down.
16 Petee. His name wasn't mentioned a lot, but you know that--
17 I think it was mentioned once or twice. Mr. Petee bought the
18 \$10,000 worth of LSD. That was the reverse that Warren
19 Dogeagle did with Kaiser. Clearly, people were being arrested
20 as they came to Kaiser's home to see Kaiser to maybe pick up
21 shipments. He was in the process of diluting it. His girl-
22 friend gets arrested, she gets released. You heard what
23 happened to her later. Gun held to her head. Put in a safe
24 home by Rob Schultz. Jeff Cunningham says yeah, so nobody
25 could get to her, and Kaiser couldn't get to her and she

Plaintiff's Closing Argument

2004.

1 couldn't get to Kaiser.

2 And all of a sudden you get a feel for how oppressing this
3 is. How entangled it is. How frightening it is to people
4 that get involved.

5 At any rate, Gabe-- They tried to get Gabe. Gabe was his
6 source. Higher up than Kaiser. Gabe finally says show me the
7 papers. Remember Dogeagle saying they wanted to see the
8 papers where he was charged with marijuana on this-- or the
9 marijuana charge. They knew. They were onto him. Kaiser
10 knew it. They didn't have any papers. So for all practical
11 purposes the ruse is up, and Kaiser probably has served his
12 usefulness to the feds. Kaiser is distraught. Basically has
13 lost everything.

14 Let's talk about did shoot the victims in the head.
15 That's easy. Dr. Lindholm will tell you that there were two
16 people. You saw the two spinal cords, you saw the two skull
17 caps, you saw the bones in the back of the head, you saw the
18 hole coming out the skull in the front. Dr. Lindholm can tell
19 you it's like a nail going into a piece of wood. Once you
20 look at the skull, you know where the entrance is and where
21 the exit is. So we know that they got shot in the back of the
22 heads, both of them. We know that they were two people. The
23 allegation was they were shot in the body and/or head. Well,
24 the testimony was there were a number of shots. We can't tell
25 how many shots went into the body. We only know of one shot

Plaintiff's Closing Argument

2005.

1 for sure in the head, and then two shots, possibly, in the
2 other head. Dr. Lindholm says that keyhole effect, I can't be
3 positive about it. It's a possibility it may be two shots,
4 but it may be one.

5 They're able to identify Nick Kaiser by dental records.
6 They were not able to identify Josh Schaefer. That has to be
7 done by circumstantial evidence. So you heard people come
8 before you to talk about why the State submits to you that it
9 was Josh Schaefer. Personal effects, contacts, last seen with
10 Nick Kaiser, and Cunningham and Williams saying it's Nick
11 Kaiser. I mean it's Josh-- Sorry. It's Josh Schaefer. So
12 you know by circumstantial evidence that is Josh Schaefer.

13 Number 1 talk about-- Sorry, Number 2. The second
14 element says the defendant acted with intent to cause the
15 death, so let's talk about how someone would act with intent
16 to cause the death. If you shot somebody in the foot, you
17 could argue nah, I just wanted to wing him, I didn't want to
18 kill him. If you shot somebody in the leg, I just wanted to
19 wing him. If you shoot somebody in the chest area, you have
20 a little harder time saying I just wanted to wing him. And if
21 you shoot somebody in the back of the head, it's clearer that
22 that person wanted to cause their death. So you ask, where
23 are the shots aimed? The shots are aimed at the head. That
24 is a lethal spot. That is intent to cause a death. You ask,
25 how many shots were fired? We have varying degrees of shots,

Plaintiff's Closing Argument

2006.

1 anywhere from five to nine, as I recalled. One officer
2 thought six to ten, but I think the testimony from the people
3 that were closest turned out to be five to nine.

4 Intent to cause the death. What type of weapon? A semi-
5 automatic. Shoots pretty quick, but you have to pull the
6 trigger every time, so you gotta keep pulling. The State
7 would submit that the second element, attempt to cause the
8 death of Nicholas Kaiser, is clear.

9 The intent to cause the death had to be premeditated. So
10 we talked a little bit about premeditated. Premeditation
11 covers a lot of things, but I will tell you that one of the
12 things that you can prove it by premeditation is that the
13 State is allowed to show that by motive. What in the world
14 was the motive to kill these two young men? Because of that
15 ability to show motive, what drove the killing, the State is
16 allowed to talk to you about how the drug industry works.
17 That's the driver. What caused them to be dead. What was the
18 overriding fear of Nick Kaiser? What was the overwhelming
19 information in the Family's community about what they had
20 done? So once that starts to come down, you see that then you
21 need to know a little bit about the drug industry. And that's
22 when Warren Dogeagle comes, and that's when Bryan Nehring
23 comes from Oakland. You get to look at how it operates. You
24 get to look at why would a drug organization want to silence
25 an informant that knew too darn much. Everything you heard

1 was he's the LSD man on the Coast. He's the Seattle boss.
2 He's the connection to San Francisco. So you know that when
3 the DEA got him, they're working their way up the ladder.
4 Remember, he had to get burned. They had to get someone to
5 burn him, and they set up two controlled buys, and so that's
6 how they got Nick Kaiser, and that's the risk when you get
7 into the drug industry. Who is going to get you? And that's
8 why the grapevine goes so fast and the drug industry people
9 have to watch their backsides. They have to know when
10 somebody's arrested. They have to know how soon they get out
11 of jail, because if it's too quick, then they have their
12 suspicions. And when then they can confirm the suspicions,
13 they can warn everybody else to not deal with the individual.
14 And that's all fine and well for the low echelon, middle
15 echelon people, but you know what? That's not all right when
16 you're at the top and you know who the-- the real top is, and
17 somebody has to get rid of you. They had to silence an
18 informant who knew too much. And who tells you that best?
19 Didn't come from the State. It came from defense counsel's
20 cross examination of Danny Percival Monday. Out of order,
21 early in the game, Danny Percival and Bryan Murphy got to talk
22 to you, and Danny Percival tells you because of his arrest,
23 related to his arrest, Nick Kaiser said people would be angry
24 with him and they would be after him because he knew too much.
25 And Danny Percival told you that, and I don't know if you

Plaintiff's Closing Argument

2008.

1 wrote it down, and I don't know if you heard it on the first
2 day as much as I heard it on the first day, but that's
3 important because that tells you from people that are his
4 associates, who are his friends, what was really going on in
5 his life.

6 Murphy says his whole lifestyle, his circle of friends,
7 they're gone. He knows it's over. Those two individuals told
8 you a bunch about the background for this case. What other
9 motives do we have besides to silence an informant who knows
10 too much? We have to protect Family members. Now, for people
11 to give orders to have people killed, I don't think that comes
12 from the street guy. I think that comes from a higher place.
13 But the mentality in the drug industry is we need to protect
14 our Family.

15 Where does John Grange fit in that? He minimized his
16 involvement with Rob Schultz, but other people say he's pretty
17 close to Rob Schultz. He got to stay at Rob Schultz's house.
18 His dad visited him every other weekend at Rob Schultz's. He
19 gets special treatment by Rob Schultz. Dane says he's a
20 spec-- he's one of his kids, is how Rob defines him.

21 How does John Grange's dad say Chewy acted about his--
22 the people he dealt with? He's very protective of his kids.
23 He told you that.

24 Another issue is-- that a drug industry would look at
25 would be to send a message, if you have somebody at this level

1 that is arrested. Jeff Cunningham said no, I don't believe
2 it. Not Nick Kaiser. The street kid that he grew up on the--
3 or didn't grow up, but honed their drug skills on the streets
4 of Portland, in the coffee shop. No, Nick Kaiser would never
5 be a nark. He was so convinced that the rumor was false. He
6 defended Nick. You send a message when you do something like
7 this. And the message got sent that Nick Kaiser turning and
8 rolling would not be tolerated. The industry had to control
9 the damage that's being done to the ongoing organization.
10 They could disrupt the entire west coast LSD distribution
11 network. He knew too much. That's pretty powerful. So we
12 say well, gee, it's just drugs, you know. We think of
13 marijuana here. We're a tremendous outlet for marijuana here.
14 It's an under-the-table business in Stevens County. We don't
15 think of it in terms of LSD. We don't think of it in terms of
16 the dollars that is generated by the LSD in the big cities.
17 So we have our own group. They do their thing. That happens
18 to be marijuana. We're a remote, isolated area. Good grow
19 area. Stevens County and Humboldt County in California. We
20 understand that, we know that. It was a little embarrassing
21 for Kez Young to come before you and tell you that he is a
22 pretty good supplier for the Family in Portland. But he did.
23 And he told you he had to have immunity to do it. But at that
24 point, you know what? Drugs don't matter. Murder matters.
25 So a lot of drugs will be given up to get to the bottom of the

Plaintiff's Closing Argument

2010.

1 murder. That's what nobody wants.

2 Those are all industry motives. The confusing part for
3 you is that you're sitting here as a juror and you're listen-
4 ing to this testimony about Family, Rob Schultz, Shadow, you
5 know, all of the associations with the drug industry, what's
6 going on in the drug industry. You're saying hey, this is
7 sort of disjointed, how does this all fit together, because
8 John Grange's dad, Doug Grange, two-thirds of his testimony is
9 just about the fact that he could walk in to Rob Schultz's
10 house and see anything he wanted to see. He'd see the
11 transactions, hear the people talking. He didn't like being
12 here testifying. He didn't like testifying for the State
13 against his son. He didn't want to volunteer anything more
14 than he had to, but he made a statement and he came and he
15 told it. And you got another glimpse. He wasn't any biased
16 person, he's a person-- he's a parent who walked into an
17 industry. Couldn't believe how open it was. So he was able
18 to come and tell you lots.

19 Jeff Cunningham, 40% of his testimony is about the Family,
20 how it works, the tour kids, the supplies, how it supplied,
21 the sale. He knows. He's been doing it for five years. The
22 State would submit he didn't like being here. He knows what
23 happened to Nick Kaiser. What did Nick Kaiser do? Jeff
24 Cunningham finds himself on the witness stand. He finds
25 himself in Florida talking to some officers about what he told

Plaintiff's Closing Argument

2011.

1 Maija: He knows the jig's up. He knows that his friend was
2 killed, and he knows that he's going to have to tell the
3 officers what happened. He didn't like it. He didn't like
4 testifying here. He didn't like defense counsel's questions.
5 He like mine a little more, but not much more. He was not
6 happy to be here 'cause he knows the ramifications.

7 Dane Williams says I'm not a Family member. I don't have
8 the five year association that Jeff Cunningham has. I'm a
9 supplier, I'm a Stevens County independent agent, and I can
10 supply to the big city and I can make money. What a golden
11 opportunity for Dane Williams. He couldn't wait. First offer
12 was for 20 pounds. Whoa. No way could he get 20 pounds, but
13 he knew how big the market was and he knew what that meant, to
14 him money-wise, and pretty soon he's going straight to Rob
15 Schultz. I don't think he felt good being here, but he told
16 you what he did. He also tried to cover his backside.

17 And finally, we brought in Nehring to talk about the
18 arrests in San Francisco. You weigh the circumstances. Josh
19 Schaefer gets busted in February, gives a statement that gets
20 Watkins and Ashworth. That statement goes to Virginia. That
21 statement is given to Mr. Watkins, just like Mr. Grange got
22 all of those statements. That's part of the way it's done.
23 He knows everything that was said and by who. Watkins pleads
24 guilty. Agent Nehring couldn't remember the exact date, but
25 knew it was in April. And he knows that Josh Schaefer has

Plaintiff's Closing Argument

2012.

1 told what happened, both to him and to Ashworth. Remember,
2 Ashworth's still out. Never was arrested. He's-- Josh
3 Schaefer is still a witness against Ashworth, if they find
4 him. Ashworth is a mainline LSD guy in San Francisco. Is
5 there a connection between Gabe and Kaiser and Ashworth?
6 Couldn't make the connection for you. Nobody could come in
7 and say we can link those. So there's a slight chink there.
8 The problem is that Josh Schaefer and Kaiser are good friends,
9 and they know each other. And when Kaiser's in trouble,
10 Schaefer goes to Seattle to be with him. I don't think Kaiser
11 ever knew that Josh Schaefer had been busted and rolled. He
12 thinks Josh Schaefer, being a mainline San Francisco guy, will
13 help him with the San Francisco people that want him dead. He
14 wasn't going to go anywhere without Josh Schaefer. And once
15 Josh Schaefer's there, Nick Kaiser feels better. But he's
16 going to stick to Josh Schaefer like glue.

17 April 25th, Nick Kaiser gets busted. By May 1st, the word
18 is out. We have about a month of terror, and what's going to
19 happen with his girlfriend in protective custody with Rob,
20 fearing for his life. His life is-- His drug style life is
21 gone, so he's distraught.

22 Schaefer comes up and all of a sudden we've got two of
23 them together. What possessed them to go to the barter fair?
24 God only knows. Bryan Murphy sure would have done his best to
25 dissuade them. They go, and they don't do much with anybody

Plaintiff's Closing Argument

2013.

1 there. They're in the truck. It's a rainy weekend. They
2 hang in the truck and they do nitrous. Not a lot of contact
3 with people because the nark is well known. The security
4 guards were there to warn people. The nark has arrived.

5 You're getting all of this to give you the whole picture.
6 For us to come in and say John Grange killed them. How does
7 John Grange tie into Nick Kaiser and Josh Schaefer? He's in
8 the Family. They're doing drugs. But until you have the
9 background it's hard to make the connection as to why someone
10 would go to such lengths. Why would John Grange do it? He
11 gets the word. Will it enhance his stature in the Family by
12 killing the nark who's working with the feds? You bet. No
13 matter what happens to John Grange, he's a hero. He did his
14 job. The problem is his two compadres didn't quite have the
15 stomach. They're drug guys; they're not murderers. You take
16 a look at Jeff Cunningham and you tell me, is Jeff Cunningham
17 going to put two or three rounds in the back of his friend's
18 head? The State would submit no.

19 Dane Williams? Dane Williams is a marijuana man. I'll
20 supply. I'll be very careful and try not to get caught. I'm
21 not as open as the Family. I don't want to be seen with
22 people. I'm going to lurk around and be my-- do my distribu-
23 tions. Murderer? No. You see their profiles. You see their
24 demeanors. Would they, either one of them, do that? John
25 Grange would like you to think that he did, 'cause he's got to

1 get the heat off him. He's got to put it on somebody. Who
2 can he put it on? Even he realized that Cunningham was not
3 going to have the stomach to do it. Who's next? It's got to
4 be Williams. And you get the greatest story you've heard in
5 a long time. The good part about it is that Dane Williams and
6 Jeff Cunningham made the worst witnesses in the world, and you
7 got to see that firsthand. The really good thing about it is
8 that you got to see that they didn't know what each other was
9 ever saying. They never knew what the other guy was saying,
10 and we wouldn't tell them. They looked pretty bad as they
11 nailed one another. I saw him going through his pockets. No,
12 he went through his pockets. He took his pipe, he took his
13 booze. Man, they looked bad. Real sorry sight for all of you
14 to see and for all of us to hear. But you know what? That's
15 what they did. They took their money. They took their pipe.
16 They took their bottle of rum.

17 Let's talk about Kaiser and Schaefer died as a result of
18 his acts, being John Grange's acts. Of course, we have bullet
19 holes to the back of the head, so that's a result of the act.
20 Then we say John Grange's act? You bet. Who's the guy that's
21 going to do this? It's John Grange. There's no doubt. But
22 to try to move that to Dane Williams? Stretch your imagina-
23 tion further than you want to go. Did anybody see him do it?
24 Nope. No eyewitnesses. What happens when you have a murder
25 with no eyewitnesses? Would you believe that most of the time

1 you don't have an eyewitness to murder, because the witness is
2 dead. That's the way murder is. You kill them, and they
3 don't talk. And is that why Dane Williams thought he might be
4 next? Cunningham was smart enough to probably shut his mouth
5 and go along. He'd been in the Family quite awhile. Dane
6 Williams really didn't know.

7 One good thing about Dane Williams. He says he's running
8 up and down the road, not knowing what to do. He goes down to
9 the creek, he's down there for two minutes, he comes back, he
10 runs down to the garden, doesn't know what he's doing.

11 Remember Maija Soucie when she talked to Jeff Cunningham?
12 Jeff Cunningham says-- told her the same thing. Dane was
13 running all over the place, frantic, panicked, running up and
14 down the roads, I think he told her. Maija Soucie came in and
15 told you: Jeff told me he was running up and down the roads.
16 Probably was. The bad thing about it is probably Cunningham
17 and Williams, you know what, they probably knew something
18 really bad was going to happen, and they're living with that.
19 Cunningham probably more than Williams, 'cause Cunningham knew
20 Kaiser. They compromised themselves. They said he was going
21 to threaten them, intimidate them, get the information out of
22 them. Is it reasonable to believe that he was going to do
23 more to them? Cunningham finally tells you on the stand, I
24 thought he was going to kill him.

25 You're stuck with circumstantial evidence. And you're not

1 stuck with it, it's because that's what you normally get in a
2 murder case. And what does circumstantial evidence talk
3 about? It's Number 4. You probably want to put a star by it,
4 because that's what the case is and that's what it usually is.
5 It says evidence can be direct or circumstantial. Direct
6 evidence is I see you kill him. I was there. And he took out
7 his knife and he stabbed him, and then he slit his throat.
8 They saw it. That's direct evidence. Circumstantial evi-
9 dence-- Well, the second sentence says: Given by a witness
10 who testifies concerning facts that he or she directly
11 observed or perceived through the senses.

12 Circumstantial evidence is different, and it's got some
13 big words, and it's got some fancy words, and once again
14 you're off into legal jargon. Evidence of facts or circum-
15 stances from which the existence or non-existence of other
16 facts may be reasonably inferred from common experience.
17 Okay? That's a key. The last sentence, next to last sen-
18 tence, is important: The law makes no distinction between the
19 weight to be given to either direct or circumstantial evi-
20 dence. So you'd think that if a person saw him do it, that
21 would be better proof. The instruction says the law makes no
22 distinction between the weight given to either direct or
23 circumstantial evidence. One is not necessarily more or less
24 valuable than the other. So I think one of the family members
25 said, you know, it's like the snow on the yard and the tracks

Plaintiff's Closing Argument

2017.

1 go to the mailbox in the new snow. And the tracks go away
2 from the mailbox. And you go out and you open up the mailbox
3 and the mail's in there. You say, The mailman came. That's
4 circumstantial evidence that the mailman came. And sometimes
5 you have even tighter facts, because at 11:00 o'clock there
6 were no tracks, and the mailman usually comes at five after
7 11:00, and 11:15 there were tracks coming and going. Some-
8 times you can narrow that circumstantial evidence. Well, in
9 this case the circumstantial evidence got narrowed down. The
10 people are 70 yards away. They're down by the creek. It
11 bothers you a little bit when one says we were only there for
12 a few seconds, the other one says we sat down there for five
13 minutes and we waited. That's what they say, they stated to
14 you before. They didn't make the best witnesses, but I think
15 it was pretty traumatic, what happened to them. So you've got
16 a circumstantial evidence case.

17 What happens to Dane Williams? He's involved. The
18 interesting thing about Dane Williams is he gives, depending
19 on whether or not the statement to the officers, then to the
20 DEA, and then to the officers on the same day are separate
21 statements or different statements, let's say five or six
22 statements he gives. Let's say there's six total. He gives
23 five statements, and he never has an attorney. They're going
24 back to Dane Williams saying tell-- Okay, tell us the story.
25 We got the story from Maija. You know, tell us what you know.

Plaintiff's Closing Argument

2018.

1 Okay, he tells the story. Sometimes you can see him thinking
2 in his mind, I want to be as far away from this cabin as I can
3 be. So for five times that he's without an attorney, just
4 himself and the officers talking about the case, he says I got
5 a ride back to my cabin and I stayed at my cabin, played Play
6 Station, and then I wondered what was going on so I went over
7 to the Crown Creek cabin. Did it make a difference? Finally
8 he gets the attorney when the charges come down, and he says
9 okay, I'll tell you what happened. And he says, okay, I went
10 with John Grange to the Crown Creek cabin, and then I was down
11 there and I got scared and I went home. He refuses to stick
12 around that cabin. Did he stay there? I don't know. Did he
13 go back home? Did he run home and run back? Maybe. Could
14 have. But he gets back in time for the shooting. So either
15 way, in both statements, after he got his attorney and prior
16 to the time he got his attorney, he comes back at the crucial
17 time. And he then says what happens. But he knows he's
18 involved, he knows he's in some jeopardy, and he wants to
19 minimize his involvement. You know that for sure. The key is
20 that he's consistent on his big points. But boy, I'll tell
21 you what, it looks bad when he's talking about what he did in
22 relation to the bodies. That's when he gets bad. Very
23 consistent all the way through on what Chewy did. That didn't
24 change. That's always consistent. ____ say what he did and
25 what Jeff Cunningham did, it got a little rough.

Plaintiff's Closing Argument

2019.

1 THE COURT: Mr. Wetle, 45 minutes, as you requested a
2 warning.

3 MR. WETLE: Thank you, your Honor. He gets caught on the
4 Porsche deal. Who cares whether he bought the Porsche the day
5 after he got to Portland or after he'd sold the pot. Okay,
6 you're the jury, you sit here. I don't think Dane Williams
7 knew that Kez was going to be here to talk about the deal.
8 That made him look pretty bad, but that's where he got his
9 money. So he had to sell Kez's pot to get his cash. Once
10 that cat's out of the bag-- Actually, that wasn't out of the
11 bag. What happened was Sergeant Caruso goes to him and says:
12 Here's a receipt from Eastside Motors of when you bought the
13 Porsche. Oh, yeah. It was on the weekend, the 17th, not the
14 day after I got back. Why he mis-stated that? Did he really
15 forget or was he really covering up how he got the money to
16 get the Porsche? You, as jurors, get to sit there and say, 'Is
17 that important to me, or is that not important to me? Does
18 that tell me a little bit about Dane Williams? Yeah, I think
19 so. Tells you he's minimizing himself as best he can.

20 Jeff Cunningham, he's running. He's getting to Fort
21 Lauderdale, Florida and he's getting ready to get out of the
22 country because his options are not good. He's been with the
23 Family, he's fallen out with the Family. They left him in San
24 Francisco, they've tried to spin him twice. For two months
25 he's gone, being spun. He has to get out. He goes to check

Plaintiff's Closing Argument

2020.

1 on his mom, he's trying to get out, and he gets arrested. He
2 gets confronted with the evidence. It was his friend that got
3 killed. And he tells his story.

4 As you sat there listening to the discrepancies in their
5 stories, and you're going to hear a ton more about the
6 discrepancies in the stories, bear in mind as to what the
7 discrepancies are. There are some discrepancies that Cunning-
8 ham may really not be able to track. The State would submit
9 that Jeff Cunningham probably knows what he had-- that he had
10 breakfast four days ago, but if you ask him what he had for
11 breakfast, he's not going to be able to tell you. That's the
12 way he is, and if you've lived his life, done what he's done,
13 maybe that's understandable. So on some things and some
14 ordering of things, Jeff Cunningham's probably not going to do
15 well. And he didn't do well. And he got frustrated.

16 But look at the big picture, I would submit. Not those
17 inconsistencies that focused most of the testimony by the
18 defense. Let's look at some of them.

19 They walk down to the creek. Did they walk down together,
20 or do they walk down separately? That's a big issue, because
21 it's a discrepancy. You as jurors say okay, I'll put some
22 weight on that. Maybe I wouldn't remember if I walked down
23 together or separately or not, but you know what, they meet at
24 the log. They both know that they meet at the log. I don't
25 know if you can see the red log down at the bottom where

1 Cunningham drew his log, and he's got them down there waiting
2 for the gunshots. Dane Williams up there, has them where the
3 blue log is down there by the creek. They're waiting. So is
4 it important to you that one went down first, one got the
5 water, was coming back, or they went down together? Discrep-
6 ancies? Yeah, but not the big picture.

7 Head signal or no head signal? Did Dane Williams get a
8 head signal from Cunningham? Or did Cunningham just move his
9 head and Dane said it was a head signal? Or is Dane trying to
10 say something about the head signal? Is it important? I
11 don't know. He says he went over and introduced them and they
12 talked, and then they went down to the creek. The State would
13 submit they know something bad's going to happen. Cunningham
14 says I think he's going to get-- they're going to get killed.
15 Did Williams know that too? He might have. Very well could
16 have. And you know what you have to decide? Whether those
17 two people's statement will bring in the shooter. That's what
18 you have to decide. Without their statements, Mr. Grange
19 walks. Are those inconsistencies going to make the differ-
20 ence? The State would submit not. Those inconsistencies are
21 shame, minimize and recollection. They are shameful. They
22 minimize their involvement, and Cunningham may not be able to
23 remember. You got those things playing throughout this trial.

24 Whether the pot was dropped or not dropped. Did he drop
25 the pot coming back, or did he not drop the pot coming back?

Plaintiff's Closing Argument

2022.

1 Was he washing the blood off his face? I don't know.
2 Important?

3 Were there separation of shots or were there fast shots
4 within-- a few slower shots at the end? Have you ever been
5 at a murder scene and the gun goes off? Did you count the
6 shots? Do you know when the fast ones came and when the slow
7 ones came, or do you hear the shots? And how well do you come
8 back and tell it six months later?

9 Did they go to the Whitebird Tavern or they didn't go to
10 the Whitebird Tavern? Does it make a difference? Grange says
11 he was there. Williams says he was there. Cunningham, I
12 don't know. So was it Bill? Where's Bill? I'd like to hear
13 from Bill. Didn't make it to the trial.

14 Loading bodies. Wow, did we spend some time on loading
15 bodies. One guy says I'm looking for the pick and the shovel.
16 One guy says I'm holding him and they're dragging me away and
17 the body up the hill. Is it important? Could be. Blue
18 blanket's on somebody. Blue blanket was on the passenger
19 door. You'll see pictures of it in the exhibits where the
20 blue blanket's hanging out the passenger door. Could have
21 been on that side of the car.

22 Did they change clothes or they didn't change clothes?
23 That's important. Let's think back. Where does that rank in
24 the realm of important things for our consideration? He
25 remembers a little blood on the shirt. Maybe that's more

Plaintiff's Closing Argument

2023.

1 normal. Did they burn a shirt or not? He thinks-- Cunning-
2 ham thinks his shirt got burned, and there's some cloth fabric
3 in the fire, but four or five months later, other people
4 there, hard to say.

5 Those are some of the discrepancies, and there'll be
6 probably many more that counsel will have for you. The main
7 focus, though, is what are the consistencies and where are
8 they. They're in the big area, not in the small areas.

9 We talked about some areas that they were consistent in.
10 Think of this: The fact that these two individuals could say
11 these things together is remarkable. How else would they
12 know? But where Williams and Cunningham agree, if they agreed
13 on one thing, or two things, that would be good. But there
14 are a number of things where Williams and Cunningham do agree
15 as to what John Grange did. Those are important. One, they
16 both agree that Grange used his new .22 rifle to shoot Nick
17 and Josh. And do you honestly buy the story that he sold it
18 to the stranger at the barter fair two days after his dad
19 bought it for him? If you can keep a straight face on that
20 one, I'll put in with you.

21 They both say he used his new .22 rifle to shoot them. No
22 question about it. They both say, and how would they know,
23 but they both say that Grange drug Nick Kaiser up the hill ten
24 to 20 feet. They've never talked to each other. They haven't
25 had a chance to make that comparison. And they've got Mr.

1 Grange dragging the body ten to 20 feet up the hill. Very
2 important. They both say that Grange picked Nick up and put
3 him over his shoulder and carried him to the Bronco. Now,
4 you'd expect him to be dragging the body. If you drug him up
5 the hill, you'd expect him to drag him down the hill. And
6 they both say he picked him up, put him over his shoulder and
7 carried him to the Bronco. Is that remarkable? Do you see
8 the significance? I mean if they were just saying what the
9 other person did, is Williams going to pick those bodies up
10 and put them over his shoulder? No. Is Jeff Cunningham going
11 to pick them up? No. How remarkable that they could both
12 have that fact in their mind that he picked them up, over his
13 shoulder, and carried them to the Bronco.

14 They both say when they got back that Grange was outside
15 the cabin. One person has him on the step, one person has him
16 somewhere else, but gets surprised when they walked up on him.
17 This is good. They both say that Grange says:

18 You're back too soon. Why are you back so
19 soon? Did you bury them?

20 What are the chances of Grange (sic) and Williams being able
21 to, not having talked to each other, come up with that
22 statement independently and relay it to you jurors? The State
23 would submit there's no change in-- There's no chance.
24 That's what happened. How could they match these issues if it
25 didn't happen? And if you get to the point you even are

Plaintiff's Closing Argument

2025.

1 thinking about buying the story that he stayed at the barter
2 fair the whole weekend, think of-- think of that. How could
3 he possibly come up with that, You're back too soon. Why--
4 You're back too soon. The other one says,

5 Why are you back so soon? Did you bury them?

6 What are the chances of that happening? They both say Grange
7 got a gas can and all three went up the hill in Grange's
8 Bronco and Grange drove. No discrepancy on that one. Some
9 things they remember. They all say-- They both said that
10 Grange said he buried the gun, he dug a hole with the butt.
11 Cunningham says the butt, and William says the barrel. The
12 fact of the matter is, they said Grange said he buried the
13 gun. They could have done a lot of things with the gun.
14 Thrown it in the creek, put it in a slash pile. He says he
15 buried it. Grange says, and get this. If he didn't say it,
16 how would he possibly know? They both say that Grange said he
17 shot Josh first and Nick second. Consistency? They weren't
18 there. They didn't know. They're down at the creek, but here
19 he is telling them in the car on the way back to Portland:

20 I shot Josh first and I shot Nick second.

21 So you're right, ladies and gentlemen, there are inconsisten-
22 cies, and there are consistencies. And the scary thing about
23 it is that the consistencies couldn't be there if it didn't
24 happen.

25 Thank you for your attention. I'll have a chance to talk

1 to you after counsel. Thank you.

2 THE COURT: All right, thank you, Mr. Wetle. And Mr.--

3 MR. WETLE: Your Honor, how much time do I have left?

4 THE COURT: I'm just going to calculate that.

5 THE BAILIFF: (Inaudible)

6 THE COURT: Let's take a quick break for anybody who needs
7 one, and we can rearrange the furniture, Mr. Simeone, the way
8 you'd like it.

9 COURT RECESSED

10

11

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Plaintiff's Closing Argument

2027.

1 COURT RECONVENED WITH JURY SEATED

2 THE COURT: Mr. Wetle, if you're back there, you do have
3 28 minutes left, if you need them.

4 MR. WETLE: Thank you.

5 THE COURT: Now, ladies and gentlemen, I'll ask that you
6 give your attention to Mr. Simeone, who will give the closing
7 argument on behalf of Mr. Grange.

8 DEFENDANT'S CLOSING ARGUMENT

9 MR. SIMEONE: Well, thank you, your Honor, _____, counsel,
10 ladies and gentlemen of the jury. It's my pleasure to stand
11 before you tonight and present you with Mr. Grange's closing
12 argument in this very important case. I too would like to
13 thank you for the very close attention that you've paid to the
14 case, for the time you've taken out of your lives to help us
15 with this most important function of our governmental system,
16 and to be here intruding upon your personal time with your
17 families and your loved ones in doing this work. It's been a
18 laborious task. I commend you for it, and the stamina that
19 you're showing being here and being as attentive. I notice
20 you're all taking notes and I appreciate that.

21 I was instructed a long time ago, when I started this,
22 that there are three things that you shouldn't do as a lawyer.
23 You shouldn't take a case personally. Don't take a case home
24 with you. And three, which is an instruction that I got which
25 I felt was most important, maybe the reason why I'm telling

Defendant's Closing Argument

2028.

1 you this, watch out for lies in your witnesses' reports. And
2 at first when I heard that admonition from a professor, I
3 thought to myself, okay, that all sounds okay, but it didn't
4 really-- It didn't really hit home with me then just how
5 important that was. But when I get into a case like this, and
6 I look back on that warning, I think of the wisdom that was
7 contained in that warning, because there's something about a
8 lie, and that is that it will always change. It's ephemeral.
9 It is like shifting sands in a desert. But the truth is just
10 totally the opposite. The truth is like gold. The truth is
11 like that element that no matter what you do to it, it does
12 not react. And there's something nice about that. There's
13 something nice and reliable. You can take a piece of gold and
14 you can throw it in the ocean, a gold doubloon, 500 years
15 later find it. There might be a little bit of something
16 growing on it, but the gold is still gold. Doesn't react.
17 Doesn't oxidize, nothing. It's still gold. That's the truth.
18 The truth doesn't change.

19 Thomas More, back in the 16th century, when there was the
20 big furor over Henry VIII who wanted to have his marriage
21 annulled, wanted to marry somebody new-- We should have so
22 serious a domestic problem these days with our leadership.
23 But the furor was whether or not he would accede to the
24 correctness of annulling his marriage and allowing him to
25 marry anew. And the Pope wanted to do it because the Pope was

Defendant's Closing Argument

2029.

1 basically in the back pocket of the king. Thomas More said
2 I'm not going to do that. Well, you know, Cromwell--
3 Cromwell would love you to do that, More, and he won't be
4 chasing you any further. And he talked to one of his confi-
5 dants and he said oh, listen, all you have to do-- all you
6 have to do is wink a little bit, you know. Say it's okay, and
7 then, you know, you'll get by. They won't be haunting you.
8 You know, you're in jeopardy of your life. He said no, the
9 truth and my integrity is like water in my hands, and if I
10 open my fingers just a little bit, I never have hope to
11 recover it, because once it's gone, it's gone. And that's
12 the-- That's what the truth is. You can't-- you can't let
13 it slip through your hands like that because you'll never
14 regain your credibility.

15 Now, I made some representations to you at the beginning
16 of this trial--or at our voir dire, anyway--which was the last
17 time-- the first time I got to talk to you. My opening
18 statement. This is the second time, which is why I value it
19 so much because I get to look you in the eye, and I get to
20 talk to you now. Because all week it has been this, and none
21 of this. And it seems like it's an awkward system, and maybe
22 some day it will change, but this is what we have right now.
23 But now I can look at you in the face and I can talk to you
24 about what we said and what we heard, and I don't have to
25 worry about objections that I'm preaching or that I'm speech-

1 ifying or that I'm somehow arguing, because I get to talk to
2 you, and I get to open my mouth and I get to tell you all what
3 I think about the case. And it's a pleasure, because it's a
4 big relief valve that's open for me.

5 I made some representations to you and I told you that I
6 would show you that the State has no physical evidence that
7 links Mr. Grange to this crime. And I've proved that to you,
8 because they haven't. We had witness after witness from their
9 side when I examined them say no, we have nothing. The best
10 they could come up with was a packet of identification. Some
11 identifying papers. A cut-up credit card and a registration
12 slip, something like that, that shows Mr. Grange was at the
13 Crown Creek cabin, which we agree with, he as at the Crown
14 Creek cabin. He stayed there. He stayed there on occasion.
15 He stayed there on several occasions. Stayed with Jeff
16 Cunningham there. So that is not proof of anything except of
17 the fact he was at Crown Creek cabin.

18 What I also told you is that their case will involve this.
19 It will involve some suspicion that surrounds some telephone
20 calls, and it will involve testimony of two witnesses whose
21 stories I told you would be very inconsistent in a number of
22 ways. And you probably took me at my word for that at that
23 time and said he said it, now prove it. And I would contend
24 and submit to you now that I have.

25 When we began I told you that there's a difference between

1 suspicion and belief, and I think I asked each of you to the
2 person, almost, whether or not you could show me the differ-
3 ence between suspicion and belief, and each of you, I think,
4 finally, after thinking about it, said yeah, there's a
5 suspicion. If you have a suspicion and get to a belief, the
6 connector is proof. And that's what the State had to estab-
7 lish. I talked about how do we actually make that connection.
8 What's a good way, if you're going to look at credibility of
9 the witnesses, to determine whether or not they are believ-
10 able? Well, I think almost all of you agreed that whether or
11 not they had a motive to testify was something that you would
12 consider. I don't think anybody said they had one sole
13 criteria upon which they'd rely in making the decision. I
14 think that everybody said well, you know, that's something
15 that'll enter into my thought processes. You said motive to
16 testify, you said well, their ability to recollect things
17 consistently. Previously-- Previous convictions for dishon-
18 esty. Those kinds of things. Body language. Demeanor. The
19 way they present. You know, almost all of those things. We
20 just have a natural feel. I think some of you said oh, I
21 don't know, I can just like appreciate what a person says to
22 me. I look and I make a judgment call on a daily basis, and
23 I can tell. Some of you with kids said I do it all the time;
24 I know what to look for.

25 Where's the proof now that the State give us that takes us

1 from that weaker level of where they are, suspicion, over here
2 to a proof or a belief? Where's the proof that gets you to
3 the belief?

4 I want to go to the phone calls first because I think the
5 phone calls are the first thing that need to be discussed.
6 Again, the phone calls are largely based upon the credibility
7 of the witnesses, so this kind of blurs. But you'll recall
8 that Mr. Cunningham testified and he alleged that there was a
9 phone call made Saturday night at a phone booth. Okay? He
10 thought he could get away with that because he used an 800
11 number. Little did he know that the phone company records now
12 are so seamless that they know just about everything that
13 happens on your line, whether it's an outgoing call, whether
14 it's an incoming call, whether it's a credit call. No matter
15 what, it's there, and they have the records, and they brought
16 the people to show it. But the funny thing is that in none of
17 their investigation, and the deputies admitted this, in none
18 of their investigation were they able to show that there was
19 any phone call made from either the freestanding booth at the
20 Clark Motel or the phone booth at the Exxon Station. So that
21 phone call didn't happen, although Mr. Cunningham would like
22 you to still somehow believe it, but he's-- he's caught. He
23 got caught there and he can't out of it because he knows that
24 call was never made.

25 There's Jeff and Dane's testimony, which I'll get to in

1 larger part here when I refer you to my exhibit board. And
2 there's a little sprinkling of a consis-- of a conspiracy
3 here that somehow ties all of this together, that's supposed
4 to be the binding element that keeps the State's case togeth-
5 er. Well, I've got a theme for this too, ladies and gentle-
6 men. I've got a theme that it is a conspiracy of sorts too,
7 and it's probably never referred to that a long time ago when
8 they first thought of the word, but what this is, what you
9 have seen here over the course of the last week is what has
10 previously been known, plainly and simply, as a frame-up.
11 This is a frame job. This is a case where a couple of people
12 who are underlings of a larger organization have got together
13 and they're going to frame somebody with a murder. This is a
14 guy you have on trial right now who's being framed with murder
15 in every sense of the word. And they do that in a couple of
16 ways, and this is how a frame is classically done. Let's
17 freeze him. Let's freeze him in a place and let's show that
18 he has a motive to do what it is we're going to say he does.
19 But they come up short in the frame job. It's the bigger
20 picture. Mr. Wetle has talked about the bigger picture, I
21 want to talk about the bigger picture too. The frame job
22 picture is exactly what we have here. They want to put down
23 a small player, an underling, a person who's basically content
24 in life to peddle around with small marijuana deals and take
25 the extra that he gets off a given transaction and share it

Defendant's Closing Argument

2034.

1 with his friends, and make him go down for a very heinous act
2 that was committed here that resulted in the deaths of two
3 boys.

4 Before I launch too far into my main argument, I want to
5 rebut some of the things that Mr. Wetle has said, because
6 generally I lose sight of those after I get into it too far.

7 This is the dark side of the world. The dark side of the
8 drug industry. A lot of things that we still don't know here.
9 That's true. But where's the connection to Mr. Wetle that--
10 or to Mr. Grange that Mr. Wetle talked about? You know why it
11 becomes mysterious and the questions are unanswered is because
12 we have two very telling bits of information came out from
13 Jeff Cunningham, which I think were-- they were-- they were
14 spontaneous and for that reason somewhat believable. They
15 weren't something that he had to make come out of his memory,
16 which is largely based upon fabrication. Spontaneously said:
17 I never heard of anybody-- That's one of the last things he
18 said before he got off the witness stand.

19 I never heard of anyone being killed in the
20 Family. Never heard of it.

21 And what about the other thing he said?

22 I've never known John to be violent.

23 Made those statements. So how do we get from an individual
24 who's never been convicted of a crime in his life, who their
25 own witness says is not a violent sort, to somebody who, first

1 time out of the box, is supposed to be a murderer? They're
2 not making it from suspicion to belief so far.

3 Go back to the telephone calls. There was another attempt
4 to say that maybe he used a pre-paid phone card. But why
5 would he? Why would he do that if he had his mother's line,
6 his mother's free-- free line to use? And he was very
7 consistent when we read through the-- through the dialogue
8 between him and the deputy about that too. That was most
9 important to them because they knew at that time that they
10 didn't have any proof that the call occurred from the phone on
11 his mother's line, so he tried to say well maybe it was a
12 credit card. You know, that's the answer they wanted to hear.
13 But what did he say at that time? You'll recall because I got
14 on this and I wanted then to for sure emphasize it. Okay, we
15 left off:

16 Q. You made that call using a 1-800 number?
17 Three-way patch? Can you explain it?

18 A. I call Florida, they put me on hold and make
19 the call, and then they put me-- and they
click back to me and then all three of us
are connected.

20 Q. So the 1-800 number, that's your mom's 1-800
21 number?

22 A. Right.

23 Q. You call your mom using that number because
24 it's free?

25 A. Yeah, more or less.

1 Q. And you tell your mom to dial the call for
2 you? To dial the number for you?

3 A. Right.

4 He was very clear at that time. I mean why now do we--
5 Why do we dredge up this idea that maybe there's a credit
6 card? Because he can't make it on the 1-800 number and he
7 knows it and he's caught.

8 How about the Cameron cabin phone call? Well, you know,
9 there's a connection there between a call that was made from
10 the cabin-- from the Camerons' to Rob Schultz, who figures as
11 a large player in the whole drug operation that we've now
12 become educated about. But where does-- How does that put
13 John there? And isn't there a lot of other activity between
14 Rob Schultz and the Camerons? Or at least Rob Schultz and
15 Dane, who is their step-son? Now, recall why it is that Dane
16 might be going to that cabin. Janell Clark said that he was
17 always there using the phone. Dane was always there using the
18 phone. He doesn't have a phone in his cabin, so isn't it
19 logical that somebody that Dane knows, that he met, that he's
20 had numerous marijuana transactions with, he testified to
21 that, he said maybe Rob came here four times but I've been
22 there a lot of times, or it's vice versa. You know, there's
23 been a lot of transactions. He didn't want to put a number on
24 it, but you can suspect that it's a lot because the kid's
25 dealing in a lot of marijuana. Does it make sense to you that

1 there would be a call back and forth between Dane at that
2 time? Yeah. Does it make sense to you that John's there?
3 No. Why not? Because that night he was at the fair. That's
4 one thing that Mr. Cunningham was fairly credible about. He
5 remembered that there was this trip that they took to go get
6 firewood. Cold night, everybody agreed. Cool as you get in
7 June. Where was the wood got? At the slash pile. How long
8 did that take? About an hour. About when did you do that?
9 About 5:30 or 6:00. Okay, so if you're talking about 5:30 or
10 6:00, you have an hour's drive, that doesn't give you a lot of
11 time after that point to get to a cabin-- to their cabin at
12 7:51 or 7:50 to go and make a phone call. But you know what--
13 what puts the icing on the cake here is this: The disclosure
14 to John that Nick was at the fair. Now, recall the chronolo-
15 gy, and I really-- I don't expect you people to get all of
16 these facts in one week, because I've been dealing with it for
17 a lot longer than that and the facts still fall into place for
18 me, so I know it's a matter of your using your best judgment
19 on this and that's why I review. But you've got a collect-
20 ive-- collective brain power of 12 here, which is going to be
21 enormous, as you'll see, and you'll amaze yourselves just how
22 much you remember collectively. But you'll remember that
23 night that Jeff said that Nick had got to the fair that
24 Saturday some time middle of the day, early day, and he stayed
25 with him in his-- in his van where they inhaled this nitrous

1 oxide, laughing gas, for about the remainder of the day. And
2 that was about six or more hours until he was there. He saw
3 John some time after that point, and after you put the time
4 together, it turns out that the disclosure to John that Nick
5 had showed up at the fair wasn't even made until that evening.
6 So now what's the significance of a phone call to Rob earlier
7 in the day, even if you were to believe that John was there,
8 if John never knew about Nick being at the fair until after
9 that night, after those phone calls were made? That's really
10 the icing on the cake, and that's really the whole way to
11 solve the whole question and answer the question about the
12 phone calls.

13 Moreover, it's important here about the cell phone, and
14 this is something that I think Jeff was caught on and it
15 flustered him like almost everything else flustered him when
16 I caught him in his numerous lies. And I didn't like that
17 either. I didn't relish in the fact that he was up there
18 squirming about this, but I don't like the fact either that my
19 client is being charged with a first degree murder here. He
20 agreed that if the phone calls were made to his mother's 800
21 line that day from his cell phone, that probably was-- it was
22 probably he was making those-- those phone calls. And he
23 looked around and he saw that there was one made at 11:35 and
24 one made at 1:39. They would have to be by him. Jeff agrees
25 that if those calls were made to his mom's number, he made

1 them. He agrees that if he used the phone that day it was
2 probably to call Rob. And he also agreed that John wasn't
3 with him when he was using the cell phone to call Nick. And
4 he agrees that the phone records of Rob showed no calls to him
5 in that very tight 6:30 or 6:45 time slot of a five minute
6 call that he said-- wherein he said the calls were made. So
7 if they were made, and I don't want to confuse this too much,
8 they were made earlier in the day, on his cell phone, proba-
9 bly, or Nick's cell phone, to his mom, whereafter she patched
10 through to Rob. There was nothing, and you'll have the
11 record, that's Exhibit-- I forget the exhibit number, but
12 it's Rob Schultz's records. I think it's 109. You'll have
13 those to look at. That's evidence. That'll go back with you.
14 You'll see nothing in the time slot that he's talking about
15 for any call between five and ten minutes that he's suggested
16 he had to Rob. Nothing on Rob's line incoming from the-- to
17 the Portland number that he has from-- from anybody in that
18 time slot. So there goes the phone calls, and there goes
19 largely what the State has put together for itself to show you
20 that there's a motive here. The motive being-- It's no
21 secret. The motive is that this man somehow got information
22 from Mr. Schultz, who's a higher-up, higher kingpin in this
23 drug conspiracy that they're talking about, that Nick was
24 there and therefore this is your time to move. Only problem,
25 like I said, those phone calls came in earlier in the day.

Defendant's Closing Argument

2040.

1 Those phone calls came in at a time before John knew that Nick
2 was there. If they were-- If he were there at all, which he
3 wasn't.

4 And remember how that worked there with the testimony from
5 Dane Williams about the call that he supposedly got at the
6 Cameron house. And I didn't like that, but I didn't jump up
7 and object fast enough, but he was led into his answer that he
8 got that phone call at-- that phone call was made between
9 7:30 and 8:00. I think the questioning went:

10 You made that phone call between 7:30 and 8:00
11 that night, isn't that right?

12 And before I had a chance to do anything, the answer was out
13 and there it went. The problem is that he's with Jeff and
14 he's getting firewood and he's at the fair that night, and he
15 can't be in two places at once. And that call was never made
16 in his presence. That was a call from Dane Williams to Rob,
17 and whatever skullduggery was cooked up there in that phone
18 call, we'll never know. And you got that confirmed with
19 Janell Clark, who, if anything, is a hostile witness to me now
20 because she's saying that Dane is there regularly for phone
21 calls, and she can't really tell you when he's there and when
22 he's not, there's so many calls.

23 Now, I want to go back to the witnesses' testimony, and
24 I'm going to bottom-line it by saying that inconsistency is
25 the hallmark of deception, and you've got a plethora of it

1 here. The officers agree. They couldn't disagree. Mr. Wetle
2 can't disagree, so what does he try to do about it? He tries
3 to downplay the importance of it. What else to do? If you're
4 served soup, you get a spoon, and that's what he's doing,
5 because what he's got is he's got two bad witnesses, so let's
6 downplay the importance of what they've said. It sounds to me
7 like a common tactic to take and a pretty clever one, at that.
8 But what those tell you, one after another, and one discrepan-
9 cy is not a defense-- does not a defense make, and I under-
10 stand that, and I'm not going to try to talk to you with a
11 straight face and say look at one little minor insignificant
12 discrepancy and rely upon that in concluding that they don't
13 make their proof. I'm not doing that at all. But what I've
14 done is a lot more than show you one or two discrepancies.
15 And don't be distracted by that. Don't be allowed to listen
16 to a position that these discrepancies are minimal, and a
17 laugh out of the side of the mouth to the effect that they
18 don't know what they're talking about. The-- the incredulity
19 of that. No. These discrepancies are important because they
20 show that it never happened. They show that the story never
21 happened. That's what they cumulatively amount to. It's like
22 if you ever have a dream-- I don't know if you've heard about
23 it, but I've heard about it, I've experienced it, and you
24 think you're reading a newspaper or a book and you look at the
25 book and you're trying to read but you can't read anything.

Defendant's Closing Argument

2042.

1 And the reason you can't read anything is 'cause your mind's
2 not putting anything and can't put anything on the paper.
3 It's not there. That's the phenomenon that you're experienc-
4 ing here when you hear these two witnesses try to testify.
5 They're trying but they aphasic about it. They don't know
6 where to dredge up the next fact or how to keep it consistent.
7 And it's falling short and they're falling on their faces and
8 you've seen it. And it's not just little inconsistencies, as
9 Mr. Wetle will have you believe, because what he wants to do
10 is he wants to put in your head that oh, but you see where
11 they've hooked up with their one or two consistencies, that's
12 what's important, now that is really what's important. Forget
13 about the myriad inconsistencies, but look at those one or two
14 consistencies, ladies and gentlemen. That saves my bacon
15 because that shows that they're telling the truth. How could
16 they-- How could they ever say such a thing? How could they
17 say why are you back so soon? How could they say they're both
18 at the log, which, incidently, I want to point out, those are
19 the two things they basically have. Those are the-- How else
20 do their stories line up? So he hallmarks them. He yellow
21 markers them. And he brings them to your attention and he
22 says how could, therefore, what's the probability of that
23 otherwise? So I'll tell you how. I'll tell you how. It's
24 because this occurred in June, and the first interview with
25 any one of these boys wasn't until October. That's four

Defendant's Closing Argument

2043.

1 months now. Four months that they had to talk to one another,
2 and four months that they had to hook up stories. How hard
3 would it be for them to say:

4 Hey, listen. Let's just say he came back. He
5 said hey, why are you-- You know, let's--
What are you doing back so soon?

6 But that whole story-- That whole story they tried to get
7 down, you can almost see them scheming the story.

8 Let's say, you know, he was there, he got there
9 and, yeah, he came out and I said to you-- I
10 said to you, okay, it's gonna-- it's gonna
11 happen, it's about to happen now. You go to
the creek, you got water and we hear shots, we
12 come back, hey, we see him with a gun in his
13 hand, he's waving, and he says get 'em, go bury
'em.

14 You know, they're doing it, and they're probably smoking
15 marijuana and they're thinking about it, and they don't get
16 their story very straight and it comes together in a hand--
17 handed kind of a bush league fashion and they've got some-
18 thing. But before they know it, the law enforcement officers
19 are on their trail, and now they're left to make a story. And
20 they try to think back, what did I say? What did he say?
21 Well, he went down, I was walking down there and he said to
me, it's all about to happen. They get to the other guy and
22 they talk to him, and he says:

23 Yeah, I was walking down and he said to me it's
24 all about-- Oh, God, was it supposed to be
that I said it was all about to happen, or that
25 he said it's all about to happen? I don't
know.

1 They don't know because they're making it up, and there's the
2 lie. And that's what we're saying about lies. They don't
3 hold up over time. They can't.

4 So we got a log point.

5 Yeah, we walked down. Let's say we met at the
6 log, we came up and we met-- You know the log
7 down there just before the creek goes-- Yeah,
I know. Let's say we met at the log and that's
where--

8 Okay, so they got the log in their mind. That's an easy thing
9 to stick out in your memory.

10 Let's say that we went, we came back, we tried
11 but we didn't do any good, and John said well,
you know, what are you guys doing back here so
12 soon? You're going-- You have to go and get
rid of those bodies ____.

13 Okay. So that stands out in their mind. Is that such a big
14 deal? That's not. So they lined up on one or two of the
15 points of the story. That doesn't show that there's consis-
16 tency. That just shows that the story that they tried to
17 rehearse for you was in some way remembered. In a very minor,
18 paltry kind of a style they somehow put two points together.

19 The heart of the problem here is that Mr. Grange has to
20 prove a negative. He has to prove a negative, and I talked to
21 some of you in the beginning of the trial on voir dire, Have
22 you ever had to prove a negative? Have you ever had to-- And
23 I asked some of you this, too. Have you ever-- Do you ever
24 think that it might be harder to explain your absence if
25 you're not on a schedule? Might that be a difficult thing to

Defendant's Closing Argument

2045.

1 do versus somebody who's got a job 8:00 to 5:00 every day and
2 he knows that his fellow worker could say yeah, he's over
3 here; I know because I saw him and we had coffee. And you
4 agreed that that might be hard. What they've done is they've
5 made him prove a negative. They strand him at the barter
6 fair, Mr. Williams does, takes his truck, leaves him there,
7 John, unsuspecting and unassuming, leaves him with it for four
8 or five hours that day, takes it. So they know that they've
9 got him fixed. He's fixed and he can't move anywhere. It's
10 almost like a chess game when they've got one person or one
11 player in a position in the corner and he can't move. He's--
12 He's frozen. He's frozen in space and time and he can't go,
13 and they know it because he's at the barter fair and he's got
14 his legs out from under him. His car is gone. They can do
15 anything they want with him and anything they want with his
16 life at that time, within reason, because he's not there to
17 defend and he can't. They can make it up as to what he did.
18 So they use him as conveniently as they want to. They put him
19 in the picture where he's not-- Here he is now. He's not
20 there before. We can use him and we can position him anywhere
21 we want. We can say that he's got a gun. We can say that
22 he's underneath the cabin. We can say that he drove the car.
23 We can say that he load-- helped load tools. We can say that
24 he hauled bodies. How can he defend himself? He's got to
25 prove a negative now. I say you did. I didn't. Well, you

Defendant's Closing Argument

2046.

1 did. I didn't. Prove it. So that's basically what's
2 happened now and he's got himself in here fighting for his
3 life on a first degree murder charge, based upon a bush league
4 kind of a setup, frame-up, that he's a murderer.

5 This is a prime example of what you might refer to as a
6 result-oriented investigation. That is that the detectives
7 here have come up with a conclusion based upon what they want
8 the answer to be, and they worked the case up that way.
9 Instead of starting at the bottom and working their way up,
10 they started up with a-- at the pinnacle and they try to work
11 their way down. Let's say that this is the-- this is the
12 actor. This is the person who's guilty of the crime, and
13 let's see what we can do to support it, rather than see the
14 ways that maybe our investigation is deficient here and
15 exonerate this individual. Because what we've got, unfortu-
16 nately, is a system that's called an adversary system, and
17 that's what we're doing right now. This is an adversary
18 proceeding. I make my case and the State makes its case. And
19 the State doesn't want to at this time do anything but make
20 its case. This is not a time when justice is being solved.
21 This is a time when what is happening is they're trying to
22 prevail. And in the large sense, the larger sense, and maybe
23 some day when we look back on this part of our history, we'll
24 say wow, how primitive and barbaric we were back then; why
25 wasn't there more in the way of cooperation so that we can

Defendant's Closing Argument

2047.

1 really go about finding the truth in a more efficient way?
2 Why are we doing-- Why were we doing it that way, butting
3 heads? But that's what's happening, so you don't-- you're
4 not going to get the coop-- kind of cooperation that you
5 would like to see here in a truth-finding process. You're
6 going to get whatever they can get to try to make a case,
7 disregarding and notwithstanding anything to the contrary that
8 would show proof in Mr. Grange's favor. So what kind of proof
9 am I showing in Mr. Grange's favor? Well, I'm talking about
10 the kinds of inconsistencies that I think are very important,
11 that should not be down-played.

12 What I did on my board, and I hope that all of you can see
13 most of these, I tried to outline for you just the Dane
14 Williams statements alone, and I've got some comparison over
15 there in major inconsistencies between Jeff and _____.
16 But I wanted to go from one to the other now in Dane's
17 statement, and I tried to color-code them for you as well.
18 But 1, 2, 3-- There's no 4 because that was an unrecorded
19 statement, as you'll recall. I'm going to 6 and to 7.

20 You remember the first statement given in October? Dane
21 was talking pretty-- pretty clearly at that time and he
22 maintains the position that John dropped him off at the Hamlet
23 Creek cabin--that's Dane's cabin--directly from the barter
24 fair on Sunday. Dane got back to his cabin, Hamlet Creek,
25 probably about 12:00 to 1:00 in the afternoon, directly from

1 the barter fair. Dane walked to the Crown Creek cabin after
2 playing Play Station with his brother for three hours. Is
3 that a mem-- Is that a matter of memory? I'll go back to
4 that. And Dane states at that time, while he and Jeff were
5 walking to the creek, that Jeff says:

6 We're going to scare the crap out of him.

7 At that time in that first lengthy statement he also said Dane
8 went down to the creek, while Dane is saying I went down to
9 the creek and shots rang out in a very short time period. He
10 took off running back to his folks' house after the alleged
11 incident, claims no involvement in the burial attempt, doesn't
12 mention that he went to the burn site with Jeff, doesn't
13 mention starting the truck on fire, and in Portland he sleeps
14 at Rob's and John leaves immediately.

15 Now, we move from there. Let's go and follow the green.
16 He's still maintaining this position about going to Hamlet
17 Creek. Well, what about on the trip back from the fair?
18 Because in the first statement he said that John had mentioned
19 something about trying to do some harm to Nick, but he said
20 nothing about that in his second statement. Why is that a
21 matter of memory, something as crucially important as that?
22 Because it wasn't just an omission, but the Sheriff's deputies
23 say:

24 Well, what did he say on the way back to the
25 fair?

1 Well, he-- No, nothing said. Nothing much. How was that--
2 Was that a slip? Is that a memory thing? Again, at that time
3 we maintain the story that he walked to the Crown Creek cabin
4 three hours after first being dropped off at the Hamlet Creek
5 cabin. And he maintains he heard the gunshots in a very short
6 time. Immediately on the trip down to the creek. He main-
7 tains he had no participation in any attempt to bury or burn
8 the bodies.

9 Let's go to the third statement where he maintain the
10 position with regards to the Hamlet Creek cabin, and he does
11 that all the way through, incidently, until we get to the last
12 statement, so I won't go through that all any more. But now
13 he's admitting to driving to the-- driving the Blazer to bury
14 the bodies, and he's now admitting to try to dig the graves
15 with a pickaxe, which has it's own problems because of the
16 results of the investigation that was done, and showed that
17 it's exactly the opposite of what it was that they said they
18 did in their attempt to bury them. Pickaxe, uphill, Dane.
19 Jeff, shovel, below. It turned out exactly the opposite in
20 their investigation, but I digress. Now he denies that it's
21 being-- being-- his idea to burn the bodies, but he's
22 starting to wobble and,

23 I don't think I made the decision to burn the
24 bodies.

25 And he exclaims-- And this is-- this is something that has

1 to catch one's attention.

2 You guys--you guys--weren't supposed to fake us
3 out like that.

4 And you heard them on the stand when I questioned him about
5 that, and you saw the difficulty he had trying to answer that
6 very difficult question.

7 Why did you say you guys, Mr. Williams?

8 He was choked. He couldn't answer that question.

9 So let's talk about the conspiracy some more and the
10 frame-up and whether that doesn't add some fuel and some
11 weight to the argument that I'm presenting to you about how
12 this happened.

13 I don't think you-- I didn't think you guys--
14 How can you possibly say you guys, unless he's talking about
15 somebody else's involvement in this heinous killing.

16 After the failed attempt to burn the bodies-- And I'm
17 sorry for you back jurors who can't see the bottom. After the
18 failed attempt to burn the bodies in Nick's Bronco, Dane
19 states that he and Jeff ran through the woods, falling. And
20 after the failed attempt to burn the bodies in Nick's Bronco,
21 Jeff states that he and Dane walked back. Let's follow a
22 couple through now. In his third-- in his fifth statement,
23 Dane says he doesn't know who poured the gasoline into the
24 rig. Maintained that he didn't have any participation in the
25 attempt to bury the bodies. I'm sorry. But when we get into

1 the last statement, he talks about how he did. He did have an
2 attempt. He did make an attempt to bury the bodies and to
3 burn them. Following the green through, he's maintaining his
4 position that he's taken straight to the Hamlet Creek cabin
5 until he got to the very last statement, where he said well,
6 now I went to the Hamlet Creek cabin after I went to the Crown
7 Creek cabin. Major shift in his position there. Is that a
8 memory thing?

9 What about the position regarding playing the Play Station
10 with his brother at the Hamlet Creek cabin? He's maintained
11 it there, but that kind of goes away in the last statement.
12 He never did it. Why not? Because now he has to buy three
13 hours somewhere that were previously made up by saying that he
14 played Play Station with his brother. But he still can't
15 quite do it.

16 He now states in his fifth statement that John came back
17 to Rob's apartment and stayed the night in Portland. I wonder
18 why that shift happened? I wonder if there was any consider-
19 ation there that he's trying to explain to the Sheriff's
20 office that wow, why would I stay at Rob's apartment in
21 Portland when I got back if I'm-- If I'm an insignificant
22 kind of a player in this whole thing? Why would John leave if
23 he's somebody who's hooked up with him pretty well? Better
24 change my story. All of a sudden now John's coming back to
25 the apartment and he's staying with Rob. Is that a memory

1 thing? Maybe. But that seems like kind of a major detail for
2 there just to be a memory lapse that's causing it. That, to
3 me, sounds like it's a calculated kind of change in a calcu-
4 lated story that-- that he's fabricating.

5 Now, remember the third statement.

6 You guys weren't supposed to fake us out like
7 that.

8 But then when we get to the fifth statement, he's saying:

9 Jeff went through the Bronco, grabbing money.

10 Dane states:

11 I'm not retracting any statements to the police
12 officers at that time. What I'm saying right
13 now, I have admitted a few things. Everything
14 is correct to the point where you can go ahead
15 and look at it and investigate it and there's
16 no reason to hold anything back like this.

17 There goes his credibility. There it goes. Because there
18 was-- He-- He's holding things back. And if he's holding it
19 back there, because obviously he's making different statements
20 by the time he gets to seven, now he's going to the Hamlet
21 Creek cabin first, now he's saying he's left to go to the
22 barter fair at 12:00 to 1:00 and returning to the-- as
23 opposed to returning to the Hamlet Creek cabin at 1:00, which
24 was what he said at first. He now says he left the fair at
25 1:00 to 2:00. Now he has John on the drive saying that he's
going to threaten Nick, compared to Number 2, he said nothing
that I can recall that he said on the drive. He abandons the
whole Play Station thing, as I said. And now he's made

1 another change, and this is a very interesting change, and I
2 only-- I only traced it through from 1 to 7 'cause I'll get
3 to it later when I compare Jeff's to Dane's.

4 Jeff said we're going to scare the crap out of him. What
5 does he say over here? Well, now I'm suggesting well, maybe--
6 What was the story anyway? What did I say? Well, maybe it
7 was. Maybe it was. Maybe I told Jeff that he's under the--
8 he's under the-- the _____. But that doesn't mean anything
9 because that's just an inconsistency, a minor inconsistency,
10 and that gets lost over time. No. That can't be a memory
11 thing. It can't be a memory thing. Why? Because it imparts
12 that one or the other of them had guilty knowledge of what was
13 going on. You can't be a-- It can't be a memory thing that
14 he just changed. That can't be waived away as a slight thing
15 by the prosecution and saying that you should ignore it.
16 Because that's what you're going to hear: You're going to
17 hear chuckle after chuckle about how these inconsistencies
18 don't mean anything. What they mean, cumulatively, is that
19 this is a fake story. This is all a fabrication, and that
20 would be a funny thing except that you have this man's life on
21 the line. That would be funny in almost any other cir--
22 Under any other circumstance it might be funny to make a
23 story. But you can't-- It can't be funny when that's what
24 you're talking about, because if the one knows the other is
25 under the house, that's the way that story should always come

1 out. That's the way it should always come out, because if you
2 recall the story, as he wants to-- as they want to tell you
3 it happened, Dane is in the truck with John as they drive
4 back, and that's when Dane is imparted with the knowledge that
5 this is going to happen. There's going to be something. We
6 don't know what, but something's going to happen. Dane later
7 starts to say in his statements:

8 Well, now he's asking me to get a second gun.
9 Where was that in the first account? Don't you think that's
10 something that the sheriffs would flush out from him, either
11 in their warmup or that would come out in the interview as an
12 important detail? Get a second gun. That would have to stand
13 out in raised letters. It would have to be highlighted in
14 fluorescent for them. Or him, in his mind. That came out
15 later. Why-- Why say that then if not now? So the story is
16 John imparts the knowledge to Dane, it's going to happen.
17 Jeff is already somehow back at the cabin, according to them.
18 Or he's going to come to the cabin soon. I'll hide and you
19 get-- and then when we get out we're going to-- So who
20 would be the one who would know that it's happening? Jeff,
21 who left with Nick, who's in the dark? Or Dane, who's driving
22 with John, supposedly? There's only one person in that kind
23 of instance who could know who it is, so that's why that
24 story's totally-- it's totally fictitious. It can't be true.
25 It's not a memory thing. And what's more, it's not just not

1 a memory thing. It totally explodes what they're doing here.
2 It totally shows you that what they're doing is conspiring to
3 frame this guy up. They're framing somebody who's an unimpor-
4 tant underling who works as a work-a-day kind of a guy in
5 Portland, smokes his pot, gets by on little transactions.
6 He's expendable. And who's going to be saved? Who's Nick in
7 this organization? He's a major guy. But who gets introduced
8 to Nick at his house in Seattle? Yeah, it was Dane Williams.
9 Dane met him at his house in Seattle. And if you want to
10 believe the testimony of the police officers, which I believe
11 they're telling the truth, and I agree with the DEA agents,
12 these guys are secretive when it comes to their business.
13 This is all very clandestine activity because it's the most--
14 it's the most dangerous game, probably, the drug trade. It's
15 dangerous because it's totally illegal. Maybe that will
16 change some day, but right now it's totally prescribed, so the
17 only way people can get their illegal drugs is through
18 criminals, because if you're dealing in 'em you're a criminal.
19 So you're dealing with people who are bad people. He's
20 meeting somebody who's at a higher level. This is an LSD
21 trafficker who everybody says-- I think the hierarchy was, I
22 think they said Chewy, they somehow put him in the Family.
23 Jeff, Shadow, Rob and Nick. So Nick is kind of high up in the
24 scheme of things there. Who's meeting him in Seattle? How
25 much did we really hear about how much is going on there?

Defendant's Closing Argument

2056.

1 Who's out on bail here? Who can't afford bail? How much did
2 he know? How much did he have to do with it? I say a lot.
3 I contend that you can conclude he had a lot and that he was
4 high up into this organization. So why don't we waste an
5 underling? That's easy. Why don't we save the guy who's
6 really important, who's doing some good? Yeah. Let me get a
7 haircut, let me get a conversion experience, I'm good to go.
8 Can't do the same with Jeff Cunningham. I mean, unfortunate-
9 ly, poor guy. He's just had too many a hard road. He can't
10 make it. Can't get back. Never got to the point where he was
11 very serious about his business. He was frivolous. Frivolous
12 about it. Kind of went along with it. His main thing in life
13 is let me go to the barter fairs, let me follow the Grateful
14 Dead around, let me smoke my pot, do my LSD. I'm enjoying it,
15 I'm here for the ride. It's a quarter mile shot through life,
16 I'm going to go as fast as I can, have as much fun as I can.
17 Dane wasn't that kind of a person. Dane is, from Jeff's
18 account, he's money hungry, he's greedy, he talked about a
19 reward that he felt was available to him. And do you think
20 he's scared? I think he's scared too, but who's he scared of?
21 I think he's scared of people who are still out there. I
22 don't think he's got any fear of John whatsoever. Proof? I
23 never saw Chewy do anything violent. Did I even elicit that
24 from him? Did I even ask him that? Whether or not he's ever
25 seen John violent or mad at anybody? That came out. That

Defendant's Closing Argument

2057.

1 came out from the State's witness. I didn't do that. That
2 was a-- It was a totally spontaneous remark, but it's
3 important because sometimes in cases like this it's those
4 things that are going to make the difference in your-- in
5 your estimation of what happened and what's right here.

6 How about Dane's very real timing conflict? I got to it
7 on the board. And he tries to-- What he does is he tries to
8 condense it, he tries to figure out how to press it down so
9 the time I'm arriving at the Crown Creek cabin is in unison
10 with the time that Jeff, Nick, et al, get there. How do I do
11 it? Because he thinks, oh, my God, now what did I do? I said
12 I'm at the Hamlet Creek cabin and I'm playing Play Station for
13 three hours, but he forgot, he left at the same time, or was
14 apparently close enough to the same time the victims left, and
15 he's saying, how do I get there so now I can make it consis-
16 tent that I'm there just before. So he finally abandons the
17 whole Play Station thing and he goes to the Hamlet Creek
18 cabin. That's why. He whittled it down a little. If you
19 look at statements-- and you don't get the statements because
20 they're considered cumulative evidence and all we can do,
21 really, is tell you what the testimony is and you have to come
22 away with that to the best of your knowledge, the best of your
23 recollection. But he whittles it away from statement to
24 statement. He gets a little bit-- he gets a little bit
25 closer in time. He leaves a little later and he played Play

Defendant's Closing Argument

2058.

1 Station for three hours. Now you get him to where he's
2 leaving a little earlier, he's leaving a little earlier,
3 finally he gets to where he goes right to the Crown Creek
4 cabin all together so he gets himself there in time. He had
5 to do that. Had to do it. But what's his problem? He
6 somehow forgets. He somehow forgets and he says he got to the
7 cabin at 4:30. So he's still not really there. He got to the
8 cabin at 4:30 after running back and forth two times. But if
9 you think about that, he runs back and forth, you saw his
10 physical condition, you're talking about a mile over physical-
11 ly difficult terrain. It's hard to believe that he can run a
12 mile there and run a mile back without wanting to stop. If
13 you do the math and you think about it, if he does that
14 after-- if he arrives back at 4:30, he couldn't have left the
15 Crown Creek cabin the first time out until 3:00. Is that
16 fair? An hour and a half? He's saying-- He's the one who's
17 saying he's running. But what time do these boys say they got
18 there? What time does Jeff say he got there? What time,
19 moreover, did he leave the fair, according to-- He viewed--
20 Jeff saw-- Jeff saw John at the gate. Jeff saw John at the
21 gate when he left. Think about that. He saw John at the
22 gate. Didn't see his Bronco though. Saw John. Twelve or
23 12:30. Hour to the Crown Creek cabin, 1:30. Be generous,
24 2:00. I don't know, somewhere around there. Jeff's testimo-
25 ny, he's there for ten minutes or so before he heard it all go

Defendant's Closing Argument

2059.

1 down. That's about 2:10, being generous. Two-fifteen. It
2 still doesn't jibe with what it is that Williams is trying to
3 say it was, because he's got to, just logistically here in
4 common sense. He's got to get back to that cabin to get them
5 there, not only in time, but he's got to get there before to
6 park the rig in the clandestine way it was parked--behind--and
7 he's got to somehow hide out, and they've got to do all these
8 preparatory things. So he's got to get there well before. It
9 doesn't work. The math doesn't work, and I'm not just getting
10 you down to a couple of minutes here and straining my credi-
11 bility. I'm not just saying well, look, he got there at 2:20
12 and they're saying he got there at 2:15 so it doesn't work,
13 so-- No, I'm talking about at the very least here an hour or
14 two gap in time. Probably more, really, but I'm trying to be
15 generous to maintain with you the credibility of the entire
16 picture.

17 What about the same clothes issue? Again, that'll be
18 down-played. But why-- why is that a big issue? Because of
19 one thing. Dane says they changed clothes. Dane-- Jeff says
20 same clothes. Dane is saying that the clothes are burned.
21 Well, does it stand to reason that John, who is involved in
22 this and carrying bodies all around, if that's what they say
23 he did, would have a lot of blood on him? You bet it does.
24 Jeff says he had a spot-- and he pointed. He got a spot of
25 blood right there on his shirt. How easy a _____ device is

Defendant's Closing Argument

2060.

1 that for us to say yeah, he had-- he had a spot of blood on
2 his shirt. How do you disprove that? Yeah, he had a spot of
3 blood on his shirt. I saw a spot of blood on his shirt. It's
4 about the easiest thing for you to remember, if you want to--
5 That's how I know he-- he didn't change his shirt. A spot of
6 blood on his shirt. You can't disprove that. It's impossible
7 to disprove that.

8 How about the just sitting there and getting shot informa-
9 tion? I went through all of these with the detectives. They
10 too agree that these are difficult inconsistencies. They
11 agree that it's troublesome for them and they couldn't explain
12 it, even after six attempts of trying to homogenize everything
13 here that Dane Williams said. But you recall, he was just
14 sitting there when I got back. That's what Jeff said. How--
15 How completely opposite is that characterization of John and
16 his demeanor there to Jane (sic) that we-- Dane, we shocked
17 him when we came up. He was surprised. Surprised to see us.
18 You want-- You want to wonder why it is that he's surprised
19 after an hour and a half in the first place, but-- or that an
20 hour and a half is a short period of time to be gone anyway.
21 But don't you-- Do you see a major difference there? Is that
22 something that would stand out in one's mind?

23 How about Kez Young's testimony? He talked pretty freely,
24 at least in a way that the police wanted him to anyway. I
25 wonder if anybody who's under heavy pressure from the police,

1 now knowing that they're involved in heavy drug trading,
2 wouldn't say whatever it is that the police wanted them to
3 say. But is there some question mark there about whether or
4 not he would really let somebody go with 10,000 or \$12,000 of
5 his marijuana? And is there some question in your mind about
6 whether or not there's a connection between Dane's going
7 through these boys' pockets after they were supposed to have
8 a mushroom deal that involved several thousand dollars, and
9 his being able to afford to buy a Porsche and an apartment?
10 Might that be some of the extra money he had, made him-- made
11 it possible for him to do it? He had the \$10,000. That
12 probably would do it, if that really happened. But now he's
13 got even-- He's got extra, because he's, by Jeff's own
14 characterization, he's a greedy, money-hungry kind of a guy.
15 Money is the important thing in his life. Going through
16 pockets of dead people and scavenging money off of them, it's
17 a hideous kind of an image.

18 Well, here's one that I think the prosecution's going to
19 have a little more trouble with, if they haven't had enough
20 trouble with the other. What about the tailgate that doesn't
21 open? That's Brian Murphy's-- their witness's own testimony.
22 Doesn't open. Doesn't function. Bronco, if the window
23 doesn't open, tailgate doesn't go down. How can that be open?
24 They-- They're caught and they don't know what to do about
25 it, so they try to trip all over themselves. They try to trip

1 all over themselves about it and say well, he poured it in
2 from the side; well, I thought he poured it in through the
3 window. But even if they're saying he poured it in through a
4 window that maybe broke or that went down because it wasn't on
5 a carriage, if the carriage is still up you're going to have
6 the same problem with the door going down. So how is the gate
7 down for them to load bodies through there? The tailgate
8 doesn't open. That was also the conclusion of the examiner
9 who did the report of the Bronco. It was his opinion in his
10 report that the window appeared to be up in the Bronco.

11 You're wondering why it is that after this much inconsis-
12 tency that the investigators were willing to take the words of
13 these witnesses when they know they're giving false informa-
14 tion about not just minor things. Why not retruck, why not
15 regroup at that point? They had the phone records. They knew
16 that the call was never made that Jeff was talking about.

17 They had other things that came up too. What about the
18 pan of water that was supposedly brought down, and the way
19 that the water pan was grabbed by Jeff? Is it a memory thing?
20 Well, you know, you might say so, but why is there such a big
21 difference in stories? And again, it's adding up. It's one
22 after another. It's not just one now, it's more.

23 Fire pit. Where were the bodies? Did they fall inside
24 the pit as Jeff said, or were they outside as Dane very
25 clearly said?

1 How about the length of time that the whole incident at
2 the creek lasted? About one or five minutes, according to
3 Jeff. I'm sorry, about one and a half minutes, according to
4 Jeff. It was very brief. He said about 40 seconds. I went
5 through that drill with Detective Caruso, you recall. He said
6 about 40 seconds to get down to the creek, about two seconds
7 to get the water in the pan, about another few seconds to walk
8 up until he got to this log that they talked about and thought
9 about. Yeah, the log, let's get back to the log. That's
10 about another half a minute. Detective Caruso agreed.
11 Probably about a minute and a half. Where was the time for
12 this five minute luxurious conversation at the creek that Dane
13 Williams is talking about? Where could that fit in? You know
14 what he thought? He thought to himself, this will sound good
15 to the police officers, I'll say yeah, we met there and we
16 basically discussed it; oh, I don't know, about five minutes
17 or so. Not thinking about the fact that wow, I'm getting
18 myself further and further into it here in a way that I
19 can't-- I can't get out of it. More about the lies, lies,
20 shifting sands, always changing. That's what's happening.

21 And how about the incident about the trip to the creek?
22 This was-- This, to me, was very interesting, and I thought
23 that it's-- I wanted to go back and I wanted to read the
24 exchange. This comes from part of the dialogue between the
25 investigator and Jeff again, when they were talking about

Defendant's Closing Argument

2064.

1 this. This would be on Jeff's second interview that occurred
2 January 4th of this year. And you have to understand that now
3 they're going back again, January 4th. The investigation
4 started in October. Let's see if we can put it together,
5 let's see if we can somehow make it meld. And he knows,
6 because he knows what he's just spoken to Dane about. Dane's
7 telling them that yeah, we went down to the-- We went down to
8 the creek together, yeah, you know, I spent about, you know,
9 a certain amount of time there. Yeah, I got-- I got-- The
10 pot was dropped, though, when we dropped-- when we got back
11 up there. Yeah. No, we never did get all the way down to the
12 creek. Never-- Never did. Now, they're remembering that and
13 they're having an interview again and he's questioning Mr.
14 Cunningham. This is Detective Erdman.

15 Okay, now, you walked down to the creek to get
16 water. You walked down there alone?

17 And Jeff says yes. Completely different from what Mr.
18 Williams' saying because he knows he asking questions where
19 he's got to see if we can get this together again. He's going
20 right to the trouble spot, right to where the ____ were.
21 Walked down? Yeah. And what trail do you take to get there?
22 The one right behind the yellow van. Here we go again. About
23 how long does it take to get down there? Thirty seconds,
24 maybe. And did you fill up the pot with water? Uh-huh. I
25 don't know. Again. It happened again, because the other

1 guy's saying he never filled up the pot with water. How do we
2 get consistent about it? You can almost hear the-- You can
3 almost hear the anguish in his voice. He's saying please,
4 please, you know, don't-- don't put another hole in-- Don't
5 put another hole in this-- this Swiss cheese, the Swiss
6 cheese of a case I've got going here. Don't put yet another
7 thing in it that I can't explain away.

8 Now, why are they going back and trying to find consisten-
9 cies in those, what they're now trying to characterize as
10 little details? They're going back here statement after
11 statement after statement, and they go to him again. Let's
12 see if we can get you to maybe say _____. Well, those are
13 details that apparently are pretty important at that point.
14 Let's see if we can match them up. They never do after months
15 of investigation and many statements. Never do. Why are they
16 important there but now you're going to hear that they're not
17 important. All of a sudden, aw, you know, forget those
18 inconsistencies, even though the police officers were willing
19 to admit to you on the stand. It's one of the things we
20 really look for first whenever we're talking about the-- the
21 trustworthiness of the statement, and that is whether or not
22 it lines up one after another, after another, after another.
23 Perfect consistencies? No, it's not a perfect world. But
24 when you get inconsistencies that are indicative of a lie like
25 this, indicative of the fact that the story never happened,

Defendant's Closing Argument

2066.

1 that's when you have to start paying more attention to those.
2 That's when, in a case that's as serious as this where you're
3 accusing somebody of a murder, a first degree murder, you have
4 to start paying real close attention to those things because
5 it's going to come down to that here. Because what the State
6 has put together is a case with two witnesses whose testimony
7 is pitiful. Pitiful.

8 THE COURT: Mr. Simeone and Mr. Wetle, I'm going to ask
9 you to approach the bench for a minute, if you would, please.
10 Sorry to interrupt.

11 UNRECORDED SIDEBAR

12 THE COURT: All right, ladies and gentlemen, I just
13 thought I'd check and see if we could forge onward, and we
14 will do that, and bear with us and we'll get through this this
15 evening, so thank you for your attention. Go ahead, Mr.
16 Simeone.

17 MR. SIMEONE: Thank you, your Honor. I want to point to
18 some of the inconsistencies in the creek story because it's
19 probably the hardest way for them to try to get their stories
20 to go side by side. But I-- And I already discussed with
21 you, did you give a signal or nod of the head? No, I went to
22 the creek by myself. That was Jeff's answer. Compare that to
23 what Dane said. Head motion. Waved me down with his hand.

24 You go down together to get creek water? Did
25 you walk there alone?

1 Yeah. We walked to the creek together.
2 Jeff says Dane said it's going to happen right now. Dane says
3 while he's walking to the creek with Jeff, Jeff says, We're
4 going to scare the crap out of them. I already went through
5 these. Gets to the end, Dane starts waffling. He told me
6 Jeff-- He told me, Jeff, something is going to happen. Did
7 you say to Jeff it's going to happen now? This is a question
8 they asked Dane. Oh, no, that's what he said to me. That's
9 what he said to me. Clear about that point. You're carrying
10 the pot with the water is the question Jeff answered yeah.
11 Did you get the water, they asked him that. No, we didn't.
12 Make it to the creek? Not all the way. How can you get the
13 water, not make it to the creek all the way? Is that a minor
14 detail? It's because it's a lie. It's because it's a lie.

15 You know, they talked about, or they tried to explain away
16 in their direct examination of the police officers why it was
17 that the stories might be inconsistent, because they know
18 they're inconsistent and the only thing they can do now is try
19 to say that there's a reason for it. They said that shock
20 might make that a problem, fear that they have might make it
21 a problem. But this is what you have to ask ourselves: Why
22 would it be important for them, after they're disclosing who
23 it is who did this heinous act, allegedly, who it is is
24 guilty, what does it matter at that point if they waffle or
25 shade on insignificant details? They're already giving up the

Defendant's Closing Argument

2068.

1 heart of the story, which is they're saying that somebody is
2 guilty of this crime, and they're pointing fingers at people,
3 why shade on details about incidentals? So that's really not
4 a good explanation as to why fear or shock is going to affect.
5 Fear of individuals? Why? If they're afraid of repercussion,
6 then they're not going to disclose names in the first place.
7 If they're afraid, the insignificant details should go with
8 the package deal. They can give those out for the truth if
9 they're already given up the whole prize. So that doesn't
10 wash, and that's not an explanation. Again, you see them
11 trying to run for shelter with regards to the fact that they
12 have the weaknesses they have in their story. The inconsis-
13 tencies, aw, they're not important. Not important and we can
14 explain them away like this. Don't let that happen.

15 You know what else was important, is when Jeff talked
16 about whether or not John had a gun in his hand when he went
17 back up to that creek (sic). And isn't that something that
18 would stand out in our minds if we saw somebody with a gun in
19 his hand waving it? Isn't that a very-- Isn't that a very--
20 a very specific and vivid image that you would see in your
21 mind? It is. Dane talked about it because he figured if I'm
22 running up a hill and I'm accusing somebody of just having
23 shot somebody, he'd have a gun in his hand. So I can say that
24 and I can get away with that. But Jeff doesn't say such a
25 thing. The best he can say, maybe he had a gun in his hand,

1 maybe he didn't. But he doesn't go the extra step of staying
2 that he saw a gun being waved at him. And that's a telling
3 difference, because that is an image that would almost be
4 horrifying for him to see.

5 And who-- What about who's in the lead? We have Dane
6 with a very specific recollection that Jeff, even though I
7 cross examined him about this, with a broken ankle was in the
8 lead. I said even with his broken ankle? Yeah. Jeff, vice
9 versa.

10 So you're going to-- after the fact this incident
11 supposedly happened. Supposedly happened. Wouldn't it be a
12 logical juncture for Mr. Grange to want to leave town if he
13 just committed this crime? Wouldn't it be the most important
14 thing on his mind is to get out of there right now, not
15 tomorrow? But what does he do? Reluctantly, over Jeff's
16 request, he lends him his car. That is totally contrary to
17 what the normal reaction and what your normal actions would be
18 at that time, which would be to leave. He gives him the keys,
19 almost on an open-ended deal. Come back tomorrow, but I have
20 to be in Portland tomorrow night because I'm going to meet
21 with some people and I'm going to have dinner with them, but
22 just be back tomorrow morning. Did he get mad when he came
23 back later? You bet. Was he unreasonably or inordinately
24 mad? No. He should have been mad that he was back-- that
25 he-- that he got his truck late.

Defendant's Closing Argument

2070.

1 But here's the last reason I think the police might be
2 afraid about their commitment to the case, and I've just gone
3 through a nice list and I'm going to recap them for you before
4 I get shut off here, which is going to happen pretty soon.
5 And it's that very harrowing, haunting statement that Mr.
6 Williams made in his first interview to Deputy Baskin, and I
7 want to review that with you again, 'cause I can't get it out
8 of my mind. This is your classic Freudian slip.

9 Okay, earlier-- This is Dave Baskin's question:

10 Q. Earlier you mentioned Chewy was coming down
11 the hill with a body over his shoulder.

12 A. Yeah, he was.

13 Q. Where in relationship to the cabin is
14 there-- Where's he coming down from?

15 A. Behind-- Behind the fire-- Between the
16 fire and the steps. There's a hill that
17 goes up. And I don't want to-- I think
18 they were confused after they killed the--
19 after Chewy killed the guys, that they drug
20 them off first and then right after that,
21 you know, picked them up and--

22 And it trails off then. Who's they? How-- How could that
23 ever-- How could he ever make the substitute for an individ-
24 ual to a "they" [quotations supplied] at that point unless
25 there's somebody here that we don't know about.

There's a lot of skullduggery here going on. A lot of it.
But here's something that I think you need to-- you need to
dwell upon when you're deliberating about this whole act, and
it's probably-- It took me awhile to see it, but it finally

1 dawned on me and I finally-- I want to impart it to you now.
2 Think about the timing that's necessary in John's departure,
3 if that's what it's going to be, and Dane's arrival just when
4 Jeff and the victims are leaving the fair. How can it be that
5 Dane arrives at that barter fair just in time now--this is
6 strictly going to be a coincidence kind of a thing--that he
7 drives to the barter fair that Sunday morning, gets there just
8 in time now, for him to leave after saying he forgot his
9 cigarettes. Now, he's not planning a trip back either.
10 That's what he's having you believe. I forgot my cigarettes.
11 How important is that to go an hour back for your cigarettes?
12 Start to think about that too. To-- To the Crown Creek, an
13 hour away, just for your cigarettes, after being driven in
14 there. How-- How possible is it, in all probability, that
15 he's going to get there just in time to leave so that he's
16 there right before these two kids who leave are going to get
17 at that cabin? How could he do that? How can that coinci-
18 dently occur that he drives there and he gets there just in
19 time to leave and to ambush these victims when they're going
20 to the cabin, not knowing beforehand when it is that they're
21 going to go there? Can that really happen? That is just--
22 That-- I mean that's got to be the one thing that stands out
23 in your mind as to the total improbability of what it is that
24 they're trying to contend occurred.

25 Now, what happens is that it's just like Mr. Grange told

1 you in his very, very reasoned, very measured examination and
2 cross examination. Remember, this is an individual now who's
3 being examined at his first degree murder trial by an experi-
4 enced prosecutor, knowing that you're all listening and that
5 you've been waiting to hear what he has to say. Did you hear
6 a hesitation in his voice? Did you hear the first catch in
7 his throat? Did you feel the first pause in anything that he
8 had to say about what happened? No. If you listened to the
9 same testimony I did, your answer to that has to be no. And
10 there's only one way that that can happen. What doesn't
11 change? It's the truth. Why is he able to get it out that
12 fast, that well, with that kind of a straight look at you and
13 everybody in this courtroom under the severe pressure he's
14 under, if he's telling you a lie? He's telling you the truth,
15 but he's fighting for his life. He's fighting for his life
16 against the State and all the other power that he's up against
17 here to try to show you, with what he's got available to you,
18 that they're lying, that he's being framed. He's being framed
19 big time, and he's looking at the 12 of you and he's saying
20 you gotta understand what it is that I'm saying. This is my
21 shot, and I'll ask-- I'll answer whatever question you want
22 me to answer. Couldn't-- Couldn't shake him. Couldn't
23 answer-- have him answer a question that he couldn't. Came
24 up with every answer. Had to stop now. Let me cut my losses.
25 The more I asked him questions, the deeper I'm getting. And

Defendant's Closing Argument

2073.

1 Mr. Wetle knew that. Can't go any farther with him. He's
2 telling the truth and he knows it. So let me now fight back.
3 When you don't have the fast ball you go with the slider, you
4 go with a screwball or the change-up, or something else. Let
5 me fight against what it is, let me fight fire with fire.
6 Yeah, there's inconsistencies but they don't mean anything.
7 Let me distract your attention all together. It's a perfect
8 kind of an athletic maneuver, but it shouldn't get you to
9 differ your opinion about what the truth is here, because
10 there's only one version of the truth that's been told, and it
11 came right from him. He's been waiting to tell you for a
12 couple of months. He's been antsy about it for the last seven
13 days. You've seen him actively involved in his defense with
14 me, he knows his case, he knows where they're wrong and he
15 knows where he's right, and he wants to get it out. He wanted
16 to get it out. He'd have told you more if they'd let him.

17 THE COURT: Mr. Simeone, your 20 minute reminder, if you
18 need--

19 MR. SIMEONE: Thank you, your Honor. Isn't it more likely
20 that that departure from the fair was something that just Dane
21 alone could plan, since he's the one who arrived at the fair
22 just in time? There's no other way, there's no other rational
23 consistent probable way that that can happen, that he leaves
24 just in time to get back to that fair. And, you know, when
25 you think about it, you listen to Jeff, he knows that he sees

Defendant's Closing Argument

2074.

1 John at the gate. If you listen to Dane's testimony when he's
2 talking to the police officers, they say where's Jeff? I get
3 the-- I get to the cabin. Where's Jeff at that time? He's
4 at the fair. That's exactly what he told them. Why? Because
5 probably in a lapse of-- a lapse of consciousness under the
6 pressure of the thing he can't keep his story together.
7 That's what happens with a lie under a little bit of pressure.
8 It breaks up. And it broke up. Where's Jeff? He's at the
9 fair. So if you think about it, if Jeff's at the fair when
10 Dane's at the cabin, and Jeff sees John at the gate when Jeff
11 leaves, there's only one place John can be when Jeff and Dane
12 are at the cabin, and that's at the fair. That's the only--
13 That's the only way that that can work logically. It's the
14 only place he can possibly be. And it takes from statement to
15 statement and from interview to interview with these boys, and
16 the inconsistency here and there after the numerous questions
17 that are asked, to finally tease it out and extract the truth.
18 But you finally get to that little kernel, that little grain,
19 that little pearl of truth, and the couple of things that line
20 up, they line up in a way that show you that there's only one
21 version here that's believable.

22 And think about it also: If you wanted to commit this
23 heinous act with a gun, with two unsuspecting, unarmed
24 individuals, why would he need anybody? Why would he need
25 that? Why not just go out there and do that, if he's going to

Defendant's Closing Argument

2075.

1 hide, if he's-- if he is an assassin, essentially. Why
2 involve anybody else in your-- in your-- in your-- in your
3 effort here? Answer? Dane says that he went with John
4 because that's an easy way to prove that John went. Yeah, I
5 went with him. You bet I did, and therefore I'm there with--
6 I'm there with him. I said it's so, therefore it's so. Jeff
7 saw John leave the fair. Standing at the gates. Did John
8 acknowledge you? Yeah. John says he saw Jeff.

9 Lance Hart testified, and I've got to wrap this up pretty
10 soon. You remember, he's the-- he's the fire investigator.
11 And I had a difference with Mr. Hart when I cross examined
12 him, and I'm wondering if his cross-- if his examination or
13 his testimony offended you people at all. You remember, his
14 report is on October 10th. Why is that a telling date?
15 Because that's before the first question and answer session
16 with Mr. Cunningham on October 13th. That's when those
17 statements started. He had a conclusion in that case, and his
18 conclusion as to why there was so much more fire to the dam--
19 to the driver's side of the vehicle than the passenger side,
20 that it didn't start from a rag being placed in the truck.
21 His conclusion was that that's where the fire started, was at
22 the tank. You saw the V pattern. And that was his conclu-
23 sion, and it's in evidence and you can look at it. But what
24 happened after that? We got the statements coming in from the
25 boys to the effect that the gasoline was poured in the truck.

Defendant's Closing Argument

2076.

1 So he's got to re-think about this. He's had conversations
2 now with the police. They're hand-in-hand. Wait a minute,
3 Mr. Hart, I know your conclusion here is thus and such that
4 the fire started from the side, but we've got the witnesses
5 now, the eyewitnesses. They're stay (sic)-- saying that it
6 started from inside. Let me go back to the drawing board.
7 Maybe that's where it occurred. Problem? He's already
8 written a report. He's already on paper. It's already out
9 there and he can't retract it. Now he's got to retool. He's
10 got to re-trench. Well, now he's telling you that it's
11 different. But the paper's there, and you'll see it. Why do
12 that? Again, we've got result-oriented investigation here.
13 They're trying to prove a point after the fact. They knew
14 that fire started from the side. They knew that there was no
15 way that-- to-- to support the statements of the boys that
16 the gasoline was poured inside. That's what they're saying
17 John did. Why is that? Well, because you've got to think
18 from the standpoint of a Cunningham or a Williams. Well,
19 let's just say poured some gas in there and he lit it.
20 They're not thinking of what experts know these days. They're
21 not thinking of what fire examiners can prove or disprove.
22 No, let's say he just poured gas in there and it all blew up.
23 No. They're showing now that it happened from a fire that lit
24 from the side, and who's the one who put the match to the side
25 of that tank, who said it never exploded? It was Jeff

Defendant's Closing Argument

2077.

1 Cunningham. Does he have some part in this? You bet. So his
2 testimony offended me, and I hope it offended you. I mean I
3 don't hope you're offended, but I just mean I hope that you're
4 duly-- you're duly aware of the inconsistency in what it is
5 that he said. You look at his report and his conclusion when
6 you're back in the jury room tomorrow. We've got his testimo-
7 ny fixed. We've got his testimony fixed on the stand and he
8 tried to make me believe that A was B, but it wasn't. You
9 look at the conclusion. There's nowhere in his conclusion it
10 says anything like you (sic) said here on the stand.

11 Dr. Lindholm, yeah, he says-- says that the cause of
12 death is bullets. We don't know for sure. We know they're
13 dead and we're sorry about that, and that's just the way it
14 is. They still can't I.D. Mr. Schaefer, even with the doctor
15 who came here trying, can't do it.

16 Agent Nehring. You know, why was he-- why was he even
17 here? What-- What did he-- What did he add to the State's
18 case? He adds questions, if nothing else. What he said is
19 that there was no hit on Nicholas (sic) Schaefer as the result
20 of the investigation in San Francisco. Well, that's where he
21 was arrested. There's no hit out on him. That's funny.
22 There's supposed to be a hit out on Nick Kaiser. How did that
23 happen from San Francisco? There's no arrests made as a
24 result of any of the information in San Francisco that Nick
25 Kaiser gave. But there's arrests made as a result of the

Defendant's Closing Argument

2078.

1 information that Schaefer gave in San Francisco. Where's the
2 consistency and where's-- where's the conspiracy? Where's
3 the-- the hit?

4 Now, Janell Clark testified. Did she have a motive to
5 shade? You bet. What did she say at first when she gave her
6 testimony shortly after the investigation started? She said
7 she couldn't recall if John was with Dane on the occasion.
8 She couldn't recall the precise time of the call that was made
9 at the house. John was there at the time she dropped him off
10 at the-- at the gate. To her at that time, and she said I'm
11 doing the best that I can to recollect; you have to remember
12 I was under a lot of stress, a lot of stress. It's funny that
13 she was under stress at that time, before they even know--
14 before they even knew that anything had happened. How's she
15 under stress? But at trial all that changed. Now why would
16 that change? Well, she's 25 year friends with the Camerons.
17 That's a good explanation right there. They know that
18 somebody who's related to them has got his head on the
19 chopping block. Yeah, it's going to change. You bet it's
20 going to change. Now, all of a sudden John's at the fair.
21 Now all of a sudden she remembers clearly, he got in the
22 truck. Why don't she have any motive whatsoever to shade in
23 his favor early on? She doesn't know him. He's a-- He's
24 nothing to her. Why would she-- That testimony was the
25 believable stuff. It's the first impression stuff that she

Defendant's Closing Argument

2079.

1 gave you that was believable. And she retracted it. And
2 there's a reason for it, and I hope you saw through that
3 because it wasn't true. She tried to tell you:

4 I'm telling you the best I can.

5 What she was pleading with you-- What she was pleading for
6 right there: You know, I can't tell you, I'm telling a lie,
7 what I'm-- so let me out of it like this, I'm doing the best
8 I can under pressure, leave me alone. She was begging off.

9 Mr. Dogeagle, another investigator. DEA. He's trying to
10 show that the big dealer, Gabe, was afraid of Nick. So if
11 Kaiser is the suspected informant, which is what they say, why
12 would he agree to any kind of a deal with him, whether it's at
13 the gas station, the restaurant, the park, the motel room, or
14 his home? Why would the home be someplace he'd be willing to
15 deal with him? That doesn't make any sense. No. The better
16 answer there is that they really didn't know anything about--
17 about Nick, and nobody really cared. Gabe wasn't afraid of
18 him. Nobody else was either, until after-- until after the
19 fact. And who gives us that evidence? Well, it was a State's
20 witness, and it was the defendant's father. And note it well,
21 because his testimony was that he went to that fair, and he's
22 the kind of guy you can look at and you can say this is the
23 kind of guy who's not going to shade for anybody. He's just
24 going to get up there, whether it's son-- whether it's his
25 son whose life is on the line or anybody else, I'm just going

Defendant's Closing Argument

2080.

1 to get up there and I'm going to do my level best and I'll
2 answer you my questions (sic) the best I can, and that's what
3 he did.

4 What was happening at the fair? What did they say about
5 Nick, who was the "nark," the informant, they'd rather say?
6 Stay away from him, just don't get next to him, he's not a
7 good guy for you to get next to, he's going to cause us
8 trouble. When's the first time you heard about any kind of a
9 plan for his demise? The next weekend. What did he hear at
10 that time? He heard his son saying: Well, if he comes to
11 Portland I'm going to give him a roughing up, I'm going to--
12 I'm going to beat him for what he's doing. How can that
13 happen, and isn't that in itself conclusive evidence, just in
14 terms of the time line that he's hearing this happen in
15 Portland the week after? He doesn't know that anything's
16 wrong. Nobody knows that anything's wrong at that time
17 because they don't find these bodies until months after the
18 fact.

19 Yeah, I'm going to beat him up if he comes back
20 here, that's what I'm going to do. He went to
21 that fair. How dare he go to the fair, take
22 the names of my friends and possibly get them
23 in trouble, get them busted? I'll beat him
24 when he comes here.

25 Telephone calls. They try to show a big operation between
Rob and out-of-state traffickers so they can prove to you
there's a connection between California and Rob. How many

1 calls with California over a month's period of time? Four.
2 One with Texas and one with New Orleans. I could explain that
3 by calling a number to try to order a product over the TV or
4 a publisher or something. That's not-- Six calls compared to
5 as many as you'll see on his phone bill you'll find is
6 nothing. That does not a conspiracy or a network with
7 California or any other part of the country make. So they're
8 not showing that nexus there between Washington and Oregon
9 like they're trying to, or Oregon and the rest of the country.
10 There's no meaningful showing.

11 The other haunting thing was the statement of Maija
12 Soucie, and that was that when Jeff told her about this
13 incident Jeff told her-- Yeah, he's telling her the basic
14 story. The basic story that's part of the plot to frame him
15 up. Yeah, it was John who did it. It was Chewy. It's Chewy,
16 Chewy, Chewy. Easy enough to remember. But what else did he
17 say to her and what did she say that she remembers from this
18 conversation that was totally, totally telling? He. She only
19 mentioned Nick. If there's two guys that he's got to remember
20 the story clearly, it's got to be vivid, it's got to be etched
21 in his mind, he's wrenching with emotions, he's-- he's
22 despairing, all of that anguish and grief he's talking about,
23 he's got to remember there are two people. He only told her
24 about Nick.

25 Ladies and gentlemen, this is a case where I feel like I'm

1 being-- I'm making an attempt to do for you-- What I'm
2 making an attempt to do is show you that there's no-- there's
3 no doubt. I'm trying to-- I'm trying to not dull you with
4 the phrase beyond a reasonable doubt, but what I'm trying to
5 not do here is there are a lot of unresolved questions, and I
6 know they're going to cause you concerns, and there's a lot--
7 there are numerous ways in which the story doesn't line up,
8 and that's got to cause you to question whether or not they're
9 telling the truth, and if you feel that at some point in your
10 hearts that they're not telling you the truth, that's the--
11 that's what's reasonable doubt. That's reasonable doubt.
12 Don't expect it to come up and bite you on the heels, 'cause
13 it's not going to do it. You can't wait for it to knock on
14 the door. That's not going to happen. Reasonable doubt is
15 something that's just going to kind of-- you're going to feel
16 a nagging feeling in your mind that there's something that's
17 happening here to-- it's just not right. And that's it.
18 That's not my-- You've got to remember that it's not-- It's
19 not what I have to do here is to try to dispel from you all
20 suspicion. I don't have to dispel all the suspicion areas,
21 'cause you got suspicion. He's on trial for murder. Serious
22 charge. I can't dispel all the suspicion that you're going to
23 have, even when you walk away from this courthouse you're not
24 going to be able to-- there's still some-- That's not what
25 I have to do, and that's not the job, and we all agree that

Defendant's Closing Argument

2083.

1 that's not what the burden of proof is here. The burden is
2 not for me to dispel all suspicion. The burden is for them to
3 say we've dispelled all reasonable doubt. We've dispelled all
4 reasonable doubt. So just as Mr. Wetle tried to prime you up
5 with that, I can't prove a case beyond all doubt, do you agree
6 with that? I can't prove it beyond all doubt? Sure you do.
7 They've got to prove it beyond a reasonable doubt, and that's
8 still a very high standard. It's the highest standard we have
9 in our justice system. They've got to somehow tell you, We
10 have displaced and dispelled all reasonable doubts you have.
11 They haven't, ladies and gentlemen, because they don't have
12 eyewitnesses here who are telling you credible stories at all
13 about what it is that happened there that night. Not after
14 six attempts. They don't agree on the times it occurred.
15 They don't on agree-- they don't agree on how they walked to
16 that creek. They don't agree about their conversations or the
17 length of time those conversations occurred at the creek.
18 They don't agree how they ran back up the hill, who was in the
19 lead. They don't agree with where John was when they got
20 there. They don't agree with where the bodies were by the
21 pit. They don't agree with whether Nick's Bronco was parked
22 at the top by the garden. One, it's below, and the other,
23 it's up top. They-- Very clearly, Dane is telling you I hear
24 the car start up and he drives up. They ask Mr. Cunningham,
25 was there any reason-- He's hoping, beyond hope, any reason

Defendant's Closing Argument

2084.

1 you can think of, Mr. Cunningham, maybe why the car would have
2 to start from-- Nope, not that I can think of. It's there up
3 top. Why stories are being told out of-- of fiction, again.
4 They don't agree how Nick was being dragged. They don't agree
5 whether or not he was wrapped in a blanket when he was carried
6 back down. They don't agree how the bodies were being loaded
7 into the truck. Dane says I assume they were carried into the
8 back. Back of a truck whose gate doesn't come down. Not just
9 my witnesses, their authorities, their investigators. They
10 don't agree where the bodies were in the vehicle. Driver's
11 side, passenger side, Nick versus Josh. Difference in each
12 side. They don't agree who decided to stop the digging, who
13 decided to stop digging the graves. They don't agree whether
14 or not John was waving the-- the-- this-- wearing the same
15 clothes when they got back. They don't agree about whether or
16 not-- what was burned in the fire. They don't agree on
17 whether Jeff went to the tavern that night.

18 THE COURT: Five minutes, Mr. Simeone.

19 MR. SIMEONE: Only one reason, ladies and gentlemen. Mr.
20 Grange wasn't there. They're putting a straw man in there and
21 they're making the story up around him.

22 THE COURT: I don't know if you heard me, Mr. Simeone.

23 MR. SIMEONE: Yeah, I did, your Honor. Thank you.

24 THE COURT: All right.

25 MR. SIMEONE: I do know the bodies-- that these guys were

1 shot in the head. They do know the bodies were burned in the
2 Bronco. They do know they were killed on June 11th. They
3 know about the hose.

4 The prosecution still wants you to believe that Jeff saw
5 John at the gate when he left, and just seconds later Dane
6 Williams arrives. Coincidentally. He leaves with John in order
7 to pass Jeff when Jeff is at the gas station. And they're
8 trying to explain this by a back road, by the fact that he
9 took a back road that Williams testified would take longer to
10 get to, and did not mention that-- himself that allegedly Mr.
11 Grange drove down. It's almost an impossibility that the
12 prosecution can't explain, is that timing, that he would get
13 there just when he's ready to leave.

14 There's unanswered questions. To the family members
15 who've suffered a great loss, I extend my sympathies. I am so
16 sorry for you and your losses, ladies and gentlemen. I am.
17 We want answers to the questions as much as you do. I know
18 you do, as well. But you don't solve a case and you don't--
19 you don't solve a crime, and you don't get a closure into
20 something by convicting somebody who's not guilty. That's not
21 the way to go about it.

22 I really appreciate your having listened to me for as long
23 as you have, as willingly and as attentively as you have. Mr.
24 Wettle has to talk to you once again, and he's going to get up
25 here and he's going to say something that I'm going to say why

Defendant's Closing Argument

2086.

1 didn't I talk about it at the time, but I'm not going to be
2 able to do that again. Please go upon what you've heard and
3 what you remember and what I've told you. And I trust that
4 with your collective wisdom you're going to go back to the
5 jury room, you're going to see the inconsistencies that I've
6 pointed out, result-- arrive at a conclusion that there's no
7 way that Mr. Grange could have been there with the story that
8 these boys are trying to give you and acquit him of these very
9 serious charges of first degree murder.

10 Thank you.

11 THE COURT: All right, thank you, Mr. Simeone.

12 EASEL IS MOVED

13 JURORS ARE INVITED TO STAND AND STRETCH FOR A FEW MINUTES

14 THE COURT: All right, now, ladies and gentlemen, I'll ask
15 that you give your attention one more time to Mr. Wetle, who
16 will give the rebuttal argument on behalf of the State.

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1 that the officer showed you where the bullet went in and where
2 the bullet exited and where it hit the-- hit the little rock
3 behind and broke it. And then you have the bullet fragment in
4 the fire pit which could have come through somebody and ended
5 up down there in the ashes, so-- And you've got some cloth.
6 And that's not a lot of evidence, but that's what we've got
7 and that's what you've got.

8 Then you've got the phone call. The critical phone call
9 is the 7:51 phone call. It goes from Camerons' house to
10 Schultz's house that Saturday night. This happens Sunday.
11 Dane Williams says we're both there, I talked to Rob Schultz,
12 Grange talks to Schultz, and we go to the barter fair.

13 Frame up. Very interesting. First of all, why would Jeff
14 Cunningham side with Grange if Dane did it? Wouldn't it be
15 more realistic to say-- Dane doesn't have any big support,
16 he's an independent grower out here in Stevens County.
17 Cunningham is a Family member for five years. Go with Grange.
18 He's Rob's friend. There's the support. Grange has the
19 support. Cunn-- or Williams doesn't. So here comes Cunning-
20 ham. He's coming out with Williams. Why would Dane kill Nick
21 and Josh, you have to ask yourself? He doesn't know Josh.
22 According to this story, he's going after Cunningham because
23 Cunningham owes him some money for the marijuana that he sold.
24 So he's going to run down these two guys from, you know,
25 Seattle and San Francisco and kill them, and Cunningham walks.

1 Cunningham's back. Cunningham was the bad guy. Cunningham
2 was the one taking the money. Didn't kill Cunningham. Kills
3 Josh and Nick. Why would he kill Josh? There's nothing for
4 Josh. Nobody knows him. Dane doesn't know him, Cunningham
5 doesn't know him. He's just there. Whoever did this-- You
6 know, we know the motive for Kaiser. We think there may be a
7 connection for Schaefer, but it's-- the absolute connection
8 hasn't been made. It's just that they're friends who are both
9 in the business. It's a possibility. But why would he kill
10 him? The person that killed Josh Schaefer is a cold-hearted
11 son of a gun. You'd have to be. And then you look at
12 Williams and Cunningham and say can they do it, could they do
13 it, could Williams do it, could Cunningham do it? In your
14 heart you know they couldn't do it. They're not going to kill
15 Schaefer. They're not going to kill two people. Williams is
16 not going to kill two people with Cunningham there. And when
17 Cunningham gets caught, why wouldn't he go with Grange? More
18 likely than not he tells that very night. He's up there with
19 Maija. Couldn't he have said to Maija: God, Dane Williams
20 killed this guy. He didn't say Dane Williams. In a very
21 emotional, heart-wrenching night he tells her Chewy shot him,
22 and we're bad because we burned the vehicle. And she says, I
23 don't know you any more. And they had a tough night. But why
24 couldn't he have said Dane killed him? What allegiance would
25 he have to Dane? There's no allegiance there. Grange is the

Plaintiff's Rebuttal Argument

2090.

1 guy that's living with him. They're both there in the Family.

2 I like this down-play what Williams and Cunningham said,
3 that the State wanted to down-play that. Let me tell you, the
4 State does not want to down-play that. The State wants you to
5 focus--to focus--on those consistencies that they could never
6 in a million years dream up. That's important. Those
7 consistencies. You're back too soon. This is really funny
8 when he says: You know what, they had four months to scheme
9 up a story. The defense says-- He comes to you and says they
10 had four months to come up with this story. Well, you know
11 that Cunningham went on tour. Got spun out twice. Grange is
12 on tour. They're all still within the Family. So I don't
13 know when Williams gets a chance to scheme up their stories.
14 But think of this. Think of Williams and Cunningham and his
15 wonderful mental state sitting down to get their stories
16 straight, saying, you got to say that Grange said he came back
17 too soon. Can't do it. Can you imagine sitting down and
18 preparing a scheme to say that we came back too soon? No. We
19 got to say we got a scheme that Grange picked him up and
20 carried him over his shoulder. Can you imagine them scheming
21 that? For four months they had the opportunity to scheme
22 this, according to the defense case.

23 Very interesting on the buried gun. Yeah, that's-- Maybe
24 everybody would say we buried the gun. They key to the buried
25 gun issue is not that the gun was buried, but that he used the

1 gun to dig the hole to bury it. That's the key there. That's
2 the unique circumstance that they would have had to heard
3 that. They would have had to have heard that he used the gun
4 itself to dig the hole. Can you imagine these two guys in
5 some bar smoking a joint saying, now, let's see, we got to
6 come up with this scheme, and what-- what will we come up
7 with that we'll remember indefinitely, because they get
8 arrested some time in November, or who knows when they're
9 going-- arrested. They certainly didn't expect to get
10 arrested. But they're going to scheme up a story.

11 Chewy's not important, they say. Well, not according to
12 Schultz. Chewy's one of his kids. When Grange's dad, Doug,
13 goes to visit in Portland he goes to Rob Schultz's house.
14 That's where they meet. After the murder, he takes them on
15 tour. Chewy's as important as anybody. Chewy was above
16 Cunningham. He's moving him out.

17 Tailgate. Whew. Tailgate was if you move the bar it will
18 come down. Who knows what happened to the tailgate and if the
19 piece of wood was taken out.

20 The fire pit. Whether they fell inside or outside the
21 firepit, that's like all of this stuff. All of this stuff is
22 collateral, miscellaneous, inconsistency that I would dare
23 anybody to go back and try to get straight. You'd get some of
24 them straight. You wouldn't get some of them straight either.
25 The important thing is nothing on these inconsistencies talks

1 about Grange and what Grange did, because they are consistent
2 about what Grange did. They are not consistent about what
3 each other did, and they try to cover their own tails, but
4 they are consistent about Grange, and they never had a chance
5 to get together and scheme, as counsel said. It didn't
6 happen.

7 Going to dinner in Portland on Monday. That's interest-
8 ing. I got a dinner engagement in Portland. Friends are
9 waiting for me to come to dinner. They, of course, don't come
10 and testify and tell you about that. However, Grange waits
11 until-- What did he say, 1:00, 2:00, 3:00 in the afternoon
12 before he goes down to Crown Creek to look for his rig? But
13 he's got a dinner engagement in Portland he has to get to
14 Monday night? And he sits there until 1:00, 2:00 or 3:00, and
15 then he decides to walk the 20 minutes to get his rig? That
16 doesn't make good sense. He says oh, I didn't want to go down
17 there 'cause there might have been a bust. Well, so what if
18 there's a bust? What's he got to hide? He says I have
19 nothing to hide. He gets busted. I mean he has nothing to be
20 busted for.

21 The best thing about Grange's story? Very, very well
22 rehearsed. You saw a guy that's been over his story, had that
23 baby down pat, and you got it. And the question is if you're
24 going to buy it.

25 Others involved? Yeah, Grange would involve others. His

1 people that are in the inside. Cunningham's in the inside,
2 Williams is on the inside to the extent that he's their
3 supplier to Rob. He's with-- He's among friends.

4 The key? Jeff tells Maija, and Jeff didn't tell Maija
5 Dane; Jeff tells Maija Chewy, because Chewy did it.

6 Let's talk about admissions. He tells his dad, if he
7 comes to Portland-- First of all, he tells his dad the nark
8 showed up at the barter fair. You just wonder how that
9 conversation came up. And then he says if he comes to
10 Portland I'm going to beat him. That's great cover talk, but
11 it says something else, too. It says his mentality is I'm
12 going to beat him. Now, can you imagine Cunningham beating
13 him? Think of Jeff Cunningham going to beat him up. Think of
14 Dane Williams going to beat him up. It's not going to happen.
15 Grange? He'll beat him. He'll kill him. He did kill him.

16 The nagging feeling. You have received a defense gold
17 mine in inconsistencies. Counsel has maximized those to the
18 fullest. You even have them in little blocks to look at. But
19 when you really look at them, it's the stories as they go
20 through, the little changes of the words, the little minimiz-
21 ing. It's all about what they did. It's nothing about what
22 Grange did. Grange's story is consistent. There's no reason
23 for Dane Williams to do any such thing as kill these two
24 individuals. Dane Williams was a marijuana supplier. He has
25 nothing to do with the LSD industry. There is no motive for

1 him to do that.

2 We talked about burden of proof. Instruction Number 3
3 talks about burden of proof, and the important thing for
4 burden of proof is for you to remember that the State must
5 prove it beyond a reasonable doubt, and the State accepts that
6 burden and proves it beyond a reasonable doubt because there
7 is no other possible explanation as to who killed these kids
8 besides John Grange. It took two people inside to come and
9 tell you. You've got their statements. They're not the best
10 statements, but you've got them. You know what happened.

11 The State has to prove it beyond a reasonable doubt. The
12 reasonable doubt is (1), it says after such consideration you
13 have an abiding belief in the truth of the charge. The
14 important thing is you will always have a nagging belief. You
15 can never get away from the nagging belief. Mr. Grange has
16 got on here and said I wasn't there, I didn't do it, I stayed
17 at the barter fair the whole weekend, I know nothing. That's
18 a nagging belief. So if you get to that stage, that's not the
19 burden. You're always going to have that. Are you going to
20 require the State to prove it proof positive, i.e. beyond all
21 doubt? I think one juror that was individually voir dired--
22 sometimes you-- you get to that mis-impression that it must
23 be proven beyond all doubt. Can't be proven beyond all doubt.
24 That would be proof positive. So it goes to beyond a reason-
25 able doubt, and the reasonable doubt is the abiding belief.

Plaintiff's Rebuttal Argument

2095.

1 Somewhere in your gut you have to feel, given all the circum-
2 stance of this case, could Jeff Cunningham have killed him,
3 could Dane Williams have killed him, did John Grange kill him?
4 And there's an abiding belief there that you know in your
5 heart who could pull the trigger five to nine times and shoot
6 them in the back of the head, pick them up over their shoulder
7 and load them into the trucks. There's only one of those
8 three that could do it, and he's sitting here in this court-
9 room, properly charged.

10 Thank you for your time.

11 THE COURT: All right, thank you, Mr. Wetle. Ladies and
12 gentlemen, I'm going to call it a night for all of us and have
13 you come back tomorrow morning at quarter to 10:00. I'm going
14 to have all of you come back, and we're not going to submit
15 this to you for any deliberations tonight, obviously. I want
16 to have you remain in the jury room for just a few minutes to
17 get just a double check on your accommodations, those of you
18 who are from the far-flung parts of the county that wish to
19 have the overnight stay here. And so put your notes in your
20 envelopes, and no discussion among yourselves or with anyone
21 else until the case is submitted to you, which will be first
22 thing in the morning. We will at that point have you brought
23 into the courtroom, I will swear in the bailiff, we will go
24 over the exhibits, make sure that they are all together.
25 We'll have the verdict forms for you to be brought into the

1 jury deliberation room so you can get started right away. So
2 I want you to be here, if you would, please, at quarter to
3 10:00. The courtroom back door-- courthouse, rather, back
4 door will be open. That's the one on Elm Street, as opposed
5 to the one out here on Oak Street. It will be open between
6 8:30 and 10:00, and that's also the case for any spectators,
7 if they wish to be here for that portion. And then we will
8 put you into your deliberations, and it's at that point then
9 that you may start in on your deliberations and select your
10 presiding juror and proceed. So with that, then, court will
11 be at recess until 9:45 A.M.

12
13 **COURT RECESSED FOR THE DAY**
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