IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Sep 03 2020 04:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

THE STATE OF NEVADA, Appellant, v. JOHN JOSEPH SEKA, Respondent.	Case No. 80925

APPELLANT'S APPENDIX
Volume 2

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Office of the District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

AARON D. FORD
Nevada Attorney General
Nevada Bar #0007704
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Appellant

PAOLA M. ARMENI, ESQ.
Nevada Bar #008357
Clark Hill
3800 Howard Hughes Parkway, Ste. 500
Las Vegas, Nevada 89169
(702) 862-8300

JENNIFER SPRINGER, ESQ.
Nevada Bar #013767
Rocky Mountain Innocence Center
358 South 700 East, B235
Salt Lake City, Utah 84105
(801) 355-1888

Counsel for Respondent

INDEX

Document — Page No.

Information, filed June 30, 1999,……. ……AA I 000001-03

Notice of Intent to Seek Death Penalty, filed July 26, 1999,
…….AA I 000004-06

Jury Trial Transcript, February 12, 2001, Volume 1,……AA I 000007-215

Jury Trial Transcript, February 13, 2001, Volume 1
……...AA I 000216-AA 2 328

Jury Trial Transcript, February 13, 2001, Volume 2 ……..AA 2 000329-99

Jury Trial Transcript, February 14, 2001, Volume 1
…….AA 2 000400-AA 3 504

Jury Trial Transcript, February 14, 2001, Volume 2 ……AA 3 . 000505-69

Jury Trial Transcript, February 15, 2001, Volume 1…….. AA 3 . 000570-644

Jury Trial Transcript, February 15, 2001, Volume 2 ……...AA 3 000645-AA 4 763

Vol. 4, Jury Trial Transcript, February 20, 2001, Volume 1 ……AA 4 000764-873

Vol. 4, Jury Trial Transcript, February 20, 2001, Volume 2 ……AA 4 000874-944

Vol. 4, Jury Trial Transcript, February 21, 2001, Volume 1
……..AA 4 000945- AA 5 1035

Continued Jury Trial Transcript, February 21, 2001, Volume 1
……AA 5 000945-1035

Jury Trial Transcript, February 21, 2001, Volume 2 ……..AA 5 001036-1108

Jury Trial Transcript, February 22, 2001, Volume 1 ……..AA 5 001109-57

Jury Trial Transcript, February 22, 2001, Volume 2 … ……..AA 5 001158-1218

Jury Trial Transcript, February 23, 2001, Volume 1 ……AA 5 001219- AA 6 91

Continued Jury Trial Transcript, February 23, 2001, Volume 1 ….AA 6 001219-91

Jury Trial Transcript, February 23, 2001, Volume 2 ……AA 6 001292-360

Verdict, filed March 1, 2001, ……..AA 6 001361-62

Reporter's Transcript of Hearing, Verdict, March 1, 2001 … ……AA 6 001363-69

Penalty Hearing Transcript, March 2, 2001 ……..AA 6 001370-435

Stipulation and Agreement to Waive Sentencing by Three-Judge Panel, filed March 13, 2001 ……AA 6 001436-37

Reporter's Transcript of Hearing, Sentencing, April 26, 2001 ….. AA 6 001438-52

Judgment of Conviction, filed May 9, 2001 ……..AA 6 001453-54

Notice of Appeal, filed May 15, 2001 ……AA 6 001455-57

Order of Affirmance, filed April 8, 2003 ……...AA 6 001458-72

Petition for Writ of Habeas Corpus, filed February 13, 2004 ……AA 6 001473-AA 7 1533

Continued Petition for Writ of Habeas Corpus, filed February 13, 2004 ……AA 7 001473-533

State's Opposition to Defendant's Petition for Writ of Habeas Corpus, filed April 6, 2004 ……AA 7 001534-46

Findings of Fact, Conclusions of Law and Order Denying Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), filed January 31, 2005..AA 7 001547-52

Reporter's Transcript of Proceedings, November 5, 2004 ……..AA 7 001553-69

Notice of Appeal, filed February 9, 2005 …….AA 7 001570

Order of Affirmance, filed June 8, 2005 …… AA 7 001571-85

Post-Conviction Petition Requesting a Genetic Marker Analysis of Evidence Within Possession or Custody of the State of Nevada (NRS 176.0918), filed June 19, 2017…….AA 7 001586-624

State's Response to Defendant's Petition Requesting Genetic Marker Analysis, filed August 15, 2017 …….AA 7 001625-40

Defendant's Reply to State's Opposition of Defendant's Petition for Post-Conviction Genetic Marker Analysis Testing – NRS 176.0918, filed September 5, 2017 …….AA 7 001641-59

Order Granting Petitioner John Joseph Seka's Post-Conviction Petition Requesting a Genetic Marker Analysis of Evidence Within Possession or Custody of the State of Nevada (NRS 176.0918), filed September 19, 2017, …….AA 7 001660-62

Court Minutes, September 13, 2017…….AA 7 001663-64

Reporter's Transcript of Petition re: Genetic Marker Analysis, December 14, 2018 ……AA 7 001665-AA 8 1814

Court Minutes, December 19, 2018 …….AA 8 001815

Order, filed January 24, 2019 ……AA 8 001816-21

Defendant John Seka's Motion for New Trial, filed November 19, 2019 …AA 8 001822 ……..AA 9 2486

State's Response to Defendant's Motion for a New Trial, filed January 30, 2020 AA 10 002487 ……..AA 11 2504

Reply in Support of Mr. Seka's Motion for a New Trial, filed March 4, 2020 ……AA 11 002505-14

Court Minutes, March 11, 2020 ……AA 11 002515-16

Defendant John Seka's Order Granting Motion for a New Trial, filed March 24, 2020 … …….AA 11 002517-19

Notice of Appeal, filed March 27, 2020…….. AA 11 002520-21

Motion for Release Pending Appeal and Retrial Pursuant to NRS 178.488 and 178.484, filed June 15, 2020 …….AA 11 002522-43

State's Response to Defendant's Motion for an Own Recognizance Release and/or Release on Electronic Supervision Pending Appeal, filed June 18, 2020 …….. …AA 002544-78

Court Minutes, June 29, 2020 ……AA 11 002579

Reporter's Transcript of Proceedings, June 29, 2020 ……..AA 11 002580-98

Defendant's Trial Exhibit C, ……..AA 11 002599-601

State's Trial Exhibit 30, ……AA 11 002602-03

State's Trial Exhibit 80A, ……AA 11 002604-26

State's Trial Exhibit 18, ……AA 11 002627

State's Trial Exhibit 38, ……..AA 11 002628-29

State's Trial Exhibit 79, ……..AA 11 002630-31

State's Trial Exhibit 2, ……AA 002632-33

State's Trial Exhibit 3, ……AA 002634-35

State's Trial Exhibit 4, ……AA 002636-37

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on September 3, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

PAOLA M. ARMENI, ESQ.
JENNIFER SPRINGER, ESQ.
Counsels for Appellant

ALEXANDER CHEN
Chief Deputy District Attorney

BY */s/ E. Davis*
Employee, District Attorney's Office

AC/Skyler Sullivan/ed

PROSPECTIVE JUROR CLARK: No

THE COURT: Do you understand that an Information is a mere accusation and not evidence, that the Defendant is presumed to be innocent until proven guilty, and that the State has the burden of proving the defendant's guilt beyond a reasonable doubt?

PROSPECTIVE JUROR CLARK: Yes

THE COURT: If you were charged with offenses similar to the ones that are alleged in this case, would you want 12 individuals such as yourself to be on your jury?

PROSPECTIVE JUROR CLARK: Yes, I would.

THE COURT: Do you know of any reason at all why you could not be completely fair and completely impartial in hearing that case?

PROSPECTIVE JUROR CLARK: No.

THE COURT: Mrs. Clark, these proceedings will be conducted in two segments. First, the jury will determine if the defendant is guilty. Punishment would not be considered at that time.

Second, if the jury finds the defendant guilty of first degree murder, then the law of this state requires that the jury set the punishment. I would set a date for a hearing on the subject of punishment; do you understand?

PROSPECTIVE JUROR CLARK: Yes.

THE COURT: In the State of Nevada there are three possible forms of punishment that the jury may consider; the imposition of the death penalty, life imprisonment without the possibility of parole, or life imprisonment or a term of 50 years in prison with the possibility of parole; do you understand that?

PROSPECTIVE JUROR CLARK: Yes.

THE COURT: In your present state of mind, could you consider fairly all three possible forms of punishment and select the one that you feel is most appropriate?

PROSPECTIVE JUROR CLARK: Yes, I could.

THE COURT: Questions from the State?

MR. KANE: Same question I've asked everyone. Is there anything about the possibility of viewing or hearing any graphic evidence that would cause you a problem?

PROSPECTIVE JUROR CLARK: No.

MR. KANE: And, I'm sorry, I didn't catch -- what is your job at the Review Journal?

PROSPECTIVE JUROR CLARK: I'm an assistant supervisor in the business office.

MR. KANE: So you're not involved in news gathering?

PROSPECTIVE JUROR CLARK: Not at all.

MR. KANE: So it's not a situation where you might have come across some information about this case and remember it in the middle of the case?

PROSPECTIVE JUROR CLARK: Not at all, sir.

MR. KANE: Nothing further, Judge. Pass for cause.

THE COURT: Defense counsel?

MR. KENNEDY: Ms Clark, on that note, how long have you been with the RJ again?

PROSPECTIVE JUROR CLARK: About nine years.

MR. KENNEDY: And were you always in this position in the business office?

PROSPECTIVE JUROR CLARK: Yes, I am.

MR. KENNEDY: The death penalty, are you for it or against it?

PROSPECTIVE JUROR CLARK: Depending on the situation.

MR. KENNEDY: So in light of that answer, if you are given a choice if my client is found guilty, that you would consider all those choices?

PROSPECTIVE JUROR CLARK: I would consider all the choices.

MR. KENNEDY: Pass for cause.

THE COURT: Thank you.

The Prosecution's third peremptory challenge?

MR. KANE: Your Honor, the State would thank and excuse Mrs. Michaelides, Juror No. 12, Badge No. 023.

THE COURT: Mrs. Michaelides, thank you very much.

THE CLERK: Badge 57, Mary Cuttrell C-u-t-t-r-e-l-l.

THE COURT: Is it Miss or Mrs.?

PROSPECTIVE JUROR CUTTRELL: Mrs.

THE COURT: Mrs. Cuttrell, do you know of any reason why you could not serve as a fair juror in this case?

PROSPECTIVE JUROR CUTTRELL: No, I don't think so. I'm not sure about if -- it's more the death penalty. If he's found guilty, I don't know if I would be willing to let someone have parole at any time.

THE COURT: Well, the question is, is that a possibility? In other words, would you consider that as one of the three possible forms of punishment?

PROSPECTIVE JUROR CUTTRELL: No. Not if he was found guilty, no.

THE COURT: Are there questions?

MR. KANE: No, Your Honor.

MR. KENNEDY: No questions, Your Honor.

THE COURT: Mrs. Cuttrell, thank you very much. You're excused.

THE CLERK: Badge 49, Barbara Kwiatkoski, K-w-i-a-t-k-o-s-k-i.

THE COURT: Is it Miss or Mrs.?

PROSPECTIVE JUROR KWIATKOSKI: Mrs.

THE COURT: Mrs. Kwiatkoski, do you know of any reason why you couldn't serve as a fair juror in this particular case?

PROSPECTIVE JUROR KWIATKOSKI: No, sir.

THE COURT: Have you served as a juror before?

PROSPECTIVE JUROR KWIATKOSKI: Yes; in a civil case in Michigan, a paternity case.

THE COURT: How long ago was that?

PROSPECTIVE JUROR KWIATKOSKI: About 18 years ago.

THE COURT: Did you reach a verdict?

PROSPECTIVE JUROR KWIATKOSKI: It was settled out of court.

THE COURT: Do you think that experience would in any way reflect negatively upon your

ability to fairly serve on this jury?

PROSPECTIVE JUROR KWIATKOSKI: No, sir.

THE COURT: Are you or any of your close friends or relatives involved in law enforcement, or have you been in the past?

PROSPECTIVE JUROR KWIATKOSKI: I have a relative that is a police in Hartland Woods, but I haven't seen him since his wedding, so that's a good 20 years ago.

THE COURT: He is an in-law then? Is that what you're saying?

PROSPECTIVE JUROR KWIATKOSKI: He's a cousin, second cousin.

THE COURT: Do you recall discussing his work with him back years ago?

PROSPECTIVE JUROR KWIATKOSKI: No, sir. I saw him at the wedding, and that was it.

THE COURT: Do you think his profession would have any bearing on your view of this case?

PROSPECTIVE JUROR KWIATKOSKI: No, sir.

THE COURT: Can you be a fair juror, do you believe?

PROSPECTIVE JUROR KWIATKOSKI: Yes.

THE COURT: Have you or a close friend or family member ever been a victim of crime?

PROSPECTIVE JUROR KWIATKOSKI: No, sir.

THE COURT: Will you follow all the instructions of the Court on the law, even though they may differ from your personal conceptions of what the law ought to be?

PROSPECTIVE JUROR KWIATKOSKI: Yes, I will.

THE COURT: A person who is accused of committing a crime is presumed to be innocent in a criminal trial. Do you understand and agree with that?

PROSPECTIVE JUROR KWIATKOSKI: Yes, I do.

THE COURT: Are you aware that the defendant does not have to take the stand and testify or offer any evidence if he chooses not to, and you can still find him not guilty? That's because the burden is upon the State to prove his guilt beyond a reasonable doubt.

PROSPECTIVE JUROR KWIATKOSKI: Yes, sir.

THE COURT: Have you or a close friend or family member ever been involved in the criminal justice process, either in prosecuting a case, or a witness, or as a defendant?

PROSPECTIVE JUROR KWIATKOSKI: Yes, sir.

THE COURT: Tell me about that.

PROSPECTIVE JUROR KWIATKOSKI: A relative, brother, who spent many years in prison.

THE COURT: This was a brother?

PROSPECTIVE JUROR KWIATKOSKI: A brother; yes, sir.

THE COURT: And where was this?

PROSPECTIVE JUROR KWIATKOSKI: In Michigan.

THE COURT: And do you recall the offense that he committed?

PROSPECTIVE JUROR KWIATKOSKI: Several times. From '69 he was in incarcerated. I think he visited every prison in Michigan.

THE COURT: For various charges over the years?

PROSPECTIVE JUROR KWIATKOSKI: Yes, sir.

THE COURT: What kind of charges are we talking about?

PROSPECTIVE JUROR KWIATKOSKI: Robbery, break and entry, rape. That I think covers it.

THE COURT: Is he an older or younger brother?

PROSPECTIVE JUROR KWIATKOSKI: Older.

THE COURT: So are we started when he

was 16?

PROSPECTIVE JUROR KWIATKOSKI: Started at 16, and I haven't seen him since 1980 when our last parent died.

THE COURT: So all began years ago in the '50s?

PROSPECTIVE JUROR KWIATKOSKI: Yes. He's 75 right now.

THE COURT: Is he currently in prison?

PROSPECTIVE JUROR KWIATKOSKI: No. He was released in '95.

THE COURT: Did you live in Michigan during these years that he was being incarcerated?

PROSPECTIVE JUROR KWIATKOSKI: Yes, I did, sir.

THE COURT: Were you aware of any of the offenses that were charged personally?

PROSPECTIVE JUROR KWIATKOSKI: No, sir.

THE COURT: Did you observe anything of that nature?

PROSPECTIVE JUROR KWIATKOSKI: No, I didn't.

THE COURT: What was your sense at that time as to whether or not he was being treated fairly or not?

PROSPECTIVE JUROR KWIATKOSKI: Yes. He was being treated fairly.

THE COURT: You haven't seen him since 1990?

PROSPECTIVE JUROR KWIATKOSKI: Since 1908 when our mother died. That was the last time I saw him, or had any contact with him whatsoever.

THE COURT: Is he your full brother?

PROSPECTIVE JUROR KWIATKOSKI: Yes, sir.

THE COURT: Do you think his involvement with the criminal justice system and all that would have any bearing on your view of this case either way?

PROSPECTIVE JUROR KWIATKOSKI: No, sir, I don't.

THE COURT: Do you think, all things considered, you can be a fair juror?

PROSPECTIVE JUROR KWIATKOSKI: Yes, I would.

THE COURT: Do you know of any reason at this point why you could not be completely fair in this matter?

PROSPECTIVE JUROR KWIATKOSKI: No, I don't.

THE COURT: Tell us, please, of your employment, the number of children you may have, and how long you've lived in Clark County?

PROSPECTIVE JUROR KWIATKOSKI: I have no children, but I have four stepchildren. I've been in Clark County going on nine years. the rest of my life has been spent in Michigan. I taught at the Country School for two years.

THE COURT: Are you currently married?

PROSPECTIVE JUROR KWIATKOSKI: Yes, sir. I married my husband, second husband in 1976. It was a year after he retired from the military.

THE COURT: You have four stepchildren?

PROSPECTIVE JUROR KWIATKOSKI: Yes. They're all married and living away from here.

THE COURT: Are any of those children or their spouses involved in a law-related occupation?

PROSPECTIVE JUROR KWIATKOSKI: No, sir.

THE COURT: Since coming to Las Vegas have you worked?

PROSPECTIVE JUROR KWIATKOSKI: No, sir.

THE COURT: Has your husband worked here in Las Vegas?

PROSPECTIVE JUROR KWIATKOSKI: No, sir.

THE COURT: And you came from Michigan?

PROSPECTIVE JUROR KWIATKOSKI: Yes.

THE COURT: What city?

PROSPECTIVE JUROR KWIATKOSKI: Well, I was born and raised in Shabbonna, Michigan, and worked for General Motors in Warren, Michigan.

THE COURT: What did you do for General Motors?

PROSPECTIVE JUROR KWIATKOSKI: I retired from General Motors after 31 years. I was in records and work order control.

THE COURT: Any other work as an adult?

PROSPECTIVE JUROR KWIATKOSKI: I worked for A and P. I taught school for two-and-a-half years.

THE COURT: What is A and P?

PROSPECTIVE JUROR KWIATKOSKI: A and P is a grocery store, sir, a chain of grocery stores.

THE COURT: So you were a clerk, or something of that nature?

PROSPECTIVE JUROR KWIATKOSKI: I was a clerk and assistant bookkeeper there.

THE COURT: And you taught school, I think you said earlier, a country school?

PROSPECTIVE JUROR KWIATKOSKI: Yes. It was a one-room school house.

THE COURT: And you taught a variety of

subjects?

PROSPECTIVE JUROR KWIATKOSKI: Only elementary through eighth grade.

THE COURT: Now, you indicated a first husband. Is that individual employed?

PROSPECTIVE JUROR KWIATKOSKI: Yes. He was employed with the A and P grocery chain. He was manager of the store. I was divorced after three years with him.

THE COURT: Have you any prejudice as to the nature of the charges in this case?

PROSPECTIVE JUROR KWIATKOSKI: No, I don't, sir.

THE COURT: Do you know any of the other prospective jurors?

PROSPECTIVE JUROR KWIATKOSKI: No, I don't.

THE COURT: Have you any racial prejudice?

PROSPECTIVE JUROR KWIATKOSKI: No, I don't.

THE COURT: Do you understand that an Information is a mere accusation and not evidence, that the Defendant is presumed to be innocent until proven guilty, and that the State has the burden of proving the

defendant's guilt beyond a reasonable doubt?

PROSPECTIVE JUROR KWIATKOSKI: Yes, I do.

THE COURT: If you were charged with offenses similar to the ones that are alleged in this case, would you want 12 individuals such as yourself to be on your jury?

PROSPECTIVE JUROR KWIATKOSKI: Yes, I would.

THE COURT: Do you know of any reason at all why you cannot be completely fair and completely impartial in hearing this case?

PROSPECTIVE JUROR KWIATKOSKI: No, I don't.

THE COURT: These proceedings will be conducted in two segments. First, the jury will determine if the defendant is guilty. Punishment would not be considered at that time.

Second, if the jury finds the defendant guilty of first degree murder, then the law of this state requires that the jury set the punishment. I would set a date for a hearing on the subject of punishment; do you understand?

PROSPECTIVE JUROR KWIATKOSKI: Yes, sir.

THE COURT: In the State of Nevada there are three possible forms of punishment that the jury may consider; the imposition of the death penalty, life imprisonment without the possibility of parole, or life imprisonment or a term of 50 years in prison with the possibility of parole; do you understand that?

PROSPECTIVE JUROR KWIATKOSKI: Yes, I do.

THE COURT: In your present state of mind, could you consider fairly all three possible forms of punishment and select the one you feel is most appropriate?

PROSPECTIVE JUROR KWIATKOSKI: Yes, I could.

THE COURT: Are there questions from the State?

MR. FATTIG: Good afternoon, ma'am. You heard the question about the photos and the grizzly nature. Does that cause you any concern?

PROSPECTIVE JUROR KWIATKOSKI: It would be disturbing, but I could face it, yes. I could handle it.

MR. FATTIG: Thank you. Pass for cause.

THE COURT: Defense counsel?

MR. KENNEDY: Mrs. Kwiatkoski, your present husband you married in '76, he was a military retiree?

PROSPECTIVE JUROR KWIATKOSKI: Yes, he was.

MR. KENNEDY: What branch of the military was he in?

PROSPECTIVE JUROR KWIATKOSKI: He was Air Force.

MR. KENNEDY: Do you know what he did?

PROSPECTIVE JUROR KWIATKOSKI: Yes. He was mostly military police at that time.

MR. KENNEDY: Was he a military police officer?

PROSPECTIVE JUROR KWIATKOSKI: Well, he was retired as major. He was a chief in the military police, yes.

MR. KENNEDY: In '76 was he still in the Air Force at that time?

PROSPECTIVE JUROR KWIATKOSKI: No, sir. He retired in '75.

MR. KENNEDY: Did you know him at the time in '75?

PROSPECTIVE JUROR KWIATKOSKI: We had gone to school together, but never saw each other until

1975.

MR. KENNEDY: Since after all these years have passed, have you ever spoken to him about his work as a military police officer?

PROSPECTIVE JUROR KWIATKOSKI: Occasionally he will bring -- if we're watching the history channel and something occurs he was familiar with, but he never discussed anything prior to that. If it's light, he'll tell me, but if it's not, he won't.

MR. KENNEDY: Do you believe if someone is convicted of first degree murder that they should forfeit their own life?

PROSPECTIVE JUROR KWIATKOSKI: Pardon me?

MR. KENNEDY: If someone is convicted of first degree murder, the charges that we have here, should their life also be taken?

PROSPECTIVE JUROR KWIATKOSKI: It would depend on the circumstances.

MR. KENNEDY: So you're willing to look at different factors and different circumstances in making that decision?

PROSPECTIVE JUROR KWIATKOSKI: Yes.

MR. KENNEDY: Pass for cause.

THE COURT: Thank you. Defense

counsel's third peremptory challenge?

MR. KENNEDY: Your Honor, the Defense would thank and excuse Juror No. 33, Ms. Gray.

THE COURT: Ms. Gray, thank you very much, ma'am.

THE CLERK: Badge No. 52, David Cacci, C-a-c-c-i.

THE COURT: Mr. Cacci, do you know of my reason why you could not serve as a fair juror in this case?

PROSPECTIVE JUROR CACCI: Yes.

THE COURT: What would that be?

PROSPECTIVE JUROR CACCI: I have problems with considering the death penalty. And having said that, I also have problems with granting parole if someone is convicted of murder, even if it's after 40 or 50 years.

THE COURT: So under no circumstances could you consider either of those alternatives? Is that what you're saying?

PROSPECTIVE JUROR CACCI: No, I could not.

THE COURT: Are there questions by counsel?

MR. KANE: No, Your Honor.

MR. CHRISTIANSEN: No, sir.

THE COURT: Sir, you're excused.

THE CLERK: Badge No. 32, Daniel Matty, M-a-t-t-y.

THE COURT: Mr. Matty, do you know of any reason why could you not serve as a fair juror in this particular case?

PROSPECTIVE JUROR MATTY: No.

THE COURT: Have you served as a juror before?

PROSPECTIVE JUROR MATTY: No, sir.

THE COURT: Are you or any of your close friends or relatives involved in law enforcement, or have you been in the past?

PROSPECTIVE JUROR MATTY: There's three people that you know. One is my fiancee's father. He's a law officer in a small town in Wisconsin. My next door neighbor, he's a Metro police officer, not involved in this case. And then my uncle is or was an officer in a small village in Arkansas.

THE COURT: All right. Have you discussed the work environment or the case assignment of any of these officers, or all, perhaps?

PROSPECTIVE JUROR MATTY: My next door neighbor, we talk about his work quite a bit.

THE COURT: How long have you known him?

PROSPECTIVE JUROR MATTY: About a year.

THE COURT: And your fiancee's father, how long have you known him?

PROSPECTIVE JUROR MATTY: About eight years now.

THE COURT: Do you discuss his work with him?

PROSPECTIVE JUROR MATTY: No. He really doesn't talk about his work.

THE COURT: How often have you seen him?

PROSPECTIVE JUROR MATTY: About five times a year in the past five years. And quite regularly before that the first two years.

THE COURT: And the individual that was the sheriff in Arkansas, do you still see that person?

PROSPECTIVE JUROR MATTY: I see him once every couple years, and talk to him very rarely.

THE COURT: When you would next see any of these individuals, do you think you would feel a compunction to explain or justify your verdict to them?

PROSPECTIVE JUROR MATTY: No, sir.

THE COURT: Do you think you can

maintain an objective view of this case, notwithstanding the fact that you are acquainted with these individuals?

PROSPECTIVE JUROR MATTY: Yes, sir.

THE COURT: Do you believe you can be a fair juror?

PROSPECTIVE JUROR MATTY: Yes, sir.

THE COURT: Have you or a close friend or family member ever been a victim of crime?

PROSPECTIVE JUROR MATTY: My cousins.

THE COURT: Tell me about that, please

PROSPECTIVE JUROR MATTY: I believe he was convicted of armed robbery.

THE COURT: Well, have you been a victim of crime?

PROSPECTIVE JUROR MATTY: No. I'm sorry.

THE COURT: You or your family or friends?

PROSPECTIVE JUROR MATTY: No.

THE COURT: We'll get around to the other. Will you follow all the instructions of the Court on the law, even though they may differ from your personal conceptions of what the law ought to be?

PROSPECTIVE JUROR MATTY: Yes.

THE COURT: A person who is accused of

committing a crime is presumed to be innocent in a criminal trial. Do you understand and agree with that?

PROSPECTIVE JUROR MATTY: Yes.

THE COURT: Are you aware that the defendant does not have to take the stand and testify or offer any evidence if he chooses not to, and you can still find him not guilty? That's because the burden is upon the State to prove his guilt beyond a reasonable doubt.

PROSPECTIVE JUROR MATTY: Yes.

THE COURT: Have you or a close friend or family member ever been involved in the criminal justice process, either in prosecuting a case, or as a witness, or as a defendant?

PROSPECTIVE JUROR MATTY: My cousin.

THE COURT: Tell me about that.

PROSPECTIVE JUROR MATTY: I believe he was convicted of armed robbery, I'm not totally sure. I'm not real familiar with the case.

THE COURT: Was this back in Michigan.

PROSPECTIVE JUROR MATTY: No; in Wisconsin.

THE COURT: You just heard this?

PROSPECTIVE JUROR MATTY: I was probably about 13 at the time, so all I know is that there was -- I don't know how much detail you want me to go

into. A bunch of his friends from college were involved in it.

THE COURT: Was that robbery?

PROSPECTIVE JUROR MATTY: Yes.

THE COURT: Knowing what you know of it, or knew at the time, did you have a sense that he was treated fairly, or perhaps not?

PROSPECTIVE JUROR MATTY: Yes.

THE COURT: Is there anything about the incident that would negatively reflect on your ability to fairly serve as a juror?

PROSPECTIVE JUROR MATTY: No.

THE COURT: Do you know of any reason at this point why you could not serve as a fair juror in this case?

PROSPECTIVE JUROR MATTY: No.

THE COURT: Would you tell us of your employment, your marital status, the number of children you may have, and how long you've lived in Clark County.

PROSPECTIVE JUROR MATTY: I work for an airline. I'm single. I have no children. I've been in Clark County for about four-and-a-half years.

THE COURT: What airline do you work for?

PROSPECTIVE JUROR MATTY: National.

THE COURT: And what do you do there?

PROSPECTIVE JUROR MATTY: I am a computer analyst.

THE COURT: Has that been your employment exclusively since coming to Las Vegas?

PROSPECTIVE JUROR MATTY: No.

THE COURT: What other work have you had?

PROSPECTIVE JUROR MATTY: I also worked for America West Airlines, and I worked for the MGM for a short period of time in convention services.

THE COURT: And as far as your service in the airlines has been computer oriented?

PROSPECTIVE JUROR MATTY: The first four years were on the ramp throwing bags.

THE COURT: Ticket agent?

PROSPECTIVE JUROR MATTY: No; ground personnel in bags and cargo.

THE COURT: And you moved from where in coming here?

PROSPECTIVE JUROR MATTY: Linden, Wisconsin.

THE COURT: And what was your employment there?

PROSPECTIVE JUROR MATTY: I worked in

the printing industry for about six years as a truck driver. And prior to that I was in farming.

THE COURT: Were you from there originally?

PROSPECTIVE JUROR MATTY: Yes.

THE COURT: The farming situation, is that your family's farm?

PROSPECTIVE JUROR MATTY: My stepfather always worked for someone, so it was the farm we lived on.

THE COURT: Were you ever in the military?

PROSPECTIVE JUROR MATTY: No.

THE COURT: Have you ever been married?

PROSPECTIVE JUROR MATTY: No.

THE COURT: Have you any prejudice as to the nature of the charges in this case?

PROSPECTIVE JUROR MATTY: No.

THE COURT: Do you know any of the other prospective jurors?

PROSPECTIVE JUROR MATTY: No.

THE COURT: Have you any racial prejudice?

PROSPECTIVE JUROR MATTY: No.

THE COURT: Do you understand that an Information is a mere accusation and not evidence, that

the Defendant is presumed to be innocent until proven guilty, and that the State has the burden of proving the defendant's guilt beyond a reasonable doubt?

PROSPECTIVE JUROR MATTY: Yes.

THE COURT: If you were charged with offenses similar to the ones that are alleged in this case, would you want 12 individuals such as yourself to be on your jury?

PROSPECTIVE JUROR MATTY: Yes, I would.

THE COURT: Do you know any reason at all why you could not be completely fair and completely impartial in this hearing that case?

PROSPECTIVE JUROR MATTY: No.

THE COURT: Mr. Matty, these proceedings will be conducted in two segments. First, the jury will determine if the defendant is guilty. Punishment would not be considered at that time.

Second, if the jury finds the defendant guilty of first degree murder, then the law of this state requires that the jury set the punishment. I would set a date for a hearing on the subject of punishment; do you understand?

PROSPECTIVE JUROR MATTY: Yes.

THE COURT: In the State of Nevada there are three possible forms of punishment that the jury

may consider; the imposition of the death penalty, life imprisonment without the possibility of parole, or life imprisonment or a term of 50 years in prison with the possibility of parole; do you understand that?

PROSPECTIVE JUROR MATTY: Yes.

THE COURT: In your present state of mind, could you consider fairly all three possible forms of punishment and select the one that you feel is most appropriate?

PROSPECTIVE JUROR MATTY: Yes.

THE COURT: Questions from the State, please?

MR. KANE: Any problems with that graphic type of evidence that we've been discussing?

PROSPECTIVE JUROR MATTY: No.

MR. KANE: Nothing further. Pass for cause, Judge.

THE COURT: Counsel?

MR. CHRISTIANSEN: Mr. Matty, the same question I've asked everybody else. Can you envision a situation in which you've just convicted somebody of first degree murder by way of the felony murder rule or premeditation or malice aforethought where you could say to that person: Hey, after a fixed period of time of incarceration, you should be allowed back out in society

and sentence him accordingly?

PROSPECTIVE JUROR MATTY: Yes.

MR. CHRISTIANSEN: You would take that into consideration with all the factors and the law the judge gives you during the penalty phase, if we get there?

PROSPECTIVE JUROR MATTY: Yes.

MR. CHRISTIANSEN: And you're not presuming we're going to get to a penalty phase just because I'm asking you about it, right? You understand that I have to do that so we can find out if people can fairly consider everything.

PROSPECTIVE JUROR MATTY: Yes.

MR. CHRISTIANSEN: Thank you, sir. I pass for cause.

THE COURT: Thank you. The Prosecution's fourth peremptory challenge?

MR. KANE: The State would thank and excuse Mr. Carrington in Seat No. 2, Badge 054.

THE COURT: Mr. Carrington, thank you very much, sir.

THE CLERK: Badge No. 59, June Craig, C-r-a-i-g.

THE COURT: Is it Miss or Mrs. Craig?

PROSPECTIVE JUROR CRAIG: Miss.

THE COURT: Miss Craig, do you know of any reason at all why you could not serve as a fair juror in this particular matter?

PROSPECTIVE JUROR CRAIG: No.

THE COURT: Have you served as a juror before?

PROSPECTIVE JUROR CRAIG: No.

THE COURT: Are you or any of your close friends or relatives involved in law enforcement, or have you been in the past?

PROSPECTIVE JUROR CRAIG: No.

THE COURT: Have you or a close friend or family member ever been a victim of crime?

PROSPECTIVE JUROR CRAIG: No.

THE COURT: Will you follow all the instructions of the Court on the law, even though they may differ from your personal conceptions of what the law ought to be?

PROSPECTIVE JUROR CRAIG: Yes.

THE COURT: A person who is accused of committing a crime is presumed to be innocent in a criminal trial. Do you understand and agree with that?

PROSPECTIVE JUROR CRAIG: Yes.

THE COURT: Are you aware that the defendant does not have to take the stand and testify or

AA 000279

offer any evidence if he chooses not to, and you can still find him not guilty? That's because the burden is upon the State to prove his guilt beyond a reasonable doubt.

Do you understand that?

PROSPECTIVE JUROR CRAIG: Yes.

THE COURT: Have you or a close friend or family member ever been involved in the criminal justice process, either in prosecuting a case, or as a witness, or as a defendant?

PROSPECTIVE JUROR CRAIG: No.

THE COURT: Do you know of any reason at this point why you could not serve as a fair juror in this case?

PROSPECTIVE JUROR CRAIG: No.

THE COURT: Will you tell us of your employment, the number children you may have had from a previous marriage, and how long you've lived in Clark County?

PROSPECTIVE JUROR CRAIG: I work for the State of Nevada. I have three kids.

THE COURT: What do you do? What kind of work?

PROSPECTIVE JUROR CRAIG: I'm an eligibility worker for the welfare system.

THE COURT: So you work in the Welfare

Department, essentially?

PROSPECTIVE JUROR CRAIG: Yes.

THE COURT: And the ages of your children, roughly?

PROSPECTIVE JUROR CRAIG: Seventeen, 14 and 9.

THE COURT: And how long have you lived in Clark County?

PROSPECTIVE JUROR CRAIG: On and off since my parents retired.

THE COURT: Which is when?

PROSPECTIVE JUROR CRAIG: On and off since '74.

THE COURT: Have you been married in the past?

PROSPECTIVE JUROR CRAIG: Yes.

THE COURT: And your husband's occupation?

PROSPECTIVE JUROR CRAIG: He's military retired, and a probation officer for the State of Colorado.

THE COURT: Was he working as a probation officer during the time you were married?

PROSPECTIVE JUROR CRAIG: Yes.

THE COURT: Did you have occasion to

discuss his work with him?

PROSPECTIVE JUROR CRAIG: No, not really. He worked with teenage boys.

THE COURT: He was in the juvenile system?

PROSPECTIVE JUROR CRAIG: Yes.

THE COURT: Do you think his work in any way would influence you as a juror, ma'am?

PROSPECTIVE JUROR CRAIG: No.

THE COURT: Do you think you can be a fair juror?

PROSPECTIVE JUROR CRAIG: Yes.

THE COURT: Now, what other kinds of work have you had as an adult?

PROSPECTIVE JUROR CRAIG: I was cashier and an accountant. My major, really, is accounting, business.

THE COURT: Have you worked as an accountant in some fashion?

PROSPECTIVE JUROR CRAIG: Yes; here in Las Vegas.

THE COURT: And what other businesses or entities have you been employed with?

PROSPECTIVE JUROR CRAIG: That's really about it.

THE COURT: You worked as accountant or in bookkeeping with some company?

PROSPECTIVE JUROR CRAIG: Accounts receivable for Union Premiums. They used to be on Maryland Parkway.

THE COURT: Any other work as an adult that comes to mind?

PROSPECTIVE JUROR CRAIG: I ran the deli in Vons.

THE COURT: Now, when you came here in the early '70s, you moved from where?

PROSPECTIVE JUROR CRAIG: My father was military. He was retiring.

THE COURT: So you moved a lot of places with your family; is that right?

PROSPECTIVE JUROR CRAIG: Right.

THE COURT: Where are from you originally, ma'am?

PROSPECTIVE JUROR CRAIG: I was born in Oklahoma.

THE COURT: What city?

PROSPECTIVE JUROR CRAIG: Oklahoma City, Oklahoma.

THE COURT: Have you any prejudice as to the nature of the charges in this case?

PROSPECTIVE JUROR CRAIG: No.

THE COURT: Do you know any of the other prospective jurors?

PROSPECTIVE JUROR CRAIG: No.

THE COURT: Have you any racial prejudice?

PROSPECTIVE JUROR CRAIG: No

THE COURT: Do you understand that an Information is a mere accusation and not evidence, that the Defendant is presumed to be innocent until proven guilty, and that the State has the burden of proving the defendant's guilt beyond a reasonable doubt?

Do you understand all that?

PROSPECTIVE JUROR CRAIG: Yes.

THE COURT: If you were charged with offenses similar to the ones that are alleged in this case, would you want 12 individuals such as yourself to be on your jury?

PROSPECTIVE JUROR CRAIG: Yes.

THE COURT: Do you know of any reason at all why you could not be completely fair and completely impartial this hearing this case?

PROSPECTIVE JUROR CRAIG: No.

THE COURT: Miss Craig, these proceedings will be conducted in two segments. First, the

jury will determine if the defendant is guilty. Punishment would not be considered at that time.

Second, if the jury finds the defendant guilty of first degree murder, then the law of this state requires that the jury set the punishment. I would set a date for a hearing on the subject of punishment; do you understand?

PROSPECTIVE JUROR CRAIG: Yes.

THE COURT: In the State of Nevada there are three possible forms of punishment that the jury may consider; the imposition of the death penalty, life imprisonment without the possibility of parole, or life imprisonment or a term of 50 years in prison with the possibility of parole; do you understand that?

PROSPECTIVE JUROR CRAIG: Yes.

THE COURT: In your present state of mind, could you consider fairly all three possible forms of punishment and select one that you feel is most appropriate?

PROSPECTIVE JUROR CRAIG: Yes.

THE COURT: Questions from the State?

MR. FATTIG: Ma'am, the question on the graphic photos, does that cause you any concern?

PROSPECTIVE JUROR CRAIG: No.

MR. FATTIG: Pass for cause, Your

Honor.

THE COURT: Thank you. Defense counsel?

MR. KENNEDY: Ms. Craig, if someone commits murder, should they be killed as well?

PROSPECTIVE JUROR CRAIG: Excuse me?

MR. KENNEDY: If someone commits murder, should they be killed as well?

PROSPECTIVE JUROR CRAIG: I don't know.

MR. KENNEDY: You've heard all the questioning, you've been here the last couple of days, and you understand, as the judge explained, that if you reach the penalty phase there are three different options.

When you say, "I don't know," does that mean you're just unsure what you would do in that circumstance?

PROSPECTIVE JUROR CRAIG: Correct. I would have to wait. I couldn't make any kind --

MR. KENNEDY: Wait until you hear all the evidence?

PROSPECTIVE JUROR CRAIG: And what he would tell me to do.

MR. KENNEDY: Pass for cause.

THE COURT: The Defense's fourth peremptory challenge?

MR. KENNEDY: Yes, Your Honor. The

Defense would thank and excuse Juror No. 55, Mr. Carter.

THE COURT: Mr. Carter, thank you very much, sir.

THE CLERK: Badge No. 66, Scott Saunders, S-a-u-n-d-e-r-s.

THE COURT: Mr. Saunders, do you know of any reason why you could not serve as a fair juror in this case?

PROSPECTIVE JUROR SAUNDERS: No.

THE COURT: Have you served as a juror before?

PROSPECTIVE JUROR SAUNDERS: No.

THE COURT: Are you or any of your close friends or relatives involved in law enforcement, or have you been in the past?

PROSPECTIVE JUROR SAUNDERS: No.

THE COURT: Have you or a close friend or family member ever been a victim of crime?

PROSPECTIVE JUROR SAUNDERS: No.

THE COURT: Will you follow all the instructions of the Court on the law, even though they may differ from your personal conceptions of what the law ought to be?

PROSPECTIVE JUROR SAUNDERS: Yes.

THE COURT: A person who is accused of

committing a crime is presumed to be innocent in a criminal trial. Do you understand and agree with that statement?

PROSPECTIVE JUROR SAUNDERS: Yes.

THE COURT: Are you aware that the defendant does not have to take the stand and testify or offer any evidence if he chooses not to, and you can still find him not guilty? That's because the burden is upon the State to prove his guilt beyond a reasonable doubt.

PROSPECTIVE JUROR SAUNDERS: Yes.

THE COURT: Have you or a close friend or family member ever been involved in the criminal justice process, either in prosecuting a case, or as a witness, or as a defendant?

PROSPECTIVE JUROR SAUNDERS: No.

THE COURT: Do you know of any reason at this point why you could not serve as a fair juror?

PROSPECTIVE JUROR SAUNDERS: No.

THE COURT: Would you tell us of your employment, your marital status, the number of children you may have, and how long you've lived in Clark County?

PROSPECTIVE JUROR SAUNDERS: I've lived in Clark County for nine months. I work at a software company, and I'm single.

THE COURT: No children?

PROSPECTIVE JUROR SAUNDERS: No.

THE COURT: Have you ever been in the military?

PROSPECTIVE JUROR SAUNDERS: No.

THE COURT: How long have you been with your current employer?

PROSPECTIVE JUROR SAUNDERS: Nine months.

THE COURT: And you moved from where when you came here?

PROSPECTIVE JUROR SAUNDERS: Seattle.

THE COURT: Were you employed there?

PROSPECTIVE JUROR SAUNDERS: Yes; for a year for another software company. And previous to that I was in Phoenix for six years.

THE COURT: And employed how?

PROSPECTIVE JUROR SAUNDERS: With a hospitality headquarters, I guess. The headquarters of a hospitality company.

THE COURT: What do you mean by a hospitality company?

PROSPECTIVE JUROR SAUNDERS: It's a hotel chain, but it was a corporate job, it wasn't in a hotel.

THE COURT: So it was promoting hotels?

PROSPECTIVE JUROR SAUNDERS: Exactly.
THE COURT: Are you from Phoenix?
PROSPECTIVE JUROR SAUNDERS: No. I'm from New York originally.
THE COURT: You grew up in New York?
PROSPECTIVE JUROR SAUNDERS: Yes.
THE COURT: Any other work as an adult?
PROSPECTIVE JUROR SAUNDERS: Just bartending through college, that kind of stuff.
THE COURT: Have you any prejudice as to the nature of the charges in this case?
PROSPECTIVE JUROR SAUNDERS: No.
THE COURT: Do you know any of the other prospective jurors?
PROSPECTIVE JUROR SAUNDERS: No.
THE COURT: Have you any racial prejudice?
PROSPECTIVE JUROR SAUNDERS: No.
THE COURT: Do you understand that an Information is a mere accusation and not evidence, that the Defendant is presumed to be innocent until proven guilty, and that the State has the burden of proving the defendant's guilt beyond a reasonable doubt?
PROSPECTIVE JUROR SAUNDERS: Yes.

THE COURT: If you were charged with offenses similar to the ones that are alleged in this case, would you want 12 individuals such as yourself to be on your jury?

PROSPECTIVE JUROR SAUNDERS: Yes.

THE COURT: Do you know of any reason at all why you could not be completely fair and completely impartial in hearing this matter?

PROSPECTIVE JUROR SAUNDERS: No.

THE COURT: These proceedings will be conducted in two segments. First, the jury will determine if the defendant is guilty. Punishment would not be considered at that time.

Second, if the jury finds the defendant guilty of first degree murder, then the law of this state requires that the jury set the punishment. I would set a date for a hearing on the subject of punishment; do you understand?

PROSPECTIVE JUROR SAUNDERS: Yes.

THE COURT: In the State of Nevada there are three possible forms of punishment that the jury may consider; the imposition of the death penalty, life imprisonment without the possibility of parole, or life imprisonment or a term of 50 years in prison with the possibility of parole; do you understand that?

PROSPECTIVE JUROR SAUNDERS: Yes.

THE COURT: In your present state of mind, could you consider fairly all three possible forms of punishment and the select the one that you feel is the most appropriate?

PROSPECTIVE JUROR SAUNDERS: Yes.

THE COURT: Are there questions from the State?

MR. KANE: Just the question I've asked everyone. Any problems with any graphic kind of evidence we've been talking about?

PROSPECTIVE JUROR SAUNDERS: No.

MR. KANE: Nothing further. Pass for cause, Judge.

THE COURT: Thank you. Counsel?

MR. CHRISTIANSEN: My question is the same, Mr. Saunders. Any problems of envisioning a scenario after a trial phase, if the finding was of guilt for two separate murders, that you could give somebody the possibility of reentering society?

PROSPECTIVE JUROR SAUNDERS: Yeah. That would be a possibility.

MR. CHRISTIANSEN: Something you could fairly consider with the other options the judge has laid out for you?

PROSPECTIVE JUROR SAUNDERS: Yes.

MR. CHRISTIANSEN: Nothing further, Judge. Pass for cause.

THE COURT: The State's fifth peremptory challenge?

MR. KANE: Your Honor, we would thank and excuse Mrs. McCoy in Seat No. 8, Badge No. 037.

THE COURT: Thank you very much, ma'am.

THE CLERK: Badge No. 61, Shari Custard, C-u-s-t-a-r-d.

THE COURT: Is it Miss or Mrs. Custard?

PROSPECTIVE JUROR CUSTARD: Miss.

THE COURT: Mrs. Custard, do you know of any reason why you could not serve as a fair juror in this particular case?

PROSPECTIVE JUROR CUSTARD: No.

THE COURT: Have you served as a juror before?

PROSPECTIVE JUROR CUSTARD: No.

THE COURT: Are you or any of your close friends or relatives involved in law enforcement, or have you been in the past?

PROSPECTIVE JUROR CUSTARD: No.

THE COURT: Have you or a close friend

or family member ever been a victim of crime.

PROSPECTIVE JUROR CUSTARD: Yes.

THE COURT: Tell me about that.

PROSPECTIVE JUROR CUSTARD: It was a domestic violence.

THE COURT: Were you the victim?

PROSPECTIVE JUROR CUSTARD: Yes.

THE COURT: How long ago was this?

PROSPECTIVE JUROR CUSTARD: In December of '99.

THE COURT: Here in Clark County?

PROSPECTIVE JUROR CUSTARD: Yes.

THE COURT: Was it reported?

PROSPECTIVE JUROR CUSTARD: Yes.

THE COURT: Was someone prosecuted in the matter?

PROSPECTIVE JUROR CUSTARD: Yes.

THE COURT: Do you think that the situation was handled appropriately, or perhaps not?

PROSPECTIVE JUROR CUSTARD: Yes.

THE COURT: Is there anything about that occurrence that would influence you as a juror in this matter, do you feel?

PROSPECTIVE JUROR CUSTARD: No.

THE COURT: Can you be a fair juror,

ma'am?

PROSPECTIVE JUROR CUSTARD: Yes.

THE COURT: Will you follow all the instructions of the Court on the law, even though they may differ from your personal conceptions of what the law ought to be?

PROSPECTIVE JUROR CUSTARD: I will.

THE COURT: A person who is accused of committing a crime is presumed to be innocent in a criminal trial. Do you understand and agree with that?

PROSPECTIVE JUROR CUSTARD: Yes.

THE COURT: Are you aware that the defendant does not have to take the stand and testify or offer any evidence if he chooses not to, and you can still find him not guilty? That's because the burden is upon the State to prove his guilt beyond a reasonable doubt.

PROSPECTIVE JUROR CUSTARD: Yes.

THE COURT: Have you or a close friend or family member ever been involved in the criminal justice process, either in prosecuting a case. Or as a witness, or as a defendant?

PROSPECTIVE JUROR CUSTARD: No.

THE COURT: Do you know of any reason at this point why you could not serve as a fair juror?

PROSPECTIVE JUROR CUSTARD: No.

THE COURT: Would you tell us, please, of your employment, the number of children you may have from a previous marriage, and how you've lived in Clark County?

PROSPECTIVE JUROR CUSTARD: I'm employed by BAnk of America as a customer care supervisor for the last 18 months. I moved to Clark County in 1978 from St. Louis, Missouri out of high school. And I went to cement mason school, I went to --

THE COURT: Are you married, ma'am, or have you been married in the past?

PROSPECTIVE JUROR CUSTARD: I've been married twice.

THE COURT: Do you have any children?

PROSPECTIVE JUROR CUSTARD: I have five children.

THE COURT: Their ages, roughly?

PROSPECTIVE JUROR CUSTARD: 23, 19, 17, 10 and 11.

THE COURT: Are any of the older children or their spouses involved in a law-related occupation?

PROSPECTIVE JUROR CUSTARD: No.

THE COURT: Your husband's occupation has been?

PROSPECTIVE JUROR CUSTARD: He was Air Force.

THE COURT: One of your husbands was in the Air Force?

PROSPECTIVE JUROR CUSTARD: Yes. The other one was an electronics technician.

THE COURT: And you're not currently married?

PROSPECTIVE JUROR CUSTARD: No.

THE COURT: And you say you are from St. Louis?

PROSPECTIVE JUROR CUSTARD: Yes.

THE COURT: And you moved from St. Louis to here; is that right?

PROSPECTIVE JUROR CUSTARD: Yes; in 1978.

THE COURT: What work as an adult, other than what you've mentioned, have you had?

PROSPECTIVE JUROR CUSTARD: Mostly casino experience the last 20 years.

THE COURT: What did you do in casinos?

PROSPECTIVE JUROR CUSTARD: I was in the slot defendant; change, cashier.

THE COURT: Have you any prejudice as to the nature of the charges in this case?

PROSPECTIVE JUROR CUSTARD: No.

THE COURT: Do you know any of the other prospective jurors?

PROSPECTIVE JUROR CUSTARD: No.

THE COURT: Have you any racial prejudice?

PROSPECTIVE JUROR CUSTARD: No.

THE COURT: Are you aware that the defendant does not have to take the stand and testify or offer any evidence if he chooses not to, and you can still find him not guilty? That's because the burden is upon the State to prove his guilt beyond a reasonable doubt.

PROSPECTIVE JUROR CUSTARD: Yes.

THE COURT: If you were charged with offenses similar to the ones that are alleged in this case, would you want 12 individuals such as yourself to be on your jury?

PROSPECTIVE JUROR CUSTARD: Yes.

THE COURT: Do you know of any reason at all why you could not be completely fair and completely impartial in hearing this case?

PROSPECTIVE JUROR CUSTARD: No.

THE COURT: Ms. Custard, these proceedings will be conducted in two segments. First, the jury will determine if the defendant is guilty.

Punishment would not be considered at that time.

Second, if the jury finds the defendant guilty of first degree murder, then the law of this state requires that the jury set the punishment. I would set a date for a hearing on the subject of punishment; do you understand?

PROSPECTIVE JUROR CUSTARD: Yes.

THE COURT: In the State of Nevada there are three possible forms of punishment that the jury may consider; the imposition of the death penalty, life imprisonment without the possibility of parole, or life imprisonment or a term of 50 years in prison with the possibility of parole; do you understand that?

PROSPECTIVE JUROR CUSTARD: Yes, I do.

THE COURT: In your present state of mind, could you consider fairly all three possible forms of punishment and select the one that you feel is most appropriate?

PROSPECTIVE JUROR CUSTARD: Yes.

THE COURT: Questions from the State?

MR. FATTIG: Good afternoon,ma'am?

PROSPECTIVE JUROR CUSTARD: Hi.

MR. FATTIG: The incident you mentioned to the judge back in the summer of '99, domestic violence, did you ever have to actually come and testify in court?

PROSPECTIVE JUROR CUSTARD: No.

MR. FATTIG: Did the case negotiate before you had to?

PROSPECTIVE JUROR CUSTARD: Yes.

MR. FATTIG: And, again, you thought the system worked itself out fairly?

PROSPECTIVE JUROR CUSTARD: Yes, I do.

MR. FATTIG: May I ask what your older children do now? Do they live here in town?

PROSPECTIVE JUROR CUSTARD: They both work for Bank of America.

MR. FATTIG: Here in town?

PROSPECTIVE JUROR CUSTARD: Yes.

MR. FATTIG: And the question on the graphic photos, anything about that cause you any concern?

PROSPECTIVE JUROR CUSTARD: No.

MR. FATTIG: Thank you. Pass for cause.

THE COURT: Thank you. Defense counsel?

MR. KENNEDY: Ms. Custard, how do you feel about the death penalty? Do you feel it's an appropriate form of punishment for somebody that commits murder?

PROSPECTIVE JUROR CUSTARD: In

instances, yes.

MR. KENNEDY: In certain cases?

PROSPECTIVE JUROR CUSTARD: Yes.

MR. KENNEDY: Pass for cause.

THE COURT: Thank you. Defense counsel's fifth peremptory challenge?

MR. KENNEDY: Your Honor, the Defense would thank and excuse Juror No. 32, Mr. Matty.

THE COURT: Mr. Matty, thank you very much, sir. You are excused.

THE CLERK: Badge No. 39, Jamila Pierson, P-i-e-r-s-o-n.

THE COURT: Is it Miss or Mrs. Pierson?

PROSPECTIVE JUROR PIERSON: Mrs.

THE COURT: Mrs. Pierson, do you know of any reason why you could not serve as a fair juror in this particular case?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: Have you served as a juror before?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: Are you or any of your close friends or relatives involved in law enforcement, or have you been in the past?

PROSPECTIVE JUROR PIERSON: Yes.

THE COURT: Tell me about that, please.

PROSPECTIVE JUROR PIERSON: My mother is a retired corrections officer. Two of my very close family friends that are more like aunts and uncles are also retired corrections officers. I have two uncles that are police officers in Washington.

THE COURT: In Washington State or Washington DC?

PROSPECTIVE JUROR PIERSON: Washington DC.

THE COURT: Concerning the matter of the corrections officers, is that locally that they worked?

PROSPECTIVE JUROR PIERSON: When I lived in Tucson, Arizona, my mother was a corrections officer there.

THE COURT: And the other two?

PROSPECTIVE JUROR PIERSON: The other two were prior here in Nevada.

THE COURT: Do you have occasion to discuss their work with them?

PROSPECTIVE JUROR PIERSON: Not often, because I was younger when they were doing it, so...

THE COURT: Does your mother live here

in town?

PROSPECTIVE JUROR PIERSON: Yes, she does.

THE COURT: And the other two individuals you mentioned, do they live here as well?

PROSPECTIVE JUROR PIERSON: Yes.

THE COURT: When you would next see any of these individuals, do you would feel a compunction to explain or justify your verdict to them?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: Do you think that their work and the others that you mentioned would have an influence on you as a juror here?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: Do you think you can be a fair juror?

PROSPECTIVE JUROR PIERSON: Yes.

THE COURT: Have you or a close friend or family member ever been a victim of crime?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: Will you follow all the instructions of the Court on the law, even though they may differ from your personal conceptions of what the law ought to be?

PROSPECTIVE JUROR PIERSON: Yes.

THE COURT: A person who is accused of committing a crime is presumed to be innocent in a criminal trial. Do you understand and agree with that?

PROSPECTIVE JUROR PIERSON: Yes.

THE COURT: Are you aware that the defendant does not have to take the stand and testify or offer any evidence if he chooses not to, and you can still find him not guilty? That's because the burden is upon the State to prove his guilt beyond a reasonable doubt.

PROSPECTIVE JUROR PIERSON: Yes.

THE COURT: Have you or a close friend or family member ever been involved in the criminal justice process, either in prosecuting a case, or as a witness, or as a defendant?

PROSPECTIVE JUROR PIERSON: Yes.

THE COURT: Tell me about that, please.

PROSPECTIVE JUROR PIERSON: I have a cousin or, actually, it's my husband's cousin that is awaiting trial right now.

THE COURT: And in this system?

PROSPECTIVE JUROR PIERSON: I believe so. We don't know all the details just, basically, that it is premeditated murder.

THE COURT: And where is this individual in the proceedings? Has he entered a plea? Or

is he about to go to trial? Or just what, exactly?

PROSPECTIVE JUROR PIERSON: All we know at this point is that he was arrested. We don't know whether he's in the process of trial or what, just, basically, that he was arrested.

THE COURT: And he's related to your husband?

PROSPECTIVE JUROR PIERSON: Yes.

THE COURT: In what manner?

PROSPECTIVE JUROR PIERSON: He is his first cousin.

THE COURT: Based on what little information you actually have, I suppose, do you have sense of whether or not he's being treated fairly, or not?

PROSPECTIVE JUROR PIERSON: I don't know all the details, so I'm really unsure of -- I know that he was arrested, and there's possible connections. So I would say at this point, if there was connections, then he is possibly being treated correctly.

THE COURT: When you say connections, between the victim and himself?

PROSPECTIVE JUROR PIERSON: Correct.

THE COURT: Well, I realize you don't know all the facts. I guess what I'm asking you, do you have a sense as to whether or not thus far he has been

treated fairly?

PROSPECTIVE JUROR PIERSON: Thus far, yes, I would say that he's being treated correctly.

THE COURT: Is there anything about that situation that would impact your ability to fairly serve as a juror here?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: Do you know of any reason at this point why you could not serve as a fair juror?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: Will you tell us, please, of your employment, the number of children you may have had from a previous marriage, and how long you've lived in Clark County?

PROSPECTIVE JUROR PIERSON: I'm employed as a status board operator in housekeeping. We, basically, give calls to house persons to deliver items to guests.

THE COURT: What hotel is this?

PROSPECTIVE JUROR PIERSON: At Mandalay Bay. And I've been with them for two years. Prior to that, I was a supervisor of housekeeping at Sunrise Hospital. And I've lived here for about five years. My husband is a bartender, and I have one child, nine months.

THE COURT: Has your husband been

employed in any industry or trade other than his current since the time you've known him?

PROSPECTIVE JUROR PIERSON: He was also a cook.

THE COURT: And where did you move from when you came here?

PROSPECTIVE JUROR PIERSON: Tucson, Arizona.

THE COURT: Were you employed there?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: Is that where you're from?

PROSPECTIVE JUROR PIERSON: Right.

THE COURT: Any other work as an adult that you have not mentioned?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: And you've been married only one time?

PROSPECTIVE JUROR PIERSON: Correct.

THE COURT: Have you any prejudice as to the nature of the charges in this case?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: Do you know any of the other prospective jurors?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: Have you any racial prejudice?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: Do you understand that an Information is a mere accusation and not evidence, that the Defendant is presumed to be innocent until proven guilty, and that the State has the burden of proving the defendant's guilt beyond a reasonable doubt?

PROSPECTIVE JUROR PIERSON: Yes.

THE COURT: If you were charged with offense similar to the once that are alleged in this case would you want the 12 individuals such as yourself to be on your jury?

PROSPECTIVE JUROR PIERSON: Yes.

THE COURT: Do you know of any reason at all why you could not be completely fair and completely impartial in hearing this matter?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: Mrs. Pierson, these proceedings will be conducted in two segments. First, the jury will determine if the defendant is guilty. Punishment would not be considered at that time.

Second, if the jury finds the defendant guilty of first degree murder, then the law of this state requires that the jury set the punishment. I would set a

date for a hearing on the subject of punishment; do you understand?

PROSPECTIVE JUROR PIERSON: Yes, I do.

THE COURT: In the State of Nevada there are three possible forms of punishment that the jury may consider; the imposition of the death penalty, life imprisonment without the possibility of parole, or life imprisonment or a term of 50 years in prison with the possibility of parole; do you understand that?

PROSPECTIVE JUROR PIERSON: Yes, I do.

THE COURT: In your present state of mind, could you consider fairly all three possible forms of punishment and select the one that you feel is most appropriate?

PROSPECTIVE JUROR PIERSON: Yes, I could.

THE COURT: Are there questions from the State?

MR. KANE: May we approach, Your Honor?

THE COURT: You may.

(Whereupon, counsel conferred with the Court.)

THE COURT: Ms. Pierson, you mentioned this individual who is being charged with a crime in this facility. What's the name of this person?

PROSPECTIVE JUROR PIERSON: Vincent

Pender.

MR. KANE: I only have one question, ma'am, the same one I've asked everybody. Anything about hearing or seeing graphic photographs that would bother you in serving as a juror?

PROSPECTIVE JUROR PIERSON: No.

MR. KANE: Nothing further. Pass for cause.

THE COURT: Counsel?

MR. CHRISTIANSEN: Ms. Pierson, my question is the same as everybody else has received as well. Would you be able to fairly consider all three of the possible penalties the judge has explained to you, even in light of the serious nature of the charges in this case?

PROSPECTIVE JUROR PIERSON: I would fairly consider them, yes.

MR. CHRISTIANSEN: Thank you very much.

THE COURT: Pass for cause?

MR. CHRISTIANSEN: Yes, sir.

THE COURT: The Prosecution's sixth peremptory challenge?

MR. KANE: the State would waive that challenge, Your Honor.

THE COURT: Defense's sixth?

MR. CHRISTIANSEN: Court's indulgence.

THE COURT: Good enough.

MR. KENNEDY: Your Honor, the Defense will waive its sixth peremptory challenge.

THE COURT: The Prosecution's seventh?

MR. KANE: Waived, Your Honor.

THE COURT: Seventh for the Defense?

MR. KENNEDY: Your Honor, the Defense would waive its seventh.

THE COURT: Very good. The eighth and last for the Prosecution?

MR. KANE: Waived, Your Honor.

THE COURT: Thank you. Defense counsel?

MR. KENNEDY: Waived as well.

THE COURT: Thank you.

Ms. Clerk, would you swear our jury.

(Whereupon the jury was sworn by the clerk.)

THE COURT: Ms. Clerk, would you call two names to serve as alternates.

THE CLERK: Badge No. 60, Michelle Pro, P-r-o; Badge No. 62, Eric Zuck, Z-u-c-k.

THE COURT: Is it Miss or Mrs. Pro?

PROSPECTIVE JUROR PRO: Mrs.

THE COURT: I'm going to ask you

questions simultaneously at the beginning, at least. Do either of you have any reason why you could not serve as a fair juror in this case, Mrs. Pro?

PROSPECTIVE JUROR PRO: No.

THE COURT: Mr. Zuck?

PROSPECTIVE JUROR ZUCK: No.

THE COURT: Have either of you served as jurors before, Mrs. Pro?

PROSPECTIVE JUROR PRO: No.

PROSPECTIVE JUROR PIERSON: Yes, sir.

THE COURT: When did you serve as a juror?

PROSPECTIVE JUROR ZUCK: About 12 years ago.

THE COURT: Was it here in Clark County?

PROSPECTIVE JUROR ZUCK: No, sir. It was in Indiana.

THE COURT: Was it a civil or criminal case?

PROSPECTIVE JUROR ZUCK: Civil.

THE COURT: Did you roach a verdict?

PROSPECTIVE JUROR ZUCK: Yes, sir.

THE COURT: Were you the foreman of the jury?

PROSPECTIVE JUROR ZUCK: Yes, sir.

THE COURT: Do you think your prior jury service would in any way inhibit your ability to fairly serve on this jury?

PROSPECTIVE JUROR ZUCK: No, sir.

THE COURT: Are you or any of your close friends or relatives involved in law enforcement, or have you been in the past? Mrs. Pro?

PROSPECTIVE JUROR PRO: No.

THE COURT: Mr. Zuck?

PROSPECTIVE JUROR ZUCK: No, sir.

THE COURT: Have you or a close friend or family member ever been a victim of crime? Mrs. Pro?

PROSPECTIVE JUROR PRO: No, sir.

THE COURT: Mr. Zuck?

PROSPECTIVE JUROR ZUCK: No.

THE COURT: Will you follow all the instructions of the Court on the law, even though they may differ from your personal conceptions of what the law ought to be? Mrs. Pro?

PROSPECTIVE JUROR PRO: Yes.

THE COURT: Mr. Zuck?

PROSPECTIVE JUROR ZUCK: Yes.

THE COURT: A person who is accused of committing a crime is presumed to be innocent in a

criminal trial. Do you understand and agree with that statement, Mrs. Pro?

PROSPECTIVE JUROR PRO: Yes.

THE COURT: Mr. Zuck?

PROSPECTIVE JUROR ZUCK: Yes, sir.

THE COURT: Are you aware that the defendant does not have to take the stand and testify or offer any evidence if he chooses not to, and you can still find him not guilty? That's because the burden is upon the State to prove his guilt beyond a reasonable doubt.

Mrs. Pro?

PROSPECTIVE JUROR PRO: Yes.

THE COURT: Mr. Zuck?

PROSPECTIVE JUROR ZUCK: Yes.

THE COURT: Have you or a close friend or family member ever been involved in the criminal justice process, either in prosecuting a case, or as a witness, or as a defendant? Mrs. Pro?

PROSPECTIVE JUROR Pro: Yes, I was.

THE COURT: Tell me about that, please.

PROSPECTIVE JUROR PRO: Probably seven or eight years ago I was human resources director at Lady Luck Casino downtown, and a woman there was murdered. And her husband was accused of the murder, and I had to testify about the conversation he had with me immediately

following to her death when he came in to work to get her insurance check.

THE COURT: You testified in a court here in this building, I take it?

PROSPECTIVE JUROR PIERSON: Yes.

THE COURT: And without asking any particulars, was the matter resolved in a fair manner in your judgement?

PROSPECTIVE JUROR PIERSON: Yes.

THE COURT: Do you think your testifying in that case would have any bearing on your view of this matter?

PROSPECTIVE JUROR PIERSON: No, sir.

THE COURT: Do you think you can be a fair juror, ma'am?

PROSPECTIVE JUROR PIERSON: Absolutely.

THE COURT: Mr. Zuck, your response to that question?

PROSPECTIVE JUROR ZUCK: I've never been involved in that; no, sir.

THE COURT: At this point, do you know any reason why you could not serve as a fair juror in this matter, Mrs. Pro?

PROSPECTIVE JUROR PRO: No.

THE COURT: Mr. Zuck?

PROSPECTIVE JUROR ZUCK: No, sir.

THE COURT: Beginning with you, Mrs. Pro, would you tell us, please, of your employment, the number of children you may have, and how long you've lived in Clark County?

PROSPECTIVE JUROR PRO: Yes. I'm currently a teacher at Area Technical Trade Center. I teach high school and juniors about hotel operations. I've been there for three years. Prior to that, I was human resource director at Texas Station, and Lady Luck Casino Hotel.

I've been in Las Vegas for 11 years. I am married, have three grown step kids, all out of the home.

THE COURT: Are any of the stepchildren or their spouses involved in a law-related occupation?

PROSPECTIVE JUROR PRO: No, they are not.

THE COURT: And you moved from where when you came here?

PROSPECTIVE JUROR PRO: I was born and raised in Wisconsin, and then I moved to Rockford, Illinois, worked there for ten years, worked in human resources at Ingersol Milling Machine Company, and then we moved here.

THE COURT: Any occupation or

employment that you've not made mention of as an adult?

PROSPECTIVE JUROR PIERSON: No. Well, I was finishing my degree at UNLV, actually, I worked in the book store.

THE COURT: Your husband's occupation?

PROSPECTIVE JUROR PIERSON: He is the human resource director now at Lady Luck Casino Hotel.

THE COURT: What other work, if any, has he had?

PROSPECTIVE JUROR PIERSON: He was the human resource director at Palace Station Casino Hotel. And prior to that he was at the Rio. He opened that place up.

THE COURT: Have you any prejudice as to the nature of the charge in this case?

PROSPECTIVE JUROR PIERSON: No, sir.

THE COURT: Do you know any of the now-jurors, or other prospective jurors?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: Have you any racial prejudice?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: Do you understand that an Information is a mere accusation and not evidence, that the Defendant is presumed to be innocent until proven

guilty, and that the State has the burden of proving the defendant's guilt beyond a reasonable doubt?

PROSPECTIVE JUROR PIERSON: Yes, sir.

THE COURT: If you were charged with offenses similar to the ones that are alleged in this case, would you want 12 individuals such as yourself to be on your jury?

PROSPECTIVE JUROR PIERSON: Yes, I would.

THE COURT: Do you know of any reason at all why you could not be completely fair and completely impartial in hearing this case?

PROSPECTIVE JUROR PIERSON: No.

THE COURT: These proceedings will be conducted in two segments. First, the jury will determine if the defendant is guilty. Punishment would not be considered at that time.

Second, if the jury finds the defendant guilty of first degree murder, then the law of this state requires that the jury set the punishment. I would set a date for a hearing on the subject of punishment; do you understand?

PROSPECTIVE JUROR PIERSON: Yes.

THE COURT: In the State of Nevada there are three possible forms of punishment that the jury

may consider; the imposition of the death penalty, life imprisonment without the possibility of parole, or life imprisonment or a term of 50 years in prison with the possibility of parole; do you understand that?

PROSPECTIVE JUROR PIERSON: Yes, I do.

THE COURT: In your present state of mind, could you consider fairly all three possible forms of punishment and select the one that you feel is most appropriate?

PROSPECTIVE JUROR PIERSON: Yes.

THE COURT: And if I might, Mr. Zuck, I'd like to inquire of your employment, your marital status, the number of children you may have, and how long you've been in Clark County?

PROSPECTIVE JUROR ZUCK: For the past two-and-a-half years I've been working at the Sands Expo Convention Center. I am a security captain on the day shift. My wife and I have been married for 19 years. We moved to Las Vegas two-and-a-half years ago. I have two grown stepchildren, a 17-year-old son and a 25-year-old daughter.

THE COURT: All right. Are either of those children or their spouses involved in a law-related occupation?

PROSPECTIVE JUROR ZUCK: No, sir.

THE COURT: Do you have any particular training in security work?

PROSPECTIVE JUROR ZUCK: No; on-the-job straining.

THE COURT: Have you ever had to arrest anyone?

PROSPECTIVE JUROR ZUCK: No, sir.

THE COURT: Do you carry a gun?

PROSPECTIVE JUROR ZUCK: No, sir.

THE COURT: What other work, if any, in Clark County have you had?

PROSPECTIVE JUROR ZUCK: None.

THE COURT: And where did you move from when you moved here?

PROSPECTIVE JUROR ZUCK: Birmingham, Alabama.

THE COURT: Were you employed there?

PROSPECTIVE JUROR ZUCK: Yes, sir.

THE COURT: How so?

PROSPECTIVE JUROR ZUCK: I worked in security for a while. I also delivered hospital equipment for a home health company.

THE COURT: Are you from that area originally?

PROSPECTIVE JUROR ZUCK: No, sir; my

wife is. I'm originally from Indiana.

THE COURT: What other work, if any, have had as an adult?

PROSPECTIVE JUROR ZUCK: I spent twelve-and-a-half years in the Merchant Marines.

THE COURT: Aboard ship?

PROSPECTIVE JUROR ZUCK: Yes, sir.

THE COURT: And your wife's occupation?

PROSPECTIVE JUROR ZUCK: Presently she is a leasing consultant for an apartment complex. She has worked here in Las Vegas as a bank teller, and also as a receptionist for a veterinary clinic.

THE COURT: Have you any prejudice as to the nature of the charges in this case?

PROSPECTIVE JUROR ZUCK: No, sir.

THE COURT: Do you know any of the other jurors or prospective jurors?

PROSPECTIVE JUROR ZUCK: No, sir.

THE COURT: Have you any racial prejudice?

PROSPECTIVE JUROR ZUCK: No, sir.

THE COURT: Do you understand that an Information is a mere accusation and not evidence, that the Defendant is presumed to be innocent until proven

guilty, and that the State has the burden of proving the defendant's guilt beyond a reasonable doubt?

PROSPECTIVE JUROR ZUCK: Yes, sir.

THE COURT: Mr. Zuck, if you were charged with offenses similar to the ones that are alleged in this case, would you want 12 individuals such as yourself to be on your jury?

PROSPECTIVE JUROR ZUCK: Yes, I would.

THE COURT: Do you know of any reason at all why you could not be completely fair and completely impartial in hearing this case?

PROSPECTIVE JUROR ZUCK: No, sir.

THE COURT: These proceedings will be conducted in two segments. First, the jury will determine if the defendant is guilty. Punishment would not be considered at that time.

Second, if the jury finds the defendant guilty of first degree murder, then the law of this state requires that the jury set the punishment. I would set a date for a hearing on the subject of punishment; do you understand?

PROSPECTIVE JUROR ZUCK: Yes, sir.

THE COURT: In the State of Nevada there are three possible forms of punishment that the jury may consider; the imposition of the death penalty, life

imprisonment without the possibility of parole, or life imprisonment or a term of 50 years in prison with the possibility of parole; do you understand that?

PROSPECTIVE JUROR ZUCK: Yes, sir.

THE COURT: In your present state of mind, could you consider fairly all three possible forms of punishment and select the one that you feel is most appropriate?

PROSPECTIVE JUROR ZUCK: Yes, I could.

THE COURT: Are there questions from the State as to either prospective jurors?

MR. KANE: Mrs. Pro, same question I've asked anybody. Any problem with graphic photographs or things of that nature?

PROSPECTIVE JUROR PRO: No, sir.

MR. KANE: Mr. Zuck?

PROSPECTIVE JUROR ZUCK: No.

MR. KANE: Nothing further. Pass both for cause, Your Honor.

THE COURT: Very good. Thank you.

Defense counsel?

MR. KENNEDY: Mrs. Pro, are you related in any way to the US Federal judge, Phillip Pro?

PROSPECTIVE JUROR ZUCK: No, I'm not.

MR. KENNEDY: I guess you get asked

that --

PROSPECTIVE JUROR PRO: All the time.

MR. KENNEDY: Do you have any problems with the death penalty as a form of punishment?

PROSPECTIVE JUROR PRO: I have problems with it just as a normal person would. It would have to be a very deserving case for me to vote for it but, certainly, I believe that there are times that it is called for, yes.

MR. KENNEDY: Mr. Zuck, same question?

PROSPECTIVE JUROR ZUCK: I don't have any problem making a decision on it; no, sir.

MR. KENNEDY: Pass for cause as to both.

THE COURT: Very good. Does the State wish to exercise a peremptory challenge?

MR. KANE: Waived, Your Honor.

THE COURT: Thank you. Defense counsel?

MR. KENNEDY: Waived as well.

THE COURT: Ms. Clerk, would you swear in our two alternates.

(Whereupon the alternates were sworn by the clerk.)

THE COURT: Ladies and gentlemen, you who have not been called, let me express my appreciation

for your willingness to be here and go through this. We know that it is quite a burden to everyone. You upstairs, downstairs, wait, and it's quite an ordeal.

As you can see, we cannot anticipate just how many people we need. So you come and you sit and you wait and you go through all this. But without your willingness to serve, you can see we also could not have jury trials.

So I want you to understand we sincerely appreciate your willingness to come here. We try to minimize the negative aspect of what you go through, but there's just so much that can be done.

I would ask you to report to the jury commissioner downstairs, and they will make arrangements to muster you out a service here. Thank you very much.

Yes, sir?

PROSPECTIVE JUROR: I just want to say thank you for the opportunity to come and at least somewhat participate in this.

THE COURT: Well, I might add, you're always welcome to come as spectators, and you can come back with us here and watch the trial if you want to. You're absolutely welcome.

Counsel, approach, please.

(Whereupon, counsel conferred with the Court.)

THE COURT: Ms. Clerk, will you read aloud the Information. And does counsel waive the reading of the list of witnesses attached to that document?

MR. KANE: Yes, Your Honor.

MR. KENNEDY: We do, Your Honor.

THE CLERK: "Filed June 30th, 8:45 a.m., '99, Shirley B. Parriguirre, Clerk; District Court, Clark County, Nevada, The State of Nevada versus John Joseph Seka, Case No. C159915, Department No. XIV.

"Information: State of Nevada, County of Clark, Stewart L. Bell, District Attorney within and for the County of Clark, State of Nevada in the name and by the authority of the State of Nevada informs the Court:

"That John Joseph Seka, the Defendant above named, having committed the crime of murder with use of a deadly weapon, (Felony - NRS 200.010, 200.030, 193.165) and robbery with use of a deadly weapon (Felony - NRS 200.380, 193.165, on or between November 5th and December 23rd, 1998, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada.

"Count I: Murder with use of a deadly weapon (open murder), did on or between November 10th, 1998, and November 16th, 1998, then and there willfully,

feloniously, without authority of law, and with premeditation and deliberation and/or during the perpetration or attempted perpetration of robbery, and with malice aforethought, kill Eric Hamilton, a human being, by shooting at and into the head and/or body of the Eric Hamilton with a deadly weapon, to wit; a firearm.

"Count II: Murder with use of a deadly weapon, (open murder), did on or between November 5th, 1998, and December 23rd, 1998, then and there willfully, feloniously, and without authority of law, and with premeditation and deliberation and/or during the perpetration or attempted perpetration of robbery and with malice aforethought, kill Peter Limanni, a human being, by shooting at and into the head and/or body of the said Peter Limanni, with the deadly weapon, to wit; a firearm.

"Count III: Robbery with use of a deadly weapon, did on or between November 10, 1998, and November 16th, 1998, then and there willfully, unlawfully and feloniously take personal property, to wit; lawful money of the United States and/or personal property from the person of Eric Hamilton, or in his presence by means of force or violence, or fear of injury to, and without the consent and against the will of the said Eric Hamilton, said Defendant using a deadly weapon, to wit; a firearm , during the commission of said crime.

"Count IV: Robbery with use of a deadly weapon. Did on or about November 5th, 1998 and December 23rd, 1998, then and there willfully, unlawfully and feloniously take personal property, to wit; lawful money of the United States, and/or personal property from the person of Peter Limanni, or in his presence by means of force or violence or fear of injure to, and without the consent, and against the will of the said Peter Limanni, said Defendant using a deadly weapon, to wit; a firearm, during the commission of said crime.

"Stewart L. Bell, District Attorney, by Edward Kane, Deputy District Attorney."

To which the defendant has entered pleas of not guilty.

THE COURT: Thank you, Ms. Clerk.

(Whereupon, continued proceedings were reported by Joseph D'Amato.)

ATTEST: Full, true and accurate transcript of proceedings.

MAUREEN SCHORN, CCR NO. 496, RPR

53

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED IN OPEN COURT
FEB 14 2001 19
SHIRLEY B. PARRAGUIRRE, CLERK
BY JUDY NORMAN DEPUTY

THE STATE OF NEVADA,

Plaintiff,

vs.

JOHN JOSEPH SEKA,

Defendant.

No. C159915
Dept No: XIV

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DONALD M. MOSLEY

VOLUME II

February 13, 2001
2:45 p.m.
Department XIV

APPEARANCES:

For the State:

MR. EDWARD KANE
MR. TIM FATTIG
Deputy District Attorneys

For the Defendant:

MR. KIRK KENNEDY
MR. PETER CHRISTIANSEN
Attorneys-at-Law
Deputy Public Defender

RECEIVED
FEB 14 2001
COURT CLERK

CE

Reported by:
Joseph A. D'Amato
Nevada CCR #17

WITNESS INDEX

Page

MICHAEL CERDA:

EXAMINATION by Mr. Kane 36
EXAMINATION by Mr. Christiansen 49
RE-EXAMINATION by Mr. Kane 66
RE-EXAMINATION by Mr. Christiansen 68

THE COURT: Thank you, Ms. Clerk.

Ladies and Gentlemen, what I will now read is intended to serve as an introduction to the trial of this case. It is not a substitute for the detailed instructions on the law, which I will give to you at the close of the case and before you retire to determine your verdict.

This is a criminal matter commenced by the State of Nevada, which I may sometimes refer to as the State, against John Joseph Seka. The case is based on the Information which has been read to you by the clerk.

You should distinctly understand that the Information is simply a charge and that it is not, in any sense, evidence of the allegations it contains.

The Defendant has pled not guilty to the Information. The State, therefore, has the burden of proving each of the essential elements of the Information beyond a reasonable doubt.

The purpose of this trial is to determine whether the State will meet that burden.

It is your primary responsibility as jurors to find and determine the facts. Under our system of criminal procedure you are the sole judge of the facts.

You are to determine the facts from the

testimony you hear and other evidence, including exhibits introduced in Court. It is up to you to determine the inferences which you feel may be properly drawn from the evidence.

The parties may sometimes present objections to some of the testimony or other evidence. At times, I may sustain such objections or direct that you disregard certain testimony or exhibits.

You must not consider any evidence to which an objection has been sustained or which I've instructed you to disregard.

If you cannot hear a witness, please raise your hand as an indication. You are informed that you may, if you wish, take notes during the trial.

You are admonished that no juror may declare to a fellow juror any fact relating to this case which is within his or her own knowledge and if any juror discovers during the trial or after the jury has retired that he or she or any other juror has personal knowledge of any other fact in controversy in this case he or she shall disclose such knowledge to me in the absence of the other jurors.

This admonition means during the course of the trial that if you were acquainted with the facts of the case or one of the witnesses and you've not

previously told me of this relationship you must then disclose that fact to me.

You communicate to the Court through the bailiff. You are admonished, additionally, that you're not to visit the scene of any of the acts or occurrences made mention of during this trial unless specifically directed to do so.

Does counsel wish to invoke the Exclusionary Rule?

MR. KENNEDY: Your Honor, defense would do that.

THE COURT: Do you concur?

MR. KANE: Yes, Your Honor.

THE COURT: We'll proceed on that basis.

Ladies and Gentlemen, we're going to take a recess. We're going to have to take care of some procedural matters, scheduling witnesses and that sort of thing. I'm going to ask that you return here at 3:30. That gives you about 45 minutes.

If you want to take a walk - - is it still raining outside - - perhaps not. As you choose, we'll take that time. I'd ask you to be back here at 3:30.

Let me read to you the admonition as is required by law.

(Whereupon, the Court admonished the

jury.)

THE COURT: Again, I'll see you back in the hallway. Look for the bailiff please about 3:30.

Court is in recess.

(Recess taken.)

THE COURT: The continuation of C159915, State of Nevada versus John Joseph Seka. Let the record reflect the presence of the Defendant, his counsel, Mr. Christiansen and Mr. Kennedy, Mr. Kane and Mr. Fattig present for the State.

Will counsel stipulate that all members of the jury are present and properly seated?

MR. KANE: Yes, Your Honor.

MR. KENNEDY: Yes, Your Honor.

THE COURT: Your opening remarks, Mr. Kane?

MR. KANE: Thank you, Your Honor.

Ladies and Gentlemen, the judge has already told you and he will tell you several more times during the trial that the remarks of counsel are not evidence.

When, what I'm about to tell you is what I would believe the government's evidence will show at trial. Whether or not the evidence bears out what I say is up for you to determine.

So you may be thinking if this is in evidence why do we have to sit here and listen to it?

There are a couple of practical reasons for it. First and foremost, to present even a simple story in perfect chronological order, one witness at a time, is a difficult thing to do.

A witness may know a little a little about the beginning of the case and something about the end and there may be 17 other witnesses who come in between, but that's not the way we call witnesses.

We call them one at a time, ask them all the questions that we have for them and then we excuse them from the rest of the trial.

So by its nature the way we present evidence to you means it gets kind of chopped up and so an overview like this of the case may be helpful to you as you go through in seeing where particular items of evidence or particular witnesses fit into the grand scope of things.

The other reason in every case why an opening statement is useful is we're not allowed to abuse witnesses the way we're allowed to abuse you people.

What I mean by that is you're here for the whole trial. You just sit around and spend a lot of time waiting and it would be nice, frankly, from my point of

view, if we could have all the witnesses, put them in a room somewhere and we would have them stay there for the two weeks we're in trial and every time we need one we haul them out and put them in front of you and we send them home.

Unfortunately, life doesn't work that way. Some witnesses don't even live in Nevada and they have to travel from out of state. We can't always present the witnesses in the best order we would like to.

Witnesses will be called out of order and you'll wonder "Why are they telling us this now instead of at a more logical point?"

Again, there's a lot of reasons for that point. Hopefully, this opening statement will help you fit everything in.

In this case, in particular, as opposed to cases, in general, there is a good reason for an opening statement and maybe one that's longer than the five or 10 minutes that I usually do and that's that this is a complicated situation.

You already know that there are two homicides that are alleged. They happened, we allege, in neighboring business premises, but you have two separate crime scenes.

There are two businesses, one next door to

each other. In addition, the bodies of the two victims were found in two other locations. One alongside a highway here in Nevada, one alongside a highway just over the state line in California.

So all of the police officers - - not all of them, but some of the police officers who processed every one of those scenes are going to come in here and tell you what they saw, what they did and they are going to bring items of evidence in from each of those scenes and put them in front of you to help you make your decision.

So because of the complicated factual nature of the case maybe this opening statement will help you a little bit.

With that in mind, back in 1998 there was a business operating here in town, one of many heating, ventilation and air conditioning businesses, HVAC's, they are called for short. This one was called Sinergi, S-i-n-e-r-g-i.

It operated out of offices at 1933 Western here in Las Vegas. The partners in Sinergi were a Japanese businessman named Takeo Kato and Peter Limanni.

John Seka, the Defendant, worked at Sinergi as an employee of Mr. Limanni's.

When the business started out Mr. Kato

spent a lot of time here and was an active participant in the business. Throughout the course of 1998 the business started to fade.

They weren't doing as well, didn't frankly need all of the vehicles that they had. Their inventory was going down. They were behind in their rent.

It got so bad that towards the end of November of 1998 the property of the business was being pawned at local pawn shops just to generate some cash to keep them going.

Mr. Kato made it plain he wanted out of the business and that Sinergi as it was was going to fold. So Mr. Limanni and the Defendant, Mr. Seka, made some plans to resurrect the business in a different form.

What they were doing was taking the premises at 1933 Western and converting part of it into a cigar room. They are really kind of fashionable now and were coming into vogue back then.

They were going to have a humidor and a big back room where cigars were stored and they had a lot of lumber and construction tools in the premises because they were handling a lot of this remodeling themselves.

You're going to hear some testimony from Jennifer Harrison who will be one of our first witnesses. She was Peter Limanni's girlfriend during this period of

time.

She had a lot of chances to observe Mr. Limanni, to observe the Defendant, observe the relationship between the two of them.

The relationship wasn't everything that you'd hope it would be and it seldom is when you have a business that's going bad.

Always worries about money. Mr. Limanni seemed to delight in putting Mr. Seka down, had him performing the most menial tasks at his beck and call, referred to him - - and I'm using his words - - as his nigger.

On repeated occasions, he accused Mr. Seka, in Ms. Harrison's presence, of coming on to Ms. Harrison and having designs on his girlfriend.

They weren't getting along. They weren't getting along personally. They weren't getting along in a business sense.

November 4th of 1998 was the last day that Jennifer Harrison saw Peter Limanni alive. They spent the evening watching a video, just hanging out.

The next day, November 5, which was a Thursday, she went - - she, being Jennifer Harrison - - went to 1933 Western looking for Mr. Limanni and he wasn't there. She couldn't find him.

Mr. Seka was there, had a girl there with him, said that he didn't know where Pete was. There was a room that Mr. Limanni used inside of the premises on Western where he would sleep and she got into that room and she didn't find Mr. Limanni there.

She did find every pair of shoes that he owned, which she thought was a little odd, and she found a cartridge on the floor which she thought was a little odder, but she wasn't able to locate Mr. Limanni.

You're going to hear some testimony from Mike Cerda. He's the property manager over at the premises on Western Avenue and he managed a number of units there, including the one that Sinergi was housed in.

He will tell you that to his recollection the last time he saw Mr. Limanni was on Friday, November 6th, and at that time the rent was due or was past due from the 1st of the month and Mr. Cerda asked about it and Mr. Limanni produced a big roll of bills, couple of thousand dollars, and was going to pay the rent, but said to Mr. Cerda "Will you let me have until after the weekend? There is a big cigar show out at Cashman Field. I think I can pick up some money there and I'll pay you the rent on Monday the 9th."

He didn't.

Mr. Cerda never saw Mr. Limanni again. And once the rent wasn't paid on the 9th, he commenced eviction proceedings and legal steps were being taken to terminate Sinergi from the business premises on Western.

That's where things stood in the first week of November of 1998. On November 16, something apparently unrelated happened.

A fella named Mike Stanish, a construction worker who was doing some work out at the Mandalay Bay, was driving from Mandalay Bay to Sloan, Nevada. That's where they did their dumping of construction debris.

As he was on his way he saw something off to the side of the road that looked like a body to him. He didn't have a phone with him so when he got to the site he told a friend of his, Jeff Lowrey, about it and Jeff Lowrey called 911 and meanwhile the two of them went back to the scene and sure enough it did turn out to be a body.

It was a body lying face down in a shallow, not even a grave, but just a shallow scoop in the dirt with some lumber placed in an odd kind of latticework over it.

Mr. Lawrey and Mr. Stanish sort of stood by the side of the road and they called to this individual, hoping it was somebody that had passed out.

There was no movement and they figured he wasn't alive and they stepped back and didn't disturb anything, waited for the police to get there.

When the police did get there they found a dead body of a black male. He had no identification on him of any kind, so he was initially booked as a John Doe.

And when police do that they try to do something that will associate that particular John Doe with the location or circumstances in which he was found and since he was found with this lumber stacked on top of him he was given the name of John Lumber Doe in the police reports.

The only thing in the way of personal effects that John Lumber Doe had on him was a slip of paper in his pant's pocket. The slip of paper said 429-5957 and the name Jack.

The police figured logically enough that that was a phone number and so they ran the phone number and it came back to Sinergi, at 1933 Western, to an employee named Jack.

That really is where the investigation of John Lumber Doe's demise stood at the close of November 16th.

Next morning, November 17th, Rick Ferguson

who is another one of the business owners in that shopping center where Sinergi was, he owns a trophy shop, noticed that the store front at 1929 Western, that is right next door to Sinergi, looked like it had been broken into.

There was broken glass, there was what appeared to be blood on the ground. There was plenty to make him suspicious so he called 911 and asked the police officers to come out there and check it out.

A couple of patrol officers you'll hear from, Officer Kroll, Officer Nogues, came out there to do an investigation. They could see the broken glass and what appeared to be blood.

They went around back and checked a big dumpster, one of those big green dumpsters out back, figuring that was a logical place to look. The dumpster was empty.

In fact it looked like everything had just been picked up because there was nothing in it but the paper that adheres to the bottom and becomes part of the dumpster itself.

they continued their investigation and while they were looking around the Defendant arrived at the business premises at 1933 Western and so they talked to him a little bit.

Early on in talking to him they noticed that there was a knife, nothing awful or formidable, like a penknife or jackknife, but also a bullet standing up on a desk in 1933 Western.

And so for their safety they handcuffed Mr. Seka so they could ascertain that there weren't any weapons around there. And once that was done they released him, but they continued questioning him.

He basically said he didn't know anything about what happened next door, that his business partner, Pete Limanni, wasn't around and hadn't been around since about November 5th and he thought he might be up in Lake Tahoe, but didn't really know where he was.

The patrol officers called Dave Ruffino, a crime scene analyst, to come out and start processing the scene at 1929. He came out and started making his observations and collecting evidence.

It occurred to him, not because he was involved in the John Lumber Doe case but because police officers discuss each others cases, that he had heard about a homicide victim discovered the previous day who had a slip of paper which returned to 1933 Western, and here he was at 1929 Western, so he added two and two together and knew that he had something and called homicide detectives.

The homicide detectives came out and they started doing their processing of the crime scene which is a little more intensive than what's done by the patrol officers.

Before the homicide detectives arrived in 1929 Western Mr. Ruffino had found a lot of what appeared to be blood. Some of it looked like something had been dragged through it.

He found a cap, found a cheap bracelet that had just been thrown off to one side and found a jacket with three bullet holes in it.

That was significant to him, because the body of John Lumber Doe recovered the day before had three bullet wounds in it.

So when the homicide detectives get there and with all this information in their possession they commence their investigation and one of the first things they want to do is talk to Mr. Seka, which they do, and one of the other things that they want to do is to re-check the scene, so they called the same patrol officers, Nogues and Kroll, back to the scene and they interview them about what they did in terms of investigating the scene and Nogues and Kroll tell them they checked the dumpster out back and it's empty.

The homicide detectives say "Go check it again"

and they do. And the dumpster which had been empty an hour or two before is now about six inches deep with stuff and the stuff, after they search, turns out to be clothing with Peter Limanni's name in it, personal effects and correspondence with Peter Limanni's name on them, and a scientific testing willing later bear out cards and items of identification with Peter Limanni's blood on them.

At this point the police know that they are really dealing with something and they want to take a more formal statement from the Defendant, Mr. Seka.

They take him down to headquarters and although he is not under arrest, and they tell him that, they advise him of his Miranda Rights and they take a taped statement from him and you'll have a chance to hear that during the course overs trial.

In the course of that statement the Defendant says several things. One of the things that he says is that the phone number 429-5957 found in John Lumber Doe's pocket is his phone number.

In fact, he's got the cellphone on him and he shows it to the officers and they look and it's his phone number. He says he has no idea who John Lumber Doe is or what happened to him.

John Lumber Doe happens to be a black man

so the police asked Mr. Seka are there any black people employed at Sinergi or who are around Sinergi doing business?

He says "The only person that I've seen like that is a guy called Seymour - - that's what I call him, kind of a homeless guy. He's done some work around here in the past, but I haven't seen him for about a month."

In processing the crime scene detectives recover from a waste basket in 1933 Western, in the offices of Sinergi, a couple of beer bottles. One of them has the Defendant's fingerprints on it; one of them has John Lumber Doe, who is later identified as Eric Hamilton.

Eric Hamilton's fingerprints are on it.

So the person that hadn't been there for a month or so left his fingerprints on a beer bottle found in a trash can on November 17th.

The police make a few more recoveries of items of evidence while they are talking to Mr. Seka, down at headquarters. They are starting to find the stuff that was out in the dumpster.

In 1933 Sinergi they find a bullet hole in a couch. They move the couch. The bullet went all the way through the couch and lodged in the hall and there is

a corresponding hole in the wall behind the couch.

At this point they are about at the end of their interview and the Defendant sort of sits back in his chair and says "So are you gonna arrest me or what?"

And the police officers say to him "Well, we've been instructed by the District Attorney that until we finish processing the crime scene and see what the forensic evidence is, no, you're not going to be placed under arrest."

He says "You guys are really scaring me now. You better arrest me or take me home."

So they take him back to 1933 Western so he can go home and so he can close up the business.

When he gets to 1933 Western the first thing he wants to do is take a Toyota pickup truck that's connected with the business and leave and go to dinner in that.

Well, they tell him he can't do that because they have noticed what appears to be blood in that truck and it later turns out to be the blood of Eric Hamilton, John Lumber Doe.

Additionally, testing of the tire impressions of that vehicle show that the rear tire of the Toyota leaves a similar tread to that left right at the gravesite of Eric Hamilton, right where somebody

would park a truck if they were going to slide him off the tailgate and into that shallow desert grave.

When they tell him he can't take the Toyota, there's still two vans parked outside. Those are business vans belonging to Sinergi. They are both white vans, but one of them is a plain white van and one of them has Sinergi markings and symbols and phone numbers all over it. It's like a rolling billboard.

Mr. Seka approaches to take the marked van home with him and the police officers think that's odd and so they ask can they take take a look around inside.

They look around inside and find what appears to them to be blood that has been partially wiped off and that is later identified through DNA testing as that of Pete Limanni.

So they let Mr. Seka leave, because they have been instructed not to arrest him pending the forensics and they would give him the unmarked plain white Sinergi van to leave in.

He tells them he will be back after dinner to lock up the business premises and also to take care of the dog. The dog is Peter Limanni's dog.

He's got a little dog that Jennifer Harrison said was devoted to, never goes anywhere without it. He would even bring it on dates to her apartment,

much less would leave town and go on a trip without it, but the dog is in the business premises.

Mr. Seka says "I'll come back to lock up the business, make sure everything is secure and to take care of the dog."

The next time the police see him is about four months later when he's arrested in the State of Pennsylvania on these charges and then he's returned back here for trial.

Never comes back to the business, abandons the business, abandons the vehicles. He does - - and I will give him credit - - have the courtesy before he leaves town to call Mike Cerda and ask him to take care of the dog, which Mr. Cerda does, until the dog can be turned over to Mr. Limanni's family members.

The police continue their search of 1933, both during Mr. Seka's statement and afterwards and up inside a false ceiling, not a false ceiling, but one of these hanging ceilings, they push up one of the tiles and look around inside and find a bunch of things.

Some are cartridges. One of them is a wallet containing Peter Limanni's driver's license, Social Security card, birth certificate and his credit cards hid in up in the ceiling at 1933 Western.

On November 17 an autopsy is performed on

the body of John Lumber Doe. His fingerprints are taken and he's finally identified as Eric Hamilton.

The autopsy shows he died of multiple gunshot wounds.

On December 23, 1998, Peter Borden is driving along a road in California called Nipton Road and he's just barely over the state line from Nevada into California and he sees what appears to him to be a body, but it's being tugged at by dogs or other animals in the desert.

So he calls the police and the San Bernardino County Sheriff's Office responds to the scene. You'll hear not only from Las Vegas Metropolitan Police Department police officers, but from those officers from San Bernardino who went out and processed that scene.

They will tell you what they found was a body that had been ravaged both by exposure and animals out there and wasn't instantly recognizable. There were a few things they could see.

One is that the body appeared to have suffered multiple gunshot wounds. Another is that the body appeared to have a number of tatoos, a map of Italy on his calf, an eagle on his arm.

Jennifer Harrison will tell you that those are tatoos that Peter Limanni had. One of the officers

who was out at the scene, Jeff Smink, who is now a criminalist with the Las Vegas Metropolitan Police Department, but at that time worked for the San Bernardino Sheriff's Department, knew that this body would have to be identified and what he did - - and it was cold out there so it took a while - - he injected water into the best remaining finger he could find which was a thumb print of this individual and injected the water so that he could get a good print and eventually did.

That print was what enabled the police to positively identify that individual found in the desert on December 23 was Peter Limanni.

Peter Limanni was autopsied on December 29 by Doctor Steve Frankel of the San Bernardino County Medical Examiner's Office and you'll hear him testify here.

He will tell you that at least 10 wounds were found on the body of Mr. Limanni, two apparent gunshot wounds to the left side of the rib cage, a non-penetrating gunshot wound to the base of the skull, an apparent gunshot wound to the left of that wound, but also in the skull, an apparent gunshot wound above the left ear in the skull, an apparent gunshot wound located right on the top of the skull and an indented skull

fracture on the top of the skull, a small hole on the top of the skull, an apparent gunshot wound in the right temple and an apparent gunshot wound in the left shoulder.

He will also tell you that a total of nine bullets or fragments were recovered from Mr. Limanni's body. No weapon has ever been recovered, but you will hear testimony by a firearms expert about the recovered shells and about the cartridges that I've already mentioned were found both in 1929 Western and 1933 Western.

You'll also hear from a DNA analyst with the Las Vegas Metropolitan Police Department, David Welch.

MR. KENNEDY: Objection. May we approach?

THE COURT: Yes, you may.

(Discussion off the record.)

THE COURT: Proceed, please.

MR. KANE: Additionally, in terms of forensic evidence, as I've already mentioned to you you'll hear fingerprint evidence and Fred Boyd is the Las Vegas Metropolitan Police Department fingerprint expert that you'll hear from.

He also will testify about some tire tracks. I just want to briefly outline that to you.

Again, he will say that he examined tire impressions left right by Eric Hamilton's body and he found those tire impressions to be consistent with the right rear tire of the 1998 Toyota pickup truck, the one that Mr. Seka attempted to leave 1933 South Western in the day after the discovery of Mr. Hamilton's body.

He will tell you that the track was - - if you back the truck up and dumped the body off the back of it you'd expect to find it.

He will also tell you that the lumber that was found in the kind of latticework over the body of John Lumber Doe, who we later came to find was Eric Hamilton, appeared to be similar to lumber that was used in the smoke shop renovation at 1933 Western.

It had some bar code markings on it and some of the ends were painted green or orange, but it appeared to be very similar and because of that Mr. Boyd processed the wood itself to see if he could raise latent fingerprints from the wood that covered the body of Eric Hamilton.

And he discovered the fingerprints of Peter Limanni and of the Defendant, John Seka, on a couple of those pieces of wood, identifying them as boards from the business there at 1933 South Western.

Finally, after all of that forensic

evidence, you will hear from a witness called Tom Creamer. Tom Creamer is a Sad Sack.

I'm not going to tell you he is not. He's a real sad individual. He's got a drinking problem. He's been treated for that drinking problem.

He received psychiatric treatment, but he's an old friend of the Defendant, John Seka, and he's one of the people that saw John Seka while he was back in Pennsylvania after he left Las Vegas here after being questioned by the police department.

He discussed what had happened to Mr. Limanni several times, that is Mr. Seka discussed it several times with Mr. Creamer. And Mr. Creamer will tell you that at one time Mr. Seka denied shooting Mr. Limanni or knowing anything about John Lumber Doe or Eric Hamilton, but that on another occasion when they were in an argument John Seka said to Tom Creamer "Don't make me do to you what I did to Pete Limanni."

And yet on another occasion Tom Creamer asked John Seka "Did you really kill people, kill Pete Limanni?"

His response was "Yeah, I plugged him and he was gurgling so I had to plug him again."

After you hear all that evidence, the State is going to be asking you to return a verdict of

guilty on charges of First Degree Murder and robbery, both of Peter Limanni and Eric Hamilton.

Thank you.

THE COURT: Thank you, Mr. Kane.

Does defense counsel wish to make an opening statement at this time or reserve your right?

MR. KENNEDY: I will at this time.

THE COURT: Proceed, please.

MR. KENNEDY: Ladies and Gentlemen, you heard in the jury selection process about having an open mind and how there are always two sides to every story.

Certainly we all, as Americans, went through that back in November and December with our recent election and two different viewpoints, two different parties thinking they had won the election.

In the end only one could be right.

In this case your perception of the evidence, of the testimony from the State - - and whether the defense presents evidence or not, your perception of that and how to assess that evidence, how to weigh it, how to determine whether it should be given any weight at all or all the weight in the world is very important.

That's your role here, because you are the Triers of Fact. You're the 12 people who get to decide this case and see whether the State of Nevada has proven

these charges of murder and robbery with use of a deadly weapon.

This case will be noteable for a number of things. It will be not noteable for the weight it obviously lacks. There will be no testimony from any eye-witnesses.

Actually that's not uncommon. No murder weapon. You'll find that the State's case will present evidence and there will be no clearly defined sequence of events as to how these two murders occurred.

I think it can be said clearly that two individuals were murdered, Eric Hamilton and Peter Limanni. That is unquestioned.

The question is how did that happen?

Who did it; who was involved?

You'll hear evidence that Peter Limanni and Jack Seka were friends. In early April 1998, Peter Limanni received an investment from some Japanese investors in California to start this Sinergi business, these heating and air conditioning business in Las Vegas.

He received a hundred thousand dollars in April of 1998 to set up this business and to start it. Jack Seka hooked up with him, they became friends. He was a worker in this business, an associate of his.

They lived in the same place. This office

at 1933 Western was actually their home as well.

They lived and worked out of this location for many months leading up to Mr. Limanni's disappearance in November of 1998.

They had a number of plans together. You'll hear testimony how the business really slowed down and actually was bordering on failing towards the latter part of 1998 and they thought of different ideas.

You'll hear evidence that they went to Lake Tahoe and Peter Limanni leased a property there in order to start up a heating business. There was also talk about starting up a cigar business in Lake Tahoe.

As you heard the State say there is a cigar humidor at this office at 1933 Western and that was a business that Peter Limanni was going to get into due to the failure of this heating and air conditioning service here in Las Vegas.

One thing that you'll note is that from the testimony of Mike Cerda - - and Mr. Kane alluded to that - - he will testify that on November 6th, which was a Friday, that Peter Limanni did show up with a wad of cash, two to three thousand dollars, and said "I'll be in on Monday, the 9th, with the money."

From the 6th, on, no one knows what happened to Peter Limanni. We do know and you'll hear

testimony that on either the morning of the 5th or the morning of the 6th, that Peter Limanni got up early and left that office location with an unknown individual.

He left 1933 Western and you'll hear that from some of the State's witnesses as well.

But what had happened to him between November 6th and December 23, 1998, wherein his body was found in California, that's a big mystery.

Certainly there's no evidence presented by the State as to how he was indeed murdered, how he ended up in the desert with approximately 10 shots to his body and head.

Eric Hamilton is an individual that came to Las Vegas in 1998 from California. You'll hear evidence he had a drug problem, that he used cocaine and there will be testimony he came to Las Vegas in order to get a fresh start in order to get back to California and was brought here by some of his family and relatives.

His body - - and it's important to think about this when you're looking at evidence, because of the charges of Eric Hamilton is robbery with use of a deadly weapon - - when his body was found - - and you'll see photographs of this - - he had a large diamond ring on his right hand, if I'm not mistaken, and it wasn't just a small diamond. It was a large nugget ring with

several diamonds on its face.

I'm sure you'll see a photograph of that. That was found upon his body.

You'll also hear testimony that at the murder site, the site where his body was believed to have been found, 1929 Western, next door a gold bracelet was found on the ground.

There may be some testimony and indeed questions whether or not that bracelet was his. That's certainly something to think about in relation to the robbery with use of deadly weapon charge.

We believe that Eric Hamilton may have been an individual known as Seymour who came around the property of 1933 Western in the latter part of 1998.

He was an African/American individual who was hired by Mr. Limanni to do some clean up work, a homeless individual who came there looking for some side jobs. You'll hear testimony he did some clean up work around the property.

There's another element to this case and it will become clear as the witnesses progress over the next several days that there was what we call a darker side to Peter Limanni.

Darker side in the sense that some things were going on in his own life that called into question

his business practices and things that he was doing.

He owed a hundred thousand dollars to these Japanese, one of the Japanese individuals. An investor named Takeo Kato I believe should be here to testify that he did indeed, along with another Japanese friend, loan Peter Limanni a hundred thousand dollars and by October their investment was gone.

They were out a hundred thousand.

I believe the testimony will show that one of the Japanese individuals was enforced to petition or file for bankruptcy as a result of this. So you're going to hear testimony that Peter Limanni had basically wasted away a hundred thousand dollars in the span of five or six months on this Sinergi business.

You'll also hear testimony that Peter Limanni bragged to others that he could easily disappear at a moment's notice and obtain false ID and become a new person.

You'll hear how he approached Mr. Kato, told him about the business failing. They were upset; they want their money back and told them that - - about this cigar business and that he wanted to get into and would you invest in that?

There's even some question about how would they finance it? He proposed to them, Mr. Limanni did,

that he could get a false ID and obtain a new line of credit, assume a new identity.

That's a factor to consider.

You'll also hear that in October '98 Mr. Kato came to Las Vegas. Sinergi had three vans and one Toyota pickup that were leased by the Japanese - - that were owned by the company, but were leased by Mr. Kato.

He was very upset on the trip and he will state that. He told that to the police as well. All he could do to salvage something was to drive one of those vans back in late October '98.

He took one of the vans back and wasn't able to return to pick up any other vehicles before everything happened. This is late October 1998.

Mr. Limanni disappears the first week of November 1998, so we're talking about a week or two time span.

Certainly you will hear evidence that there are a lot of people that were either upset with Mr. Limanni or that he owed money to. And he disappears on the 6th.

This case - - and it will require your attention, because I know it's not a simple case. We're going to be here possibly for a couple weeks. It will be easy to at times get distracted and think about things

going on in your own life.

Certainly as far as my client is concerned, he has a lot on the line and we certainly would hope that you would be able to maintain your focus and to listen to all the evidence carefully.

This story, I kind of liken it to a mystery novel, to a classic Who Dunnit?

And you people are the critics. You're to decide whether the State has proven Who Dunnit or who is the perpetrator of this crime.

I think what you'll see is it's like a poorly written mystery novel. This novel will lead you in many different directions. You'll hear from a cast of characters. There will be plot, a theme, but the thing that's missing is the cohesiveness to it.

You'll find the evidence presented will lack an ability to tie itself in. It will be in all different directions.

Like a bad mystery novel at the end of the story it comes to a conclusion, but you're left scratching your head going "This doesn't make sense. How did we get to this point?"

We think this is just that case. We -- the defense, my co-counsel and I, believe that the State's case will be - - will arrive at a conclusion, but

it will leave you scratching your head.

It will leave you wondering how do we get to this point based on what's been presented in the last couple of weeks? We believe that when this case is concluded the mystery will still exist.

The mystery of who killed Peter Limanni and who killed Eric Hamilton will remain unsolved.

Whether that's right or wrong, the fact of the matter is if they can't prove that, then you have a duty that you need to abide by. I would submit it on that.

Thank you, very much.

THE COURT: Thank you, counsel.

First witness from the State, please.

MR. KANE: Michael Cerda.

MICHAEL CERDA,

called as a witness herein, was sworn by the clerk of the court, was examined and testified as follows:

EXAMINATION

BY MR. KANE:

Q. Would you state your name and and spell your last name for the record?

A. Michael Cerda, C-e-r-d-a.

Q. By whom are you employed?

A. Nevada Properties.

Q. How long have you worked for them?

A. Approximately three years.

Q. I want to talk to you about 1998.

Were you managing certain properties for Nevada Properties during that year?

A. Yes.

I just started working for them as a manager, property manager.

Q. And included among those properties were there locations at 1933 and 1929 Western Avenue here in Las Vegas, Clark County, Nevada?

A. Yes. It's part of a large complex there.

Q. How many properties - - separate offices were you administering at that complex?

A. Five and a yard in the back.

Q. Do you remember the addresses of them?

A. Yes, 1921, 1925, 1929 and 1935 and 37.

Q. Is there also a 1933?

A. And 1933.

Did I forget that one?

Q. Yes.

What was 1933 during the year of 1998?

A. It originally started as Sinergi, Sinergi Air Conditioning.

Q. Who operated that business?

A. There was two partners, it was Takeo Kato and Peter Limanni.

Q. And when was the Sinergi air conditioning business opened?

A. May 6 of '98.

Q. And was there a lease?

A. Yes.

Q. For what term?

A. Two years.

Q. What were the monthly payments?

A. Eight twenty-five.

Q. Did they vary at all with income or anything else or was that a fixed amount?

A. No. It was a statutory 825.

Q. How were they at making that monthly rent?

A. At first they were fine and then towards the latter part of - - it was just before October they started getting a little late, but it wasn't real late.

They were past the five-day due.

Q. Was there anybody working at Sinergi from May through November of 1998 besides Takeo Kato and Peter Limanni?

A. They had some other employees there. I didn't know them all, but they had other employees there, yes.

Q. Did you know a man named John Seka?

A. Yes.

Q. What did he do at Sinergi?

A. I wasn't sure if he was employed on a full-time basis, but I knew he was a friend of Peter Limanni's.

Q. On how many occasions did you see Mr. Seka?

A. Four or five.

Q. Is he present in Court?

A. Yes.

Q. Point to him and tell me what he's wearing.

A. He's sitting in front of me with a sweater, brown and grey sweater.

MR. KANE: May the record reflect identification of the Defendant, Your Honor?

THE COURT: It may.

BY MR. KANE:

Q. I want to talk to you specifically about the last time you ever saw Peter Limanni.

Do you recall the date?

A. The exact date I'm not quite sure, but it was towards the first part of the month, after the 5th, because they were still late on the rent and I had talked to him regarding it.

He said to come on down and pick it up. He was going to have it for me.

Q. Do you recall the day of the week?

A. It seemed to me it was on Friday.

Q. If I tell you that November 6th was a Friday, you have no reason to quarrel with that?

A. No.

Q. Where did this conversation take place between you and Mr. Limanni?

A. In front of the unit that he occupies, 1933.

Q. About what time of the day was it?

A. It must have been around - - I'm really not sure. It was around noon, close to noon, maybe 10:30.

Q. Was there anyone else present at any time during the conversation except for you and Mr. Limanni?

A. I saw a girl come out of the building. Peter had said Hi to her and she was leaving.

Q. Did she participate at all in your conversation?

A. No, she didn't.

Q. Would you relate to the jury the conversation that you had with Mr. Limanni?

A. He asked me that if it was possible to delay making the monthly payment, because he was going to be involved in a show at Cashman Field, a cigar show.

I told him he was already late. He was going to have to pay the late fee.

I told him if he'd pay it on Monday that would be fine.

Q. Was Mr. Limanni, as far as you know, in possession of any money while you were talking to him?

A. He displayed some money that he could pay the rent with right now. I was going to write a receipt. He had cash.

He had to have had over the amount of the rent which was 825 and it looked like a large sum of money. I would say it had several hundreds rolled up and I would say between two and $3,000.

Q. And yet he asked you if he could wait to pay until Monday?

A. Yes.

Q. What was the reason again?

A. He wanted to use the cash for a show he was involved in at Cashman Field. He wanted to use it

for purchasing, I guess, retail items to sell.

Q. Did you receive the money on Monday?

A. No, I didn't.

Q. Did you you ever see Mr. Limanni again?

A. No.

Q. Did you attempt to contact Mr. Limanni to collect that money?

A. Yes.

Q. What did you do?

A. I called him on Monday morning. When I had no response I went to the shop and issued a five-day notice, posted it on the door, because there was no response.

I knocked on the door. The dog, Jake, was barking. I saw the dog and I walked around the back and saw a truck in the back.

I thought he was there, but apparently he wasn't so I just posted it.

Q. After you posted the five-day notice did you have any conversation with the Defendant, Mr. Seka?

A. Later in the afternoon I got a call from John Seka.

Q. And was there anyone else on the phone, at least as far as you know, except for Mr. Seka and yourself?

A. No.

Q. Would you tell the jury about that conversation?

A. Just that John had called to say he received the notice. He was going to pay the rent. He was looking for Peter Limanni. He wasn't around.

He had the check, but he would take care of the rent.

Q. Did you ask Mr. Seka where Mr. Limanni was at that time?

A. I asked, but he didn't know where he was. He said he didn't know where he was.

Q. Did you ever receive the rent from Mr. Seka, either?

A. No, I didn't.

Q. Did you ever see Mr. Seka after that time?

A. Yes, I did.

Q. When did you next see him?

A. It was on a Wednesday, I think it was Wednesday afternoon, the same week, which would be - -

Q. I'll tell you Monday was the 9th, so that would have been the 11th?

A. If Monday was the 9th that would have been the 11th.

Q. Where did you see him?

A. At the shop at 1933.

Q. And about what time of the day?

A. It was in the afternoon.

Q. Did you have a conversation with him at that point?

A. I just saw him pull up in the parking lot at that time. I was there with the - - some police officers that were investigating, I thought, a break-in over at 1929.

Q. So this time that you saw him was the day that the police were there investigating the break-in?

A. Yes.

Q. You mentioned the dog Jake.

A. Yes.

Q. Did there come a time when Mr. Seka asked you to take care of the dog?

A. Yes.

Q. When was that in relation to these incidents we're talking about?

A. It was Wednesday night, late Wednesday night.

Q. Is that that same day that the police were out there?

A. Yes.

Q. And how did he contact you?

A. By phone.

Q. And again, as far as you know, the only two people on the phone were you and him?

A. Yes.

Q. Tell the jury what that conversation was.

A. It was related to the dog and he asked if I would look after it, possibly take care of it. He would be gone for a while and that he wanted me to make sure that the building was secured and locked up.

I told him I had already done that.

Q. Between that conversation and today had you ever seen Mr. Seka again?

A. I don't think so. I don't think so, no.

Q. When all of this came up in November of 1998 what was, if you know, the relationship of Mr. Takeo Kato to the business?

A. He was actually the front man, the financier. He applied for the application for the unit.

He made out the application, filled the lease agreement out and participated in the operation for about a month and a half.

Q. As of November 1998 was he still participating in the business or trying to get out of it?

A. He was trying to get out.

Q. How do you know that?

A. He mailed me a letter asking that - - he wanted a release from his guarantor position of the lease and I told him he couldn't do that.

Q. Finally, were you aware of a conversion of part of the business at 1933 Western to a smoke shop or cigar room?

A. Made a request, yes.

Q. Who made the request?

A. Peter Limanni.

Q. And what did you tell him in response to the request?

A. I told him that so long as he continued to pay the rent and it was basically on time that I would allow it, provided he made his modifications and applied for the proper permits from the city.

Q. During the period of time when the police were there - - on the day that the police were there doing their investigation did you see the police talking to Mr. Seka?

A. Yes, yes.

Q. Was that in 1933 Western, his business office?

A. Yes, it was.

Q. Were you in the office at any point during their interview?

A. Yes.

Q. And what, if anything, did you see unusual while you were there in the office?

A. Well, first of all, I didn't have a key to get in and they wanted to inspect to see if there's any damage on the inside of that unit because it was next to 1929.

When John approached the unit, he came up. I saw him and I asked him for a key to get inside because I told him the police would like to check the inside. He gave me the key, because they had apparently changed the locks on the front door.

I had a key to the front door. It didn't work. He gave me a key, we opened it in, went inside. They wanted to check the inside, the back unit in there.

He went with them and allowed them to go inside.

Q. Did you see anything that attracted your attention on the desk or in any area inside of 1933 Western?

A. In the - - past the first office in the foyer when I was standing in the doorway I saw the police were making a glance around and they saw something on the table. I looked over at the same time and we saw it was a bullet on top of the one of the tables standing up by

him.

Q. Do you own or use firearms yourself?

A. Yes.

Q. What kind of firearms have you used?

A. .357 Magnum.

Q. And in relationship to .357 Magnum ammunition what did this look like?

A. It looked like a .38 special or .357 round.

Q. Did you see what happened to it eventually, whether Mr. Seka took it or the police took it, or what happened to it?

A. No. It remained on top of the desk.

Q. For as long as you saw it?

A. Yes.

MR. KANE: Nothing further, Your Honor. Tender the witness.

THE COURT: Cross-examination.

MR. CHRISTIANSEN: Thank you.

May I retrieve the lecturn?

THE COURT: You may.

EXAMINATION

BY MR. CHRISTIANSEN:

Q. Good afternoon. My name is Pete Christiansen. I represent Mr. Seka.

You've met me before, haven't you?

A. Yes.

Q. I caused a subpoena to be issued on your your business about two weeks ago?

A. Yes.

Q. In response to that subpoena I asked you to provide me all the lease documents for this strip mall there on Western Avenue that I think has five or six separate businesses?

A. Yes.

Q. Just so we have an idea, how big are each one of these businesses?

A. The the larger one at 1921 is about 2,000 square feet, maybe three. It has a warehouse in the back.

Q. Let's talk about the two we're thinking about which is 1929. How big is that?

A. They are all 1,225.

Q. 1,225 square feet?

A. I'm sorry, yes.

Q. The same for 1933?

A. Yes.

Q. If I asked you to draw on that piece of paper how these go could you do that to show the jury how the various businesses front to Western?

A. Yes.

MR. CHRISTIANSEN: Your Honor, may I have the witness do that for me me, please?

THE COURT: That will be fine.

BY MR. CHRISTIANSEN:

Q. Let me hand you a black marker and ask you to draw the street of Western and maybe the direction of north and then lay out how The Strip mall works, if you would, please.

A. This is Western here. The driveway here and the beginning of the complex is here, it goes across like this and back.

This is not to proportion, but this is is 1921.

Q. Just so the record is clear, that is the southern most - -

A. This is the northern most.

Q. The northern most business of an L-Shaped complex, with the largest one, that being 1921 Western?

A. Right. Here is 25, 29, 33 and 37.

Q. Just for the record, you're drawing these

various numbers going south and they get greater by a number of two every time.

It goes 1921, 23, 25?

A. Twenty-one.

Q. I'm sorry, 21 - - I can't read it.

A. Twenty-one, 25, 29, 33 and 37. These all have front doors here.

Q. Those front doors are facing west towards Western?

A. Yes.

Q. What is behind or just to the east of this complex that you were the manager of back in 1998?

A. Back here is the railroad tracks, and there is a yard back here.

Q. Was there a dumpster behind there anywhere?

A. I think we had one or two dumpsters. There was one back here.

Q. Just so the record is clear, would you write, put a D next to that little box you've placed behind 1933 Western or to the east of 1933 Western?

A. (Witness complied with request of counsel.)

Q. Just so the jury has some common sense, is there some type of prominent building or sign around

there that people could use as a landmark, something across the street?

A. Well, the only thing that I can think of is there's Cheetas down the street here, but that was about 500 feet south.

Q. This is somewhere between Oakey Avenue and Sahara Avenue on Western; is that accurate?

A. Yes, yes.

Q. You can sit back down, Mr. Cerda, if you would.

Mr. Cerda when you were negotiating the lease as part of your duties you were given credit applications and information on this Takeo Kato; is that correct?

A. Yes.

Q. You were not given anything on Peter Limanni?

A. Right. Peter had all the licensing with the air conditioning and heating.

Q. And Peter wasn't the guarantor on the note?

A. No.

Q. Correct?

A. No.

Q. There came a time when Mr. Kato had some

concerns that you related to Mr. Kane about being the guarantor; is that accurate?

A. Yes.

Q. In fact he sent you a letter in October 1998 asking to be taken off of the guarantor status?

A. Yes.

Q. And just so everybody is - - understands, what's your understanding of being a guarantor on one of your properties in a lease agreement?

A. They guarantee that the lease would be completed, the two-year lease period, that they would be guaranteeing payment.

Q. So if Sinergi had gone out of business, Takeo Kato would have been still been on the hook for 825 dollars a month for two years?

A. Yes.

Q. And did your company release him from his position as a guarantor?

A. No.

Q. It's your understanding that at this time, in October of 1998, the business has gone into a downturn, Mr. Limanni and Mr. Kato's business?

A. Yes.

Q. Mr. Kato is no longer there?

A. Yes.

Q. Mr. Kato in fact takes back one of the vans about this time; is that true?

A. I don't know the status of any of the vans.

Q. Fair enough.

Did you notice the number of vans that were parked out in front of the business decreasing over time?

A. Yeah, at times, yes. I noticed they were there parked and every once in a while I would see one of them missing or gone.

I wasn't quite sure how many was out there at any one time.

Q. Did you later receive in your capacity as a property manager for this complex a notice of bankruptcy on behalf of Mr. Kato?

A. Yes.

Q. And you or your company was listed as a creditor?

A. Yes.

Q. And can you explain your - - do you have an understanding of - - he went into bankruptcy and you were a creditor?

A. Yes.

Q. And so you couldn't collect from him?

A. Yes.

Q. The bankruptcy stayed those proceedings?

A. Right.

Q. Did you have an understanding if it was this business failure that forced him into bankruptcy?

A. I'm not quite sure. I just know he went BK. He filed for bankruptcy.

We were listed as a creditor and by that time we had re-rented the complex so the loss had been minimized.

Q. That bankruptcy came sometime after you received the October letter saying - - from Mr. Kato saying "Please take me off as a guarantor."?

A. Yes.

Q. When the lease was entered into between Sinergi and Mr. Kato and yourself or your business were you given some type of financial statements for Sinergi?

A. Yes.

Q. Did you ever check those financial statements out to see whether they were true and accurate?

A. They seemed to be accurate.

We had run a credit check on Mr. Kato and we felt, because of his financial status, individually, we could grant the lease.

Q. I want to be clear.

You were looking to Mr. Kato for the guarantee of this lease payment and never to Mr. Limanni?

A. No.

Q. At this time in late 1998, October, November, December, 1998, there was another building within this complex or another room within this complex being rented out as a boiler room or telemarketing room, correct?

A. I wasn't sure exactly what it was, but it was telemarketing.

Q. Do you know whether any individuals that worked there were indicted in the federal system?

A. No.

Q. Was it closed down at some point?

A. Yes.

Q. In fact they rented that office and paid a bunch of money up front and then closed down sometime within the time frame that they had paid in advance?

A. Yes.

We had a lease agreement with an attorney in New York and because of his distance we requested more money up front.

Q. When is rent due or under the lease agreements between yourself and Sinergi when was rent due

during the month?

A. On the 1st.

Q. So when you see Mr. Limanni on the 6th, if that's the Friday you saw him, he's five days overdue with rent?

A. One day actually. We give them until the 5th.

Q. So they take the statutory five-day late time before you try to go out and post a five-day notice you told these folks about?

A. Yes.

Q. And Mr. Limanni asked you not to do that day, correct?

A. Yes.

Q. He pulled out of his pocket a wad of cash?

A. Yes.

Q. He said he would be back and pay you on Monday?

A. He was going to pay me right then and there. I was going to accept the money and he asked afterwards "Do you think I could hold off? Since I'm late, I can go ahead and pay on Monday, over the weekend."

Q. It wasn't you saying to Mr. Limanni "Hey, why don't you hold off until Monday?"

He asked you for the favor?

A. Yes.

Q. His justification was that he had to go do some type of cigar show?

A. Yes.

Q. Was there a cigar show at Cashman Field that week?

A. I don't know. I'm not sure if there was or not.

Q. Did you ever see any proof from him that he entered or had anything to do with the cigar show that weekend?

A. Nothing except there was some scattered cigars after we entered, after the five-day notice was completed.

Q. And that would have been the 17th or a couple weeks later on?

A. Yes.

Q. When the police officers were there?

A. It would be after that.

Q. You posted the five-day notice sometime during the week. If the 6th is when you see Mr. Limanni, it would have been sometime during the week of the 9th; that is accurate?

A. It was the Monday, that Monday, whenever

it was. It was the 6th.

Q. The 9th?

A. Right.

Q. And in response to that my client, Jack Seka, called you and told you that he didn't know where Mr. Limanni was, correct?

A. Yes.

Q. He thought they were going to make good on the rent?

A. Yes.

Q. Correct?

A. Yes.

Q. And that never came to be; is that accurate?

A. Yes.

Q. There was a brown truck, Toyota pickup owned by this business; is that correct?

A. I don't know if it was owned by the business, but it was used there.

Q. Do you know who owned all the vans and the truck in question?

A. No.

Q. You never got to see who was on the lease?

A. No. On the truck and vans I suspected it was Mr. Kato.

Q. This truck they had back then, it was kept clean, correct?

A. It appeared to be clean.

Q. And that's what you told the police back when they interviewed you in your taped statement on November 17, 1998?

A. 17th. That would have been a Wednesday. It was the following Wednesday, I mean after the five day, so it would have been 9, 10, 11 - -

Q. If I show you, might that help your recollection?

A. Sure.

MR. CHRISTIANSEN: May I approach the witness?

THE COURT: Yes.

MR. CHRISTIANSEN: I'm showing him the statement, counsel.

THE WITNESS: I know I gave a statement. I didn't know it was that date.

BY MR. CHRISTIANSEN:

Q. It was on a Wednesday; is that accurate?

A. Yes.

Q. If the 17th was the following Wednesday, that would comport with your memory?

A. Yes.

Q. In that statement you told the police the truck was kept clean, correct?

A. Yes.

Q. And that - - in that statement you also told the police that at the time Mr. Limanni showed you the cash and asked the favor, on the 6th, that he had a blonde-headed, I think you said a shapely, blonde-headed, nice looking gal?

A. She came out of the building, yes.

Q. I think you told Mr. Kane she wasn't part of the conversation, but she was with him?

A. No, no.

Q. Was he wearing shoes when you saw him on the 6th?

A. I can't recall if he was or not.

Q. Now, this is wintertime.

Did you notice a guy walking around barefooted?

A. Wouldn't seem logical, but we have nice weather here.

Q. I want to tell you - - talk to you about the time when when Mr. Seka pulls up to the business on the 17th of November.

You've already told the jury, in response to Mr. Kane's questions, that you asked Jack for a key to

the building; is that correct?

A. Yes.

Q. That's a key to 1933, just so I'm specific?

A. Yes.

Q. Jack then gives you the key to 1933 Western and you let the police officers in?

A. There was a key inside. I don't know if there was was a key inside that I received.

I'm not sure who opened the door to get inside. We entered all at the same time.

Q. You just can't remember if you unlocked the door or if Jack unlocked door?

A. I can't remember that.

Q. Once you go inside, the police officers appear to look around, they see a bullet and they - - a penknife of some type and they handcuff Jack while they look around the inside of the building?

A. Yes.

It was just the one officer that I can remember that went inside. We went inside together, all three of us.

Q. Were these uniformed officers?

A. Yes.

Q. In black and whites?

Q. I think so.

Q. Do you remember how many patrol cars were there?

A. There was more than one patrol car when we entered the building, yes.

Q. Did the officers that were with you - - do you remember the names either being Kroll or Nogues?

A. I can't remember their names.

Q. Fair enough. Been a couple of years.

Did the officer that went inside with you ever go on to the back door of that building?

A. Not when I entered with them. I didn't go all the way in the back.

I stayed in the foyer and door area. He might have gone out the back door, but I didn't see him go out.

Q. How long was he out of your eyesight?

A. Not very long.

Q. Long enough to go out the back yard and search the dumpster and the area?

A. I didn't see.

Q. When was the first time you saw anybody from the Las Vegas Metropolitan Police Department behind on the east side of 1933 by that dumpster?

A. It was after - - it was late, because I

had left the site and they had asked me to be on call to come back and lock it up if I needed to.

They called me. I was at Bible study on Wednesday nights. It must have been after 8:30, 9:00 o'clock when he called and I returned to the site to lock it up.

When I returned - - I don't know for what reason - - I went around the back. There was two officers in the back searching the trash bin.

Q. This would have been sometime around the time you gave this taped statement?

A. I think so, yes.

Q. So if the taped statement indicates that you had gave it at 2135, military time, I think that's about 9:30 real person time?

A. Right.

Q. So that would have been - - comported to your memory, correct?

A. Yes, it would.

Q. And prior to you going back to Western to secure the premises Jack called you on the phone, didn't he?

A. No. It was after I got home that evening.

Q. What did he ask you to do when he called you on the phone?

A. He said that he was going to be gone for a while and that if I could take care of the dog and make sure I would feed it or pick it up.

I looked after the dog.

Q. At any point did Jack say to you any version of events other than what you've told the jury that he didn't know where Mr. Limanni was?

A. No. He insisted he didn't know where he was.

Q. And prior to you giving the statement to the police officers and even as we sit here today you're not friends the Jack Seka, are you?

A. No.

Well, I know Jack and I've talked to him. He was a friendly person. I'd call him a friend if I saw him, talked to him.

Q. You didn't know his name, last name when you gave the statement to the police?

A. I honestly don't think I knew his last name.

Q. Everything you've testified here today is to the best of your recollection, even though it's three years out?

A. Yes.

MR. CHRISTIANSEN: Thank you. Pass the

witness.

THE COURT: Re-direct?

MR. KANE: Two things to clear up.

RE-EXAMINATION

BY MR. KANE:

Q. When you got to the business on the day when the police were there?

A. Yes.

Q. Who got their first?

Were the police there when you got there or the other way around?

A. No. I was there first.

At 1929, at the break-in, I was there first. We called the police and then they arrived.

Q. Then the police arrived?

A. Yes.

Q. You had mentioned that at one point Mr. Kato stopped coming around the business?

A. Yes.

Q. About when was that?

A. I would say towards the end of June, maybe July, beginning of July. You know, I didn't see him.

I saw him on a regular basis the first

month, maybe month and a half he was there full-time.

Q. Between the end of July and the events we've been talking about and the end of November 1998 did you ever see Mr. Kato at the business?

A. I think once.

Q. And when was that in relation to what we're talking about, that first or second week of November?

A. It was - - he had come down to talk to Pete about something and he come in the office and asked me - - he said he was unhappy with the arrangement. He wanted to try and make arrangements to get out.

I told him at that time I couldn't do it.

Q. What I'm trying to get clear on is when was that in relation to these events in November?

A. I would say in August.

Q. A couple of months before?

A. Yes.

Q. That was the last time you saw Mr. Kato at the premises at 1933 Western?

A. I saw him afterwards when he came back up after.

Q. Right. I mean between - -

A. No.

Q. - - that date and the date the police were

there that was the last time you had seen him?

A. Yes.

MR. KANE: Nothing further.

THE COURT: Anything further?

RE-EXAMINATION

BY MR. CHRISTIANSEN:

Q. Mr. Cerda, did Mr. Limanni ever tell you he had one of these Sinergi businesses or heating and air conditioning businesses in other cities?

A. I think so.

Q. Did he ever give you a card indicating a Paulsborow area, Williamstown area business?

A. I got some documents back in the file that had other locations. I think Arizona some place.

MR. CHRISTIANSEN: May I approach the witness?

THE COURT: You may.

BY MR. CHRISTIANSEN:

Q. In response to my subpoena you gave me a photocopy on the top that has Peter Limanni's name on a business card with locations and phone numbers in Paulsborow and Williamstown; is that correct?

A. Yes.

Q. Did you keep that in the regular course of your business?

A. Yes.

Q. Is that something Peter Limanni gave to you?

A. Yes.

Q. And so that leads you to believe he had this business in other areas - -

A. Yes.

Q. - - of the country prior to starting up with you?

A. Yes.

MR. CHRISTIANSEN: Judge, move for the admission of Defense Proposed Exhibit A.

THE COURT: Any objection?

MR. KANE: No objection.

THE COURT: It is received. Thank you.

MR. CHRISTIANSEN: Nothing further.

Thank you, Mr. Cerda.

THE COURT: You may step down.

Counsel approach, please.

(Discussion off the record.)

THE COURT: Ladies and Gentlemen, we will adjourn for the evening. Let me read to you the admonition as is required by the law.

(Whereupon, the Court admonished the jury.)

THE COURT: Let me, if I may, add one thing to that. When you go home it is likely that a family member or friend might well ask you "What happened in Court today?"

It's a very natural question. You don't come to Court every day. Please refrain from discussing it with them. Not only is it very definitely the law, but perhaps more importantly it's just fair.

If you were the prosecutor or if you were the Defendant you would want a decision made by the jury based on what happens here in Court, not what someone's neighbor thinks or their husband or son. You see the situation.

Relatively soon, in a very short time, you'll be able to discuss this with anyone you'd care to. Please resist the temptation of discussing it because my experience has been once you start talking about it, maybe things that seem innocuous, it leads to another question and pretty soon you're talking about things that really you shouldn't be. Please keep that in mind.

Small thing to ask. We will resume at 1:00 o'clock tomorrow. Be here punctually because we can't start until we're all assembled.

If there's anything to discuss, counsel, outside the presence of the jury before we begin tomorrow I would ask you to see me before 1:00 o'clock.

Court is adjourned.

(4:50 p.m.)

ATTEST that this is a true and complete transcript of the proceedings held, DATED this 14th day of February 2001.

J. A. D'AMATO CCR #017

163

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED IN OPEN COURT
FEB 15 2001 19
SHIRLEY B. PARRAGUIRRE, CLERK
BY Linda Skinner
LINDA SKINNER, DEPUTY

* * * *

STATE OF NEVADA,

Plaintiff,

vs.

JOHN JOSEPH SEKA,

Defendant.

Case No. C159915
Dept. XIV

VOLUME I

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

BEFORE THE HONORABLE DONALD M. MOSLEY

DISTRICT JUDGE

Taken on Wednesday, February 14, 2001

At 1:00 p.m.

APPEARANCES:

For the State: EDWARD KANE, ESQ.
TIM FATTIG, ESQ.
Deputy District Attorneys

For the Defendant: KIRK T. KENNEDY, ESQ.
PETER S. CHRISTIANSEN, ESQ.

Reported by: Maureen Schorn, CCR No. 496, RPR

INDEX

WITNESSES ON BEHALF OF THE STATE:	PAGE
GILES SHELDON GREEN, M.D.	
Direct Examination by Mr. Kane	17
Cross-Examination by Mr. Christiansen	30
RICK FERGUSON	
Direct Examination by Mr. Kane	38
Cross-Examination by Mr. Christiansen	42
JENNIFER HARRISON	
Direct Examination by Mr. Fattig	50
Cross-Examination by Mr. Christiansen	74
Redirect Examination by Mr. Fattig	101
Recross Examination by Mr. Christiansen	103
Further Redirect Examination by Mr. Fattig	105

EXHIBITS

STATE'S	DESCRIPTION	MARKED	ADMITTED
1	Photograph	21	22
25	Photograph	73	
DEFENDANT'S			
B	Statement	76	

LAS VEGAS, NEVADA. WEDS., FEBRUARY 14, 2001, 1:00 P.M.

* * * *

THE COURT: The continuation of C159915, State versus John Joseph Seka. The record will reflect the presence of the defendant; his counsel, Mr. Christiansen and Mr. Kennedy; Mr. Kane and Mr. Fattig present for the State. The record will further reflect the absence of the jury.

Mr. Christiansen, you have a motion?

MR. CHRISTIANSEN: Yes, Your Honor. Yesterday during opening statements Mr. Kane mentioned DNA, and eventually mentioned the name of a Mr. David Welch who works for the Las Vegas Metropolitan Police Department Forensic Laboratory.

And at that time during openings and contemporaneous with the mentioning of that name, we objected. We approached the bench, and off the record spoke to Your Honor about the lack of notice as required by NRS 174.234, inasmuch as the State had failed to give us notice of this expert and his CV as required 21 days prior to trial.

So I first ask the Court that it deem the objection timely and appropriate at the time. We are making a record of it now so we didn't interrupt

proceedings yesterday.

The issue in the case, really, is whether the Court should preclude David Welch from testifying on behalf of the State. We've impaneled the jury, we've had one witness testify already. I was provided Mr. Welch's CV either last night by Mr. Kane, or this morning. It was at my office when I got there this morning. I don't know if he faxed it to me last night.

And his CV shows that he has a Masters in Forensic Chemistry and a Bachelors in Biology. We were given this afternoon when we came to trial the Supplemental Notice of Expert Witness, which does comport to the referenced statute, and that notices David Welch to testify.

Now, I have had possession of Mr. Welch's reports done in connection with this case. I've had one, I think in March of 2000, and then about a week or ten days ago Mr. Kane and I met up at the homicide office with Detective Thowsen. I noticed that I didn't have a second report, and Mr. Kane provided that report to me at the time.

However, had I known and been notified that Mr. Welch was going to testify, had he been listed on the witness list, even a nonexpert witness list, I would have retained an expert of my own to examine the forensic

evidence in this case.

It becomes quite important, Your Honor, if you just sort of breeze over the reports done by these purported experts. In every DNA test I've looked at in trials I've done the results are, if they're a positive result, astronomical numbers.

In other words, they say the chance of it not being a certain individual's blood or DNA is one in some-odd billion or trillion, numbers that are very amazing and impress a jury, surely.

However, if the Court just briefly glances through Mr. Welch's reports, he has such numbers as one in 17,200, and one in 88,000, which I can tell the Court seems no more DNA evidence -- no more beneficial than the old-fashioned blood typing, and far less scientific than DNA evidence.

So there is definitely fruit and fodder to be had with Mr. Welch, who expectedly is going to come in here and stand up and say: I know the blood found in the back of the truck was Peter Limanni's -- or Eric Hamilton's, and I know the blood found in the back of the van was Peter Limanni's.

We are put at a severe downside and having our hands tied, and being expected to review a CV of a purported expert in a day, or a week for that matter, when

our legislature has mandated that they give us 21 days.

The statue in question is mandatory. It's not a "may" statute, it says "shall." The State or the Court shall -- and it gives the Court the discretion. Subsection 3A says, "The Court shall prohibit an additional witness from testifying if the Court determines that the party acted in bad faith by not including the witness on written notice required by Subsection 1.

I am not suggesting that Mr. Kane or Mr. Fattig intentionally tried to hide things from us or hide the ball; however, we are in a death penalty case where the most severe penalty is being sought by the State of Nevada.

And we are at a disadvantage now having to review a Curriculum Vitae, as well as questionable reports and results in a matter of days, when we should have had a matter of 21 days at minimum as required by statute.

So I would ask that the Court preclude David Welch from testifying in this case. It's clearly within your authority to do that. The statute allows you to do that. The State can put their witnesses on and continue through the case without his testimony.

And it was no failure on the part of the Defense that we were not notified of the State's intention to use David Welch as an expert in this case.

THE COURT: Thank you. Response?

MR. KANE: Your Honor, I would ask permission to file the Supplemental Notice of Expert Witness in open court?

THE COURT: Very well.

MR. KANE: And I just want to make a record on the issue of good faith. If the Court will take a look at the Notice of Expert Witnesses that we did file in this case, you'll see that every crime scene analyst is listed as an expert witness, people who just go out and pick up evidence, bring it into court and say: Yeah, that's my signature on the evidence bag. They're all listed as experts.

In other words, in our unit every effort is made to list everybody who could conceivably be thought to give an expert opinion. In homicide cases especially, all of the reports aren't done at the beginning of the case. Reports dribble in from time to time, especially reports of forensic examination.

For that record, I have never believed that the open file policies instituted by our office is the most effective means to make sure that needed information gets into the hands of the Defense.

I've got my own policy, and my own policy which I implement in every case, and did in this case, was

to make my file available to the Defense at any time. As we get close to a firm trial date -- and the Court well knows that usually several trial dates are set in a homicide case, and finally you get one where you know it's pretty much going to go.

And as you get close to that date, it has always been my policy, and I did it in this case, told Defense counsel: Please, come to my office, go over my file page by page to make sure that there's nothing that I've got here that you haven't got. That was done within the last two to three weeks.

After that, Mr. Christiansen told me that he wanted to go to homicide and take a look at the homicide detective's file just to make double sure that I had everything the homicide detective had, and that Mr. Christiansen had everything that I had.

We did that and we spent a couple of hours with the homicide detective one afternoon. Mr. Christiansen pulled out several pages of reports. I think they were all reports of forensic examination, one by Torrey Johnson, one by Mr. Welch.

I asked the detective who was running the copies of those reports to run extra copies just so I would know what was alleged to have been missing. And when I got back to my office after the conference with the

homicide detective, I compared the extra reports that Mr. Christiansen had requested with the reports in my file, and they were all duplicates of things that were in my file.

Now, David Welch did do two separate reports. He did an original report which Mr. Christiansen has indicated he received back in March of 2000. And then he did a supplemental report.

Now, I suspect that in going through my file what happened was, they were viewed as duplicates of the same report, and that's why Mr. Christiansen wound up without one.

All of this being said, there has been absolutely no bad faith here. Mr. Christiansen and I have made reference from time to time in a joking manner about there's going to be DNA evidence at the trial since that original report was turned over in March of 2000.

There's been no effort here to hide anything, and it certainly wouldn't be in my interest to hide anything. The only thing that they got at the last minute was his CV. And his CV is his CV. It's where he went to school, what his experience is, the courts in which he is qualified.

I know what the statute says, and I think I know why the statue is there, so that neither side in the

middle of trial will come out of left field with some witness that no one has ever heard of, testifying in an issue that is unforeseen, and all of that investigation has to be done in the middle of trial.

This is a witness testifying in an issue that the Defense has known would be an issue since at least of March 2000 when they received the first report. And the only thing that was turned over at the last minute right at the eve of trial was the CV. And the only reason that happened is, I didn't know they hadn't gotten it.

I will admit that all of the formal discovery procedure does not excuse my responsibility for complying with statutory requirement, and we blew it. He should have been listed as an expert witness in that notification, and he wasn't.

But the only situation in which the statute addresses exclusion of the witness's testimony is where the Court makes a finding that the State has acted in bad faith. That didn't happen here.

So the remedy should be, if the Defense needs n day or something to get an expert here to attack either Mr. Welch's conclusions or his CV, they should be allowed that, but Mr. Welch should be allowed to testify.

THE COURT: Mr. Kane, of your knowledge, do you know how many times, if at all,

Mr. Welch has been recognized as an expert in any court system that is comparable to this court on the DNA matter?

MR. KANE: He was been recognized as an expert on DNA matters on approximately ten occasions.

THE COURT: In what system?

MR. KANE: In our court system.

THE COURT: Was there something more, Mr. Christiansen?

MR. CHRISTIANSEN: Judge, only to point out to the Court that there is something more that a CV brings in terms of if you're trying to defend a case. And the best example I can give is, about three years ago there was a defense expert who traveled around the country testifying about methamphetamine labs.

And a Prosecutor in this jurisdiction in the federal system did a background check on this Defense witness's -- expert witness, he testified in multiple jurisdictions as an expert. They did a background check on him and found that he had a felony conviction in Texas, and had served some prison time at a point in time when on his resume he was supposedly attending some graduate school some place else.

And so every time I get a CV and get a notice that somebody is going to testify as expert, my staff is meticulous about calling every place this

gentleman purportedly, or woman purportedly was in terms of their education and their experience, and verifying this.

That is a time-consuming effort, and it's one which I will not be allowed to undergo in this process because of the late notice given, not comporting to the statute regarding Mr. Welch.

THE COURT: Thank you. All right. Today is Wednesday. Mr. Kane, when will you conclude your case in chief?

MR. KANE: Your Honor, I expect to conclude next Tuesday or Wednesday, however --

THE COURT: You realize Monday is a holiday?

MR. KANE: Right. However, Mr. Welch is leaving town Saturday morning. He also has a doctor's appointment at 3:15 on Friday. So it had always been my plan to call him tomorrow.

And as far as his CV, I don't challenge the Defense's right to look into it. If they find out that he's a felon or spent some time in prison, I've known Dave for about 20 years, we can strike his testimony and give whatever instruction we need to the jury. That's not going to happen.

But if they need some time to check his

qualifications, I certainly think we'll be finished with our evidence by Tuesday or Wednesday, and if a day or so is needed to get an expert in here on behalf of the State, I'm not going to raise an objection to that.

THE COURT: All right. The attendant circumstances do not amount, in my judgement, to bad faith on the part of the Prosecution. I think we have more of an oversight than anything else.

Having said that, it would be my intention not to strike the testimony, but to try and cure or avert any disadvantage that might be suffered by the Defense.

Now, I asked the question of you, Mr. Kane, not to determine when your man would testify, but to get some idea as to when the Defense would be calling a counter to this if, in fact, they elect to do so. And I would estimate maybe Thursday of next week or, perhaps, Friday. Is that in the ball park, Mr. Christiansen?

MR. CHRISTIANSEN: That sounds to me to be correct. As I indicated to the Court in chambers after I got the CV yesterday, last night and this morning I've been in contact with an individual I've used in California. I sent her just as I was leaving office, I was faxing her all of the relevant information.

I'm hopeful that I can speak to her tonight or tomorrow morning. Since we only have the afternoon

trial schedule, that gives me some flexibility in the morning to talk to her to try and prepare for cross-examination of Mr. Welch and, hopefully, get her here Thursday or Friday of next week.

She told me she was free at some point next week. I could tell the Court tomorrow when we come in at 1:00 o'clock what day I can have her here. She's not far, Judge. She's only in LA, so it's an hour flight if, in fact, I intend to use her.

The only problem I potentially see is -- if Mr. Kane has known David Welch for 20 years, I doubt I'm going to find that he was in prison in Texas or anything of that nature. If I did uncover something as dramatic as that, I would reserve my right to recall him in my case in chief, and expose whatever problems with his CV I discover in the next week, even after he is done testifying.

MR. KANE: And, Judge, as one final accommodation, since this is my fault. If it turns out that Mr. Christiansen's witness is only available let's say Tuesday, and I am still in the middle of the State's case, I have no objection to interrupting that and allow her to be called out of turn, so we don't lose her testimony.

THE COURT: Well, that's certainly understood. And I think it's safe to indicate the Court

is going to accommodate this situation on the part of the Defense in any way that is feasible. And I think the State will agree with that as well.

MR. KANE: Yes, Your Honor.

THE COURT: Any else outside the presence of the jury, counsel?

MR. CHRISTIANSEN: No, sir.

MR. KANE: No, Your Honor.

THE COURT: Mr. Bailiff, please.

(Whereupon, the jury entered the courtroom.)

THE COURT: Ms. Clerk, would you call the roll of the jury, please.

THE CLERK: Paul Kanala?

JUROR KANALA: Here.

THE CLERK: June Craig?

JUROR CRAIG: Here.

THE CLERK: Antonina Clark?

JUROR CLARK: Here.

THE CLERK: Jamila Pierson?

JUROR PIERSON: Here.

THE CLERK: Timothy Thomas?

JUROR THOMAS: Here.

THE CLERK: Laura Williams?

JUROR WILLIAMS: Here.

THE CLERK: Daniel Brown?

JUROR BROWN: Here.
THE CLERK: Shari Custard?
JUROR CUSTARD: Here.
THE CLERK: Trudy Reeves?
JUROR REEVES: Here.
THE CLERK: Scott Saunders?
JUROR SAUNDERS: Here.
THE CLERK: Monta Hafen?
JUROR HAFEN: Here.
THE CLERK: Barbara Kwiatkoski?
JUROR KWIATKOSKI: Here.
THE CLERK: Michelle Pro?
ALTERNATE JUROR PRO: Here.
THE CLERK: Eric Zuck?
ALTERNATE JUROR ZUCK: Here.
THE CLERK: Your Honor, the panel is present.
THE COURT: Very good. Good afternoon, ladies and gentlemen. The State may call their first witness of the day.
MR. KANE: Dr. Giles Sheldon Green, Your Honor.
/ / /
/ / /
/ / /

Whereupon,

GILES SHELDON GREEN, M.D.,

was called as a witness by the State, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KANE:

Q Sir, would you please state your name and spell your last name for the record.

A Giles Sheldon Green, G-r-e-e-n.

Q Sir, by whom are you employed?

A I am employed by Clark County as a coroner in the Medical Examiner Department.

Q And are you a Medical Doctor, sir?

A I am.

Q Would you briefly summarize for the ladies and gentlemen of the jury your educational and professional background.

A Okay. I received my degree of Doctor of Medicine from the University of Oregon School of Medicine in Portland in 1959. I served one year of internship at St. Mary's Hospital in San Francisco. And then one year of postgraduate training or residency training in the field of obstetrics also at St Mary's.

At the end of that year I had changed my

field of interest to pathology, and spent the next two years in postgraduate training in pathology at St. Joseph's Hospital, also in San Francisco.

I then moved to Houston, Texas, and spent the next three years in postgraduate training in pathology at the University of Texas, M.D. Anderson Hospital. Following that I was appointed on the staff of Anderson Hospital as Assistant Pathologist and Assistant Professor of Pathology in the University of Texas system.

I remained on the staff there for approximately two years, and in the fall of 1968 I joined the Harris County Medical Examiners Department, which also is in Houston. I served with that department for approximately seven years, first as Assistant Medical Examiner, and later as Deputy Chief Medical Examiner.

Finally, I moved here to Las Vegas in 1975 to join the Clark County Coroner Medical Examiner Department, and I've been here ever since. I have a license to practice medicine here in Nevada, of course. I have held active licenses in both Texas and California, which I no longer pay exorbitant rates for.

I'm certified by the American Board of Pathology in fields of anatomic pathology, clinical pathology, and forensic pathology. And I'm a member -- I'm not going to bore you with the list

here -- but member of most of the professional organizations in North America which deal with the problems of forensic pathology, and the forensic science in general.

Q You've used the term forensic pathology, Doctor. Would you explain what that is to the ladies and gentlemen of the jury.

A Forensic pathology is a subspecialty of the general field of pathology, and it deals with the medical part of the investigation of sudden, unexpected, or violent death.

Our job is to examine the remains of those who were found dead here in our community, and to determine why they died, what the circumstances were, and what really happened, and what really went on there.

Many of these cases are natural deaths. We have an enormous number of natural deaths which we look at. And there are many that are violent deaths. We must look at all of those, whether these are accidents, or suicides, homicides, or a body that's found and nobody knows what happened. They're all ours.

Q Do your duties with Clark County Coroner's Office include performing autopsies on the bodies of persons who die under suspicious circumstances?

A Yes, sir.

Q Do your duty also include forming opinions as to the cause and manner of the deaths of those persons?

A Yes, sir.

Q And, finally, do your duties include testifying about those opinions and conclusions in court?

A Yes.

Q Have you previously qualified as an expert in the field of forensic pathology before any courts in the State of Nevada?

A Many times, yes.

Q At all levels of trial courts?

A From the Grand Jury or Justice Courts or District Courts, and in the federal courts as well.

Q And I won't ask you how many times, but starting in what year?

A I suppose the first time was about 1976 in Texas, and most of the court appearances there were in the District Court. And I suppose over the years between Texas and Nevada and the scattering of other states, a thousand times or more.

MR. KANE: Your Honor, I would tender the witness for voir dire on his expert qualifications.

MR. CHRISTIANSEN: I don't have any questions for Dr. Green.

THE COURT: The doctor is recognized as

an expert in his general field. Proceed.

Q (By Mr. Kane) I want to direct your attention to November the 17th of 1998, Doctor, did you perform an autopsy on that date on the body of a person who was later identified to you as Eric Hamilton?

A Yes, I did.

Q Now, at the time you performed the autopsy, he had been booked as a John Doe; is that correct?

A That is correct.

Q Is it part of your practice, Doctor, to have photographs taken in the course of the autopsy?

A Yes. The photographs which you have undoubtedly were taken by one the people from the Police Department Crime Lab. I think that was Mr. McPhail. They handle virtually all the photography. We are now doing more photography in-house than we used to, but at that time we weren't doing very much.

MR. KANE: May I approach, Your Honor?

THE COURT: You may.

Q (By Mr. Kane) I only want to show you one photograph, what's been marked for the purposes of identification as State's Proposed Exhibit 1. Is that a picture of the person who was identified to you, at least back on November the 17th, as John "Lumber" Doe?

A Yes. I'm not sure the date that he

was -- it must have been the 17th, because that's the date of the autopsy. But he was found on the 16th, and we didn't know then who he was.

Q Understood. And does this fairly and accurately depict the way he looked on November 17th of 1998?

A Yes. May I make one comment here? In the picture there is a rectangular piece of heavy paper which we prepare for identification purposes for the photographers. And this one says John Doe, but it also says John, quote, "Lumber" Doe.

The reason for that is, that when he was found there was some pieces of fresh-thrown lumber either on or near the body.

MR. KANE: Offer State's Exhibit 1, Judge.

MR. KENNEDY: No. Objection.

THE COURT: It is received. Thank you.

Q (By Mr. Kane) Would you briefly outline the procedure that you employed in performing this autopsy for the benefit of the ladies and gentlemen of the jury?

A The procedure is quite standard and quite routine. We first review all of the information that is available about a particular case. We have our own investigators who go to the scene of death, collect as

much information as they can about the person, get him identified, if possible, and give us a word picture of what the situation looked like.

They file a written report that we have available the next morning. And, also, in cases which involve police officers, detectives, and so on, we often have a lot of conversation about the case, and they often can fill in blank spots that were not possible to fill in at the time that our investigator was there.

So we try to find out as much as we can about the individual in question, basically, so that we know what questions we have to answer.

We then examine the body externally. My routine is to start at the top of the head and work my way all the way down, using a handheld tape recorder so that as I look at the body and various features of it, I'm dictating my findings. And by the time I'm through looking, I'm through talking. It's all on tape.

The body then is opened and we have a chance to look at the various organs and structure of the chest and abdomen as they lie together in their normal relationships. And we're looking for anything out of the ordinary, any abnormal, evidence of injury, disease malformation, whatever may be unusual.

Finally, each of the various vital organs is

removed and they are examined by the pathologist, in this case myself, weighed, measured, findings dictated. And when you finally get through with all this, hopefully we have a good idea of what happened to this person, some idea of who he is or she is. And we know more about the circumstances of death than we did when we started.

Now, this is just a basic routine. We may go on to do other things. We often will do toxicologic studies. We, our own department, does not do them. These are performed by Associated Pathologist Laboratories here in town. They have undoubtedly the best toxicology laboratory between Los Angeles and Salt Lake.

Particularly in cases where there may be evidence or suggestion of violence, we like to have the toxicology studies. We want to know if the person was intoxicated, did he have drugs, legal or illegal in his system. This may have a bearing down the line somewhere on our findings.

Q Doctor, would you tell the jury, please, what were your significant observations during your external examination of the body of the person we've been referring to as John Lumber Doe?

A The most significant findings consisted of three gunshot wounds. One bullet struck the back about midchest area, a couple inches to the left of the midline

of the back. We found that this had gone through and had exited the right upper chest just below the collar bone, and right next to the breastbone.

A second bullet had struck the left flank area just above the hip bone going from left to right, a little bit back, and exiting out the right buttock.

And the third had gone through the back side of the right thigh. This was a fairly short flesh wound, did not strike any vital organs.

Minor findings which may or may not have any great significance, there was a little laceration of the skin of the right wrist, actually just above the wrist joint an inch or so; a little abrasion or scraping injury on the ball of the thumb.

We had a few little nicks on the left-hand, and some little areas where the skin looked like it had been blistered, like on the left elbow. What had caused that, I have no idea. They were quite small, but it looked like an area that you get if you burn yourself with blisters, and the top layer of skin comes off.

Q Doctor, as to the minor wound on the wrist, if I told you that there was a bracelet found at the crime scene, would that wound be consistent with somebody tearing a bracelet from the wrist?

A Possibly.

Q Would you next describe for the ladies and gentlemen of the jury the significant observations you made during your internal examination of John Lumber Doe's body?

A Okay. The significant internal findings were related to a gunshot wound hitting the back and coming out of the front of the chest. And the one that hits the left flank goes on through to exit the right buttock.

The one hitting the back, obviously back to front, drifting in a left-to-right direction so that it actually crossed the centerline of the chest. It came up through the midline structures of the chest, did not actually enter either side of the chest, either space occupied by the lung.

But in doing this, it hit and chipped the sixth thoracic vertebra; then lacerated the descending aorta, the major artery that carries blood from the heart to the rest of the body; hit, I think, the left main stem bronchus; and, finally, came through and came out next to the breastbone.

The injury to the aorta and also to the pulmonary artery, this is a lethal nonrepairable lesion. There simply isn't time to get a person to the hospital.

The wound in the flank had gone into the

abdomen coming left to right, very slightly downward, and a little bit front toward back. It perforated about four loops of intestine, going posteriorly hit the left femoral iliac artery just below where it branches out to the aorta that supplies the banks.

And that's a good sized vessel too. It's, I would say, about the diameter of my pen would be very close to it. So it's a big artery.

MR. KANE: May the record reflect the doctor was holding up what appeared to be a fairly standard-sized ballpoint pen. Go ahead, Doctor.

THE WITNESS: Following that it crossed the pelvic soft tissues and went through the right pelvic bone and on out. This also was a potentially lethal lesion, because an artery that size the person is going to bleed internally, bleed rapidly, which he did.

We had at least a liter, perhaps a little more than a quart of blood in the abdominal cavity. So he had bled very profusely from that injury, as well as internally from the injury of the chest.

The wound to the right thigh, not a major injury.

Q Doctor, was there any way for you to tell from your examination the order in which these wounds were inflicted?

A I don't think we can. The fact that the wound going through and hitting the artery down on the pelvis had done a lot of bleeding, suggests that it probably came before the shot to the chest. Because the shot to the chest disrupted the aorta which supplies blood on down. And it would seem reasonable that he could not have bled as much from the lower wound as he did if that came after the wound to the chest.

Now, this makes good sense. I would admit there's a little bit of speculation here, but I think it's reasonable.

Q Doctor, as a result of your external and internal examination of this body, did you arrive at an opinion as to the cause of death?

A Yes.

Q What is that opinion?

A Death was a result of the gunshot wound to the chest and abdomen.

Q Did you arrive at an opinion as to manner of death?

A I did.

Q What is that opinion?

A My conclusion was that this was a homicidal injury.

Q Were the injuries consistent, in your

AA 000427

opinion, with death by natural causes?

A No.

Q Were the injuries consistent, in your opinion, with self-inflicted injuries?

A There was no evidence of self-inflicted injury at all.

Q Doctor, did you also have this body subjected to the toxicological testing that you were describing earlier?

A Yes.

Q And what were the results of it?

A There was small amount of alcohol in the bloodstream, a .02 percent. He had some cocaine, most of which had been metabolized into its by-product. I don't think he had anything else. Let me check to be certain of that. No, that was it. We found the cocaine in the bloodstream also present in his urine.

Q And when you say that most of it had metabolized, could you just explain that to the jury?

A Well, the drug, as most drugs do, breaks down and little pieces of it are removed from the molecule by various actions of the body. And the product of that process is called a metabolite. The unaltered drug is what we call apparent drug.

In this case, he had maybe ten percent

apparent drug, and 90 percent or more of the metabolite.

Q And what, if anything, are you able to conclude from that?

A Considering that he was found, as I recall, at about 6:00 o'clock in the morning of the 16th, the amount of change in the drug would suggest a period of hours prior to his death, probably sometime on the preceding day.

Q That he had actually ingested the cocaine?

A Yes.

MR. KANE: Nothing further. Pass the witness, Your Honor.

THE COURT: Cross-examination?

MR. CHRISTIANSEN: Thank you, Judge.

CROSS-EXAMINATION

BY MR. CHRISTIANSEN

Q Good afternoon, Dr. Green.

A Good afternoon.

Q Dr. Green, you told the jury about three gunshot wounds that you examined on John Lumber Doe, who was later identified to be Eric Hamilton; is that accurate?

A Correct.

Q Now, all three of those were

through-and-through wounds, entrance and exit wounds?

A That is correct.

Q So what that means is, that the bullet came in, one in the back, one in your hip area, and one in the thigh, and then exited as various points?

A That is correct. There was no bullet left in the body.

Q And, Doctor, I've questioned you in a number of cases, and you have somewhat of an interest in bullets and guns, if I recall?

A I have some working knowledge there.

Q Would a bullet exiting the leg of the injury you saw of Mr. Hamilton have enough force to go through a glass and possibly break the glass window?

A It certainly could.

Q You talked about this wrist injury, and that was -- I forgot which wrist you told us.

A A little nick on the right wrist.

Q When you say nick, there was no, like, rope burn or rub burn?

A No, no. This was a very superficial linear injury, whether it was made by a cutting instrument, or just something with a relatively sharp corner. And it's maybe an inch long. It doesn't even go through the full thickness of the skin.

Q So if I told you what the State believes to be the crime scene there was a bunch of broken glass or broken window that a body appeared to be drug through, any of that glass could have caused such an injury by poking or cutting?

A I would expect glass to do more than what we found.

Q Mr. Kane asked you about the bracelet, and could ripping the bracelet off cause such an injury. Did any police officer, crime scene analyst, District Attorney, investigator bring you a bracelet and say: Here, Dr. Green, you're the expert here, take a look and see if this matches up to that injury on the wrist?

A Not that I recall.

Q And you could have done that, right?

A I certainly could have looked at it and said something like: Yeah, it probably could have. I can't prove that it did.

Q But say, for example, the bracelet was two centimeters thick, and the cut was two centimeters thick, you would have said: Hey, they're consistent, something of that nature?

A Probably.

Q And nobody asked you to do that?

A Not that I recall, no.

Q And so when you told Mr. Kane that it could have happened, as you sit here today you really don't know that that bracelet had anything whatsoever to do with that injury on that gentleman's wrist?

A No, I don't.

Q Similarly, as you sit here today, can you tell the jury in what position Mr. Hamilton was when he was shot? Was he standing, sitting, laying down?

A No. All we can say is that the relationship between the shooter and the victim changed between shots. One of them was hitting him in the back, the next one comes and hits him from the left side.

Q Can you tell --

A Or another one, which is the sequence I'm not going to get into any more detail than I already have.

Q Dr. Green, can you tell these folks in the jury that it was just one gun that fired the rounds that went into this gentlemen and then subsequently exited?

A Not having the ammunition; no, I can't.

Q Could it have been more than one gun, correct?

A Possible.

Q And then there's no way for you to say it's more likely there was one gun, or it's more likely it was two guns?

A Well, the probability it would be one. Two is uncommon, to say the least.

Q Uncommon based upon years of doing homicides?

A Yes.

Q But not uncommon because you don't know the facts of how this gentleman was shot, correct?

A I wasn't there. I didn't see it.

Q Okay. Now, the Ethinyl found in the system, that's the test you told these folks was done by APL, correct?

A Yes.

Q And those results showed cocaine in Mr. Hamilton's system?

A Yes.

Q A significant amount of cocaine in his system?

A Well, depends on what you call significant. This is probably ball park average street dose.

Q In your experience, does the average street dose get the ingester, the person ingesting it high?

A I'm sorry, I missed the first couple of words you were saying.

A In your experience, does the average street dose render the person that ingests it under the

influence?

A Probably.

Q And the Ethinyl, is that necessarily a result of Mr. Hamilton ingesting alcohol?

A Yes, it would be.

Q Isn't there a fashion by which the body creates some Ethinyl after it stops working, for lack of a better term?

A Only when the body starts to decompose, which was not the case here.

Q Were there any tatooing or stipling on this body?

A No.

Q So the jury knows what I'm talking about, what is tattooing?

A I assume you're referring to gunshot injuries?

Q Yes, sir.

A Okay. If a weapon is fired fairly close to its target, let's say a couple of feet, burning powder particles will strike that target and leave an impression or a tiny burn mark. This is what we call stipling or tattooing, gun powder tatooing.

Most firearms, pistols will throw powder at least two feet. Little .22s will do that. Bigger and

heavier things like a 9 millimeter and on up through the .45 will put out quite a bit further.

But the effect is to surround the bullet hole with these little marks, assuming that the skin is unprotected. If a person is closed, then the clothing may well prevent that stuff from striking the skin. And it would be up to the crime lab people to take the clothing and try and find out by chemical means what, if any, powder mark there is.

Q Do you know if that was done in this case, Dr. Green?

A I have no information on that. You're going to have to ask the crime lab people.

Q I will. Dr. Green, the time of death, I think you told Mr. Kane that it would have been at least within the previous day, which would have made it -- if the 16th of November was a Monday morning, would have made it sometime during the day of Sunday the 15th of November, 1998?

A That's certainly reasonable.

Q And you wouldn't go so far as to say it couldn't have been 48 hours that he was killed, would you?

A I think the body was too fresh for that. I would say within the preceding 24 hours, and it could have been, certainly, less than 24.

Q Did you do any tests to determine like age of the blood that was left inside the lungs that you described for the jury.

A Do what?

Q Any testing of the blood to see how old the blood had possibly been, or the injuries were?

A Well, if you can test blood for that, I wish you would tell me how to do it.

Q I'm asking you, aren't there histological tests that can be done on blood or injuries to determine how long the injury has been present?

A There are a few things which can pinpoint -- that's bad word -- can give you an estimate of the time if it occurred, say, within an hour of death. There have been some systems worked out for that. Beyond that, I'm not aware of any.

Q So you're not aware of any staining that's done to blood in putting iron stains on blood, and looking at it through different --

A In a fresh body, iron stains aren't going to help.

Q So the best you can say is, this happened within 24 hours of the time the body was located Monday morning, the 16th of November of 1998?

A Without a doubt.

MR. CHRISTIANSEN: Pass the witness. Thank you, Dr. Green.

THE COURT: Redirect?

MR. KANE: No, Your Honor.

THE COURT: Dr. Green, thank you very much, sir. Next witness, please.

MR. KANE: Rick Ferguson, Your Honor.

Whereupon,

RICK FERGUSON,

was called as a witness by the State, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KANE:

Q Sir, would you state your name and spell your last name for the record.

A Richard Ferguson, F-e-r-g-u-s-o-n.

Q And where do you work, sir?

A I work at R & M Trophies.

Q And where is that located?

A 1937 Western.

Q How long have you been there?

A Nine years.

Q I want to talk to you about November of

AA 000437

1998; specifically, November the 17th. And whether you remember the date or not, was there a day in November when you called the police because of something that happened in a neighboring business?

A Yes, there was.

Q And what time of the day was it when you called them?

A To my best recollection, it was probably around 8:00 o'clock; 8:00, 8:30.

Q And what was it you were reporting?

A I was reporting broken glass with blood and everything else that was two buildings down from where I was at.

Q And do you recall what the number was?

A No, I don't recall.

Q But it's whatever one was two down from you?

A Yes; two down.

Q And did the police respond to the scene?

A Yes, they did.

Q About how long was it between the time you called and the time they got there?

A Well, I really can't answer that question, because I don't recall how long it was.

Q Did they eventually respond to the scene?

A Yes, they did.

Q Were any of the other businesses in that center open and operating by the time the police got there?

A No.

Q Only yours?

A Correct.

Q While the police were there, did anyone arrive that you knew from any of the other businesses?

A Well, I think it was Jack that showed up after the police had arrived.

Q Now, when you said Jack, you appeared to indicate someone?

A Yes.

Q Do you know someone here in court?

A Jack Seka.

Q Would you point to him and tell me what he is wearing?

A Right there in the brown sweater.

MR. KANE: May the record reflect identification of the defendant, Your Honor?

THE COURT: It may.

Q (By Mr. Kane) How did you know Mr. Seka back in November of 1998?

A Well, him and Pete had the business right next door to me, the air conditioning business.

Q Was that Cinergi? Does that name ring a bell?
A I believe that was the name of it, yes.
Q And do you know Pete's last name?
A No, I don't.
Q So you knew them as Pete and Jack?
A Right.
Q Now, Jack arrived while the police were there?
A Yes.
Q Walking or driving?
A He was driving.
Q Driving what?
A A little brown Toyota truck.
Q Had you seen that truck before?
A Yes, several times.
Q Had you seen Jack driving it before?
A I don't recall Jack driving it.
Q Was there anything different about the truck on that day from other times that you had seen it?
A Yes. It was washed.
Q What was so different about that?
A Well, I'm accustomed to seeing the truck out there, but it's always been dirty.
Q And this was the first time that you had

seen it that it was clean?

A Yes.

Q And it was significant enough you remember it now a couple of years later?

A Yes. It was just one of those eye-catching things that I noticed. When he came up it was nice and clean.

Q And did you mention that to the police officers; if you recall?

A I don't recall if it was the police officer or Mark, the landlord, was standing there. But I did make that comment, yes.

Q Now, did you ever go inside 1929, or did you ever go inside the business premises that you called about with the broken glass, or did you just let the police go in there and do that?

A No. I did not go in there. The police went in there.

MR. KANE: Nothing further, Your Honor. Pass the witness.

THE COURT: Cross-examination?

CROSS-EXAMINATION

MR. CHRISTIANSEN:

Q Good afternoon, Mr. Ferguson. My name is

Pete Christiansen, and I represent Jack Seka. You have spoken to my investigator, the bald guy here, right?

A Yes.

Q And then you subsequently spoke to an investigator, Mr. Maldonado, who works for the District Attorney's Office?

A Correct.

Q And you relayed very similar versions of events to both of these gentlemen that you just gave the jury here today?

A Correct.

Q Back in November of 1998, this was a Tuesday morning that you were at work; do you recall?

A I believe it was Tuesday morning. I don't recall, exactly.

Q Did you work Mondays back then?

A Yes.

Q Your business was open on a Monday?

A Monday through Friday.

Q And you didn't notice this broken glass yourself. Somebody else told you about it, correct?

A Correct.

Q And that was some type of homeless person that was wondering through the area mentioned to you that there was broken glass and blood two doors up from you?

A What it was, a guy had pulled up next door. I know exactly what I talked to him about. But a guy had pulled up next door and asked me if I knew when these guys next door were going to open up the air conditioning business.

And I told them no. And he said: Well, did you see all this blood and glass broken over here?

Q So somebody appearing to be looking for either Peter Limanni or Jack --

A Correct.

Q -- is who eventually informs you of the broken glass?

A Correct. And then I went down to take a look.

Q On Monday you didn't walk down in front of that business and look and see if that glass was broken, did you?

A No, I did not.

Q Now, the police arrive eventually after you call them?

A Correct.

Q At some period of time later?

A Correct.

Q And after they arrive then Jack arrives?

A Yeah. It was a little time later. I can't

recall exactly what time it was.

Q And did you see Jack let the police in to Cinergi, the business that was Peter Limanni's?

A No. I didn't see him do that.

Q Did you ever see one of uniformed police officers that morning out behind the business looking in the dumpster?

A Not -- I guess he was a police officer. He was in civilian clothes and had a badge.

Q Okay. So I just want to be clear for you. If you turn around and look at that chart on the wall, does that appear to be 1921 through 1937 Western in which your business is located?

A Yes.

Q And there's little box right behind 1933 with a D next to it. Was that about where the dumpster would have been?

A That's about it, yes.

Q Back in 1998 as well? Is that a yes?

A Well, the dumpster was brought in there by these guys. And I don't remember when it was actually brought it, but it was sitting there. Because I asked them if I could use it occasionally.

Q You recall, don't you, that it was there when the police were around doing their investigation in

November of 1998?

A Correct.

Q Because about 1:00 o'clock in the afternoon you saw a plain-clothes police officer looking in this dumpster behind 1933, correct?

A I did not see the police officer looking in there. He was standing off to the side. I opened up the back door.

Q Of your business?

A Of my business, and I walked out there.

Q Which one is your business?

A The furthest on the right on the end, 37.

Q Thirty-seven. And did you happen to look into the dumpster that day?

A Yes, I did.

Q About what time did you look into the dumpster?

A What time that was, it was apparently in the afternoon.

Q Was it about the same time you saw this plain-clothes police officer in that area?

A Yes.

Q And prior to, say, 1:00 o'clock in the afternoon -- if that's the time you're putting me at ball park?

A Right.
Q Had you seen any uniformed police officer out in the back looking in that dumpster?
A No, I did not.
Q And your business is right next door to 1933?
A Correct.
Q When you looked in the dumpster, did you see any burnt items?
A Not that I can recall. It was just a small amount of trash that was in the bottom of it. And when I was looking in there, the police officer that was standing off to my right there, he says: Don't touch anything in there.
Q That was the ununiformed police officer?
A Correct.
Q And did you smell anything as being burnt?
A No. It didn't look unusual at all.
Q Did you see any hose or water being drained into that dumpster?
A No.
MR. CHRISTIANSEN: Nothing further. I pass the witness.
THE COURT: Redirect?
MR. KANE: Court's indulgence. No

redirect.

THE COURT: Sir, thank you very much. You're excused.

Next witness, please.

MR. KANE: Judge, prior to calling our next witness, we do have a request for judicial notice, if I could approach?

THE COURT: Fine.

MR. KANE: A lot of dates have come up, and question of what day of the week were they on. I provided the Court with a copy of the calendar of November and December of 1998, and just ask the Court to take judicial notice of that.

So now if the witness says the 17th, we can just say: Yes, that was a Tuesday, and we will all know what they were talking about.

THE COURT: Did you cause to have this duplicated from a calendar?

MR. KANE: I caused it to be printed and I xeroxed it.

MR. KENNEDY: We have no objection to that. I have received a copy as well.

THE COURT: You didn't cause to have the calendar printed, the original calendar that this was taken off of?

MR. KANE: No. I created the calendar.

THE COURT: You created this actual document?

MR. KANE: Yes.

THE COURT: You did so referring to a 1998 calendar?

MR. KANE: I did.

THE COURT: No objection?

MR. KENNEDY: No objection.

THE COURT: It is received as judicial notice. Proceed, please.

MR. FATTIG: Jennifer Harrison.

MR. CHRISTIANSEN: Judge, may we approach real quickly?

THE COURT: You may.

(Whereupon, counsel conferred with the Court.)

Whereupon,

JENNIFER HARRISON,

was called as a witness by the State, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FATTIG:

Q Ma'am, will you please state your name and

spell your last name for the record.

A Jennifer Harrison, H-a-r-r-i-s-o-n.

Q Ma'am, back in 1998, were you residing here in Las Vegas?

A Yes.

Q What were you doing for a living?

A Selling Yellow Pages.

Q And what was the name of your employer?

A The Frontier Telephone Directory.

Q Did you have occasion to meet a person named Peter Limanni?

A Yes.

Q How did that come about?

A I was given his account to talk to him about how there was -- I don't remember the exact problem, but there was something with the advertizement that I had to clarify, and I went over there to discuss that with him.

Q And was Mr. Limanni attempting to advertise with your company?

A Yes.

Q And about when did you meet Mr. Limanni in 1998?

A In August, first part of August.

Q Did you, after that initial meeting, see Mr. Limanni again?

A Yes, I did.
Q Did you, in fact, begin to date Mr. Limanni?
A Yes, I did.
Q How long did you date Mr. Limanni?
A Approximately three months.
Q When was the last time you remember seeing Mr. Limanni?
A On a Wednesday night.
Q Would do you remember the month?
A Yeah; in November.
Q Was it early November, or late?
A It was the first week in November.
MR. FATTIG: And may I ask for judicial notice that that was November 4th?
THE COURT: That would be the indication.
THE WITNESS: Wednesday.
MR. FATTIG: Thank you.
Q (By Mr. Fattig) Could you briefly describe your relationship with Peter in terms of how many times you saw him, and how close you were from August 1st to November 4th of '98?
A Yeah. I met him in August and that day we got along well, and he was actually teasing me about buying an ad if I go out with him, and I told him that I

didn't date clients, this and that, and ended up going out with him, I believe it was the following week. And then we started dating and seeing each other a few times a week.

Q And would you see -- where did you see Peter at when you initially went to see him the first time?

A The first time, at the office.

Q Was that Cinergi?

A At Cinergi on Western.

Q Where did Peter Limanni live?

A He lived there in the back.

Q In the business?

A Uh-huh.

Q Was anyone else related with that business, did anything anyone else live there?

A Yes. Jack lived there.

Q And the person that you say is Jack, do you see that person here in court today?

A Yeah.

Q Could you please point to him today and identify a piece of clothing that he's wearing?

A He has on a sweater.

MR. FATTIG: May the record reflect the identification of the defendant?

THE COURT: It may.

MR. FATTIG: Thank you.

Q (By Mr. Fattig) How often were you around Peter and/or Jack at the business?

A Daily, usually.

Q So you saw Peter pretty much every day?

A I'd see him pretty much every day.

Q Did Peter often come over to your house?

A Just a few times.

Q Did you also have a lot of telephone contact with Peter?

A Yes.

Q And how would that occur?

A Well, he gave me phone that was linked in with the business, with Cinergi, with one of the phones there, radio and telephone, and we would radio back and forth and he could type messages on the computer to me.

Q Was it easy for you to contact Peter?

A Yeah, oh yeah.

Q Did he have a cell phone?

A Yeah. He had a phone just like mine.

Q Was his cell phone normally turned on and was accessible?

A Most definitely, yes.

Q Do you know where Jack Seka, the defendant in this case, where he lived?

A He lived there also.
Q At the business?
A At the business.
Q Where did they stay in the business?
A They stayed in the back part. There was a separate door from the office area. And then there was another room behind that, a kitchen and so forth, and there was a door back there that went into another room where they had beds.
Q And how big was that room, approximately?
A Say 14 by 14, 14 feet by 14 feet.
Q And both of them stayed in the same room?
A Yes, uh-huh.
Q Were you familiar with any vehicles that were associated with the business?
A Yes.
Q What vehicles did you see?
A Peter often drove a Toyota truck, a brown Toyota truck. And then there were three or four white vans.
Q And did some of these vans have markings?
A Cinergi on them with the phone number.
Q Were you familiar in August when you first got to know Peter, did you become aware of how the business was going?

A It appeared to be going very well when we first met.

Q And what do you base that on?

A Just by dinners that we used to have, and the way that he was spending money. And I would be there occasionally and see the phones ringing, and just from being in sales and hearing people. I remember two times someone mentioning calling up Cinergi to get air conditioning installed, and this and that.

Q Was there a point in time when Peter and/or Jack indicated to you that they wanted get into the cigar business?

A Uh-huh.

Q And when about was that?

A I don't remember when.

Q Were you -- did the three you do things together occasionally?

A Yes.

Q Could you describe generally the relationship between Peter Limanni and the defendant, the things that you witnessed?

A They were friends. I mean, they got along, they were friends. Peter was more controlling, say, than Jack.

Q How about their relationship?

A He was controlling. He controlled the money and he pretty much -- I don't want to say managed the friendship, but Jack pretty much did what Peter said to do.

Q So you wouldn't describe them as equal partners with the business?

A No, huh-uh.

Q What sort of things would Peter make Jack do?

A He did a lot of the errands and just running around picking up supplies, going for coffee, staying in the office doing a lot of the phone work.

Q Did you see Jack give Peter any orders or directions to do things?

A No.

Q Was it always the other way around?

A Yes.

Q Did you ever see Peter be disrespectful to Jack?

A Yes.

Q Could you describe that? What did you see?

A One time I remember when they were building -- this was when they were going to start a cigar shop there at Cinergi, I remember Jack spilled some purple paint. And Peter just was livid about that, and calling

him a dumb ass and really lost his temper.

Q And you thought Peter was out of line?

A Well, yeah, because he just spilled paint, and just clean it up. It wasn't that big of a deal.

Q Did you have a conversation with the defendant about that?

A Yeah. Because Jack got upset because he was upset that he got Peter so upset, and Peter was so angry. And I said: Don't worry about it, just blow it off. And he said: You don't know, that's just the tip of the iceberg. He's got such a temper.

Q Did you ever hear Jack use -- excuse me, Peter use derogatory terms when referring to Jack?

A Yeah.

Q What did he call him?

A He always called him his nigger.

Q Did you hear him use that term in Jack's presence?

A Not that I remember in his presence.

Q Do you remember an incident at the Palace Station?

A Yes.

Q Could you describe that?

A We were at Palace Station at the Oyster Bar, and we were standing in line and we were taking turns

because we were playing Double Diamonds. And Jack was drinking and getting a little buzzed and dropped his beer, and made a comment about what I was wearing, about how I dress so nice. And I could just see Peter getting angry the way Jack was talking.

Later that night when we left, Peter made some comments to Jack to stop looking at me in a nasty way. What I remember is him saying, "Stop looking at her like you want to fuck her. Don't disrespect me like that." And Jack was, like: I'm not, I'm not. And they just had a few words, and I don't know what was said after that. I just walked away and Jack got in the truck and left.

Q And they appeared to leave on bad terms that particular night?

A Yes.

Q Do you remember an incident involving some luggage?

A When we went to Lake Tahoe, Jack drove us to the airport. And we got out and we were standing out on the side getting ready to check in, and Peter just stood there. And I was kind of waiting for Peter to get the luggage.

And he told Jack, "Get our luggage." And Jack goes, "I'm not getting your luggage." He goes, "Get

our luggage, just do, get our luggage now." So Jack got our luggage out and put it up, and that was it.

Q Was Jack going on the trip with you?

A No.

Q He was dropping you two off?

A He dropped us off at the airport.

Q Did you see Jack with money during this time period?

A Not often, no. I don't think I ever saw him with money.

Q Did Peter have money?

A Yes.

Q Did you ever see -- how would Jack get his money?

A From Peter. Peter would give him some money.

Q And that was part of his salary, or do you know?

A I don't know if it was his salary. I never saw him get a check. He would just give him cash. Jack would say: Hey, give me a few bucks.

Q And Peter would do that?

A And Peter would give him some money.

Q Did Peter have a dog?

A Yes.

Q What was the dog's name?
A Jake.
Q What kind of dog was he?
A He was a -- I can't remember.
Q Could you describe what the dog looked like?
A He was a Jack Russell.
Q So a small sort of --
A Yeah; a small, thin dog.
Q Could you describe for the jury what Peter's relationship with his dog was?
A Always with his dog. Jake was sitting on his lap when I met him. He was always with him, always had Jake.
Q Would he bring Jake over to your apartment?
A A few of the times, yes.
Q Would he bring Jake with him on jobs?
A Yeah.
Q Or on errands?
A Yeah.
Q So a very close relationship?
A Oh, yeah. And he said that was his number one friend. And he used to always make the comment, he would say, "A man can't live without his dog and his camel." And I would ask what is the camel, and the camel was his woman.

Q Do you remember the last time you saw Peter?
A Yes.
Q And, again, you testified earlier that was Wednesday night?
A Uh-huh.
Q What occurred on Wednesday night?
A He came over to my house and we watched a movie. And I remember that he was really exited by all the things that were going to be happening with the cigar shop. And he was real optimistic, ready for things to start turning around because business was not as good as it had been, and was very optimistic. And he left that night, I stayed.
Q Did the two of you leave on good terms?
A Yeah. I was standing there, he was at the bottom of my stairs and I said: I'll talk to you tomorrow, call me tomorrow. And he said: You can call me. And he said we would probably do lunch or something, and he left.
Q On the morning of the 5th of November, that Thursday, what did you do?
A I was at work in my office and tried to call Peter, and his phone -- I don't remember if it was turned off or whether it went right to voice mail, which was unusual. So I waited and called back and I started

leaving messages.

Then I attempted to radio him and it wasn't going through.

Q Was that unusual?

A Yes, uh-huh. And then I called, radioed Jack and it said that it went through, and Jack wasn't picking up. So I called on the phone, Jack's phone from my office and Jack picked up the phone, and I started talking to Jack.

Q And what was the essence of your conversation with the defendant?

A I just said: Hey, where is Peter? I'm trying to reach him and he's not answering his phone. He said: I don't know, you must have kicked his ass last night and got him in gear, because he was up this morning first thing in the morning, out and about. I waited for him to wake me up and he didn't. I thought he was getting up early, but he's gone.

Q Did he indicate whether or not the defendant had left with anyone else?

A I don't remember.

Q Whether Pete had left with anyone?

A He left, and I think I remember him saying with someone.

Q Do you remember whether or not he told you

Peter left in a specific vehicle?

A I don't remember if he was in the truck or the van.

Q Or perhaps the vehicle of the other person?

MR. CHRISTIANSEN: Objection. Leading, Your Honor.

THE COURT: Rephrase, please.

Q (By Mr. Fattig) Do you remember if he told you what vehicle Peter left in?

A No, I don't remember.

Q Did you have anything else -- did Jack tell you anything else on that particular phone call; do you remember?

A Yeah. We talked for a while because Jack was really down. I said: What's going on? And he had just gotten back from New Jersey. And I asked him, I said: What, are you on drugs or drunk? You sound terrible. And he said: I'm just so depressed, and was just say how depressed he was.

Q Did he say why he was depressed?

MR. CHRISTIANSEN: Objection. Relevance.

THE COURT: What is the relevance?

MR. FATTIG: It goes to state of mind, Your Honor, during a very relevant time.

MR. CHRISTIANSEN: May we approach, Your Honor, briefly?

THE COURT: You may.

(Whereupon, counsel conferred with the Court.)

THE COURT: Proceed, please.

Q (By Mr. Fattig) Ma'am, at that point in the conversation, did Jack indicate he was depressed because when he went to New Jersey he caught his girlfriend in New Jersey in bed with another man?

A Yes.

Q And after that phone call, what did you do?

A I knew something wasn't right. I just knew something was not right. And I was in my office, and I remember right around 11:00 o'clock or so, I just put everything down and I told the secretary I was leaving, and I left and drove over there.

Q And when you went over there, what did you see?

A When I went over there, I got there and the door was locked. And I remember walking in to the front room, and there's another door that's always open and it was shut. And I just -- most of me wanted to leave because I had a feeling that something wasn't right. Anyway, I went in though, I opened the door and Jack was there just knocked out on the floor.

Q And did you see anyone else in there?
A And there was another girl there on the couch.
Q And what time of the day was this about?
A This was somewhere around noon. I sat outside the office for a while and didn't go in.
Q This was at Cinergi on Western?
A Yes.
Q What did you do once you got in there?
A When I got in there, like I say, Jack was on the floor and he was out cold. Jake was there, which was strange. Jake was on the floor with Jack, and this girl was passed out on the couch.

And I went right away walking around and Peter wasn't there. And I went into the back room where their beds were where they sleep, and that door was locked. And I started banging on it, and it was never locked and that was odd. And this girl came back and asked me what I was doing.

Q And did you eventually get into the room?
A Yes. I got into the room.
Q What did you see in the bedroom?
A It was very strange because right away -- the room only had two beds, and like a chair, and clothes. And I remember, everything was right there. And

right near Peter's bed, all of his shoes were there, and that's the first thing I saw. And I saw a pair of pants and a sweater I had bought him.

Q And were you personally familiar with Peter's shoes?

A Yes.

Q With all of them?

A Yeah; because he only had three pairs.

Q And you saw all of them there?

A Yes.

Q And that struck you as odd?

A Yes.

Q What about the fact that Jake was there?

A And Jake there, yeah.

Q That was odd too?

A Oh, yes.

Q What did you do next?

A I looked around the room and I saw, like I said, his shoes were there; the jeans that he had on with the one belt, he had the leather belt, that was there. And I remember just snooping around kind of kicking things around, and I did find a bullet.

Q Could you describe the bullet?

A It was a small bullet.

Q Did it look like it had been fired?

A No.
Q Where was that at?
A On the floor.
Q Did you ever see --
A Near the back door.
Q In the bedroom?
A In the bedroom.
Q Did you ever see any firearms around Cinergi?
A Never.
Q Did you ever see Peter with a gun?
A Never.
Q Ever see Jack with a gun?
A Never.
Q What did you do after you saw that?
A After I saw that, I left. Well, I went back into the room because this girl was there, and she had woken up and she said no one is here.

MR. KENNEDY: Objection, Your Honor. Hearsay.

MR. FATTIG: I'm not calling for that, Your Honor.

THE COURT: Go ahead. Next question, please.

MR. FATTIG: Thank you.

Q (By Mr. Fattig) Did you see any cash in the area?
A Yes. There was a wad of cash in the front office.
Q Was that near where Jack was passed out?
A Jack was on the floor, and the money was on the desk.
Q And how much money did you see?
A Twenties and tens, maybe a couple hundred bucks.
Q Was that unusual to see that?
A Lying out, yes.
Q At Cinergi?
A Yes.
Q At that point did you leave Cinergi?
A Yes. Like I say, Jack was out. I actually kind of kicked him a few times because I was upset, wondering what was going on. And Jack was out and this girl asked for a ride, so I actually gave her a ride just down the road and dropped her off.
Q Did you have any further contact with Jack?
A Yes.
Q Explain that.
A I don't recall if it was that day or the next day, but I kept calling because I hadn't heard from

Peter, and Peter's phone was not turned on. And I just knew something was going on and kept asking Jack. And I said: What, he's probably just taken off, skipped town.

Q Who said that?

A I said that. And Jack said probably. I don't know. I don't know anything. And I spoke to Jack, I don't recall how many times, but just checking in wondering if he had heard from Peter. And then I said I wanted to call the police and call missing persons, and he said: No, no. He's missing because he wants to be missing.

Q Were you familiar with a crate or a box that Peter owned?

A Yes.

Q Could you describe it?

A Yeah. It was the one thing he said that he always traveled light but always had this with him. And he opened it up, and inside of it was an old bottle of Crown -- unopened bottle of Crown Royal that I don't recall where he got it from, but he said he was going to open it when either him or his brother got married, or had their first baby or something.

And also his prom picture with a girl with a hat on, and a transfer logo from his dad's restaurant.

Q So he indicated to you that the box had some

meaning for him?

A Oh, yeah. And he had a family picture with him and all his -- one picture, an old black and white photo of him and the family.

Q During your conversations with Jack during this time period, was the box ever brought up?

A Yeah. I right away asked, because Jake was there, and I said: He would never leave without Jake. He wouldn't leave without Jake. And I said: Is the box gone? He said the box is gone.

Q The defendant said that?

A Yes.

Q Did you have additional conversations later on in November with the defendant?

A With Jack, yes.

Q What were those?

A He called me one time. He paged me and he was calling from Arizona. And I don't recall if it was before or after I had met with the investigators. But he told me that someone had been killed, and I'm going to be called in because they have your pictures from Tahoe.

And I asked him why, and he told me that some black guy got killed and he's got to get out of town because they're trying to blame him, and I've got to get out of here. And, actually, that was in the parking lot

of 24-Hour Fitness.

Q That wasn't on the telephone, that particular conversation?

A That conversation was in person. That was the last time I saw Jack.

Q When about was that?

A I don't remember.

Q Would it have been in November of 1998, or later than that?

A It could have been -- I believe it was in November before the holidays, I know. I don't remember.

Q And where was that conversation? Where did it occur?

A That was in the parking lot of 24-Hour Fitness.

Q Was there a separate conversation where the defendant indicated he was in Arizona?

A Yeah. That was when he called me, and that was afterward. He said he was going underground, and it was just --

Q He used the term "underground"?

A Uh-huh.

Q Did you ever get any phone calls or any messages or anything from Peter after November 4th of 1998?

A No.
Q Were you familiar with any tattoos on Peter?
A Yes.
Q What?
A He had Italy on his calf, and he had an eagle on his arm.
Q Were you familiar with any other employees that were involved with Cinergi?
A Just Peter, Jack, and a Mexican guy. I don't recall his name.
Q Did you ever see an African-American male around the business?
A No.
Q Ma'am, do you remember a conversation in November of 1998 with the defendant involving your vehicle?
A I left my vehicle when we went to Tahoe. My vehicle, Jack wanted to borrow my vehicle, but I don't remember what time that was.
Q You don't remember when that occurred?
A I do remember. It was in the parking lot at 24-Hour Fitness, because he was in the van and he wanted to borrow my car because he was being followed. And that's why he was meeting me at the parking lot. He had paged me when I was at the gym. I met outside of 24-Hour

Fitness at Rainbow and Cheyenne right at the Pier One, and I said no.

Q You didn't give him your vehicle?

A No.

Q Did he indicate to you who was following him?

A No. I believe he said the police, because he had said that he was called in to be prosecuted for a murder. He didn't do it, he's got to get out of town.

MR. FATTIG: May I approach the witness, Your Honor?

THE COURT: You may.

Q (By Mr. Fattig) Ma'am, showing you Proposed Exhibit No. 25, a photograph, do you recognize anything in that photograph?

A Yes.

Q What do you recognize?

A The box that Peter had.

Q That Peter had. That was the box you testified?

A That was the box that everything was inside, yeah.

Q The Crown Royal and sentimental things?

A Uh-huh.

MR. FATTIG: Nothing further at this

time.

THE COURT: Cross-examination?

CROSS-EXAMINATION

MR. CHRISTIANSEN:

Q Good morning, Ms. Harrison, or good afternoon, I'm sorry. Ms. Harrison, you met with my prior to today; is that correct?

A Yes.

Q You came up to meet me and my investigator a week or ago, or two weeks ago on a Saturday?

A It was on a Saturday.

Q And talked to us about this case; is that accurate?

A Yes.

Q What was your phone number, Ms. Harrison, back at the time in question? Do you remember?

A I couldn't get the phone number.

Q Do you remember what your phone number was?

A No, I don't.

Q Was it 429-9242?

A 429, yes.

Q Do you remember what Peter's phone number was?

A 429. I know that's right.

Q Was it 429-7433?
A I don't remember.
Q So if I had phone records with listings from your cell phone, and phone calls you made on certain dates, I couldn't ask questions about was this who you were calling, because you don't -- and it's three years later, you don't remember specifically whose phone numbers are whose?
A No.
Q Do you remember I told you when we met it's okay if you don't remember?
A I don't remember.
Q That's fine. Now, you gave a statement on December 7th to police officers, Detective Tom Thowsen; is that right?
A Yes.
Q And that was a taped statement. He had a dictaphone and you guys talked on tape?
A Yes.
Q And you were subsequently provided a transcribed copy of that statement to review by Mr. Fattig or Mr. Kane before you came in here and testified?
A Yes.
MR. CHRISTIANSEN: Judge, may I approach the witness?

THE COURT: You may.

Q (By Mr. Christiansen) Ms. Harrison, I'm handing you what's been marked for identification purposes Defendant's Proposed Exhibit B. Does that appear to be your statement?

A Yes.

Q I give it to you because I may refer to portions of it, and if it's in front of you, you can look at the page I'm referring to and make life easier for everybody.

You are knew Peter Limanni from August to November of 1998?

A Yes.

Q You became involved with Mr. Limanni, if I understood your testimony, or you met him in your capacity as a rep for Frontier Yellow Pages, and you were trying to correct something dealing with his advertising in your Frontier Yellow Pages?

A Yes.

Q And after you met him, he actually increased his ad, because you probably did a good job, so he increased his ad to a full page from a half page, right?

A He increased it that day to a full page, actually over the phone. And that's what I went to go see him about.

Q So over the phone you did a really good job, you got it increased to a full page?
A Yes.
Q Did he ever pay that bill?
A Yes; it's monthly.
Q If you would turn to Page 64 of your statement. Now, your statement was given back much closer in time to the events we're talking about today than we are here in 2001, correct?
A Excuse me?
Q The day you gave this statement, things were fresher in your mind than they are today, some three years later?
A Yes.
Q And would you look down and read to yourself the questions and answers on about the bottom five or six lines, and when you're finished reading go ahead and look up at me so I'll know you're done.
A I'm done.
Q Does that refresh your recollection a little bit?
A A little.
Q It appears, at least in that statement, that you told the police officers Peter didn't pay his bill at the Frontier?

A Right.
Q And, similarly, Peter had ads in Sprint and in the Review Journal?
A Yes, he did.
Q Those adds are expensive, you know from your experience selling?
A Yes.
Q Peter never paid any of them, did he?
A Well, it says here that he didn't pay his Frontier bill. That's the only bill I would know about.
Q Fair enough. When you met Peter, he told you a story about how he had been fleeced by his ex-wife, and she had taken everything he had and that's why he had to live in -- for lack of a better term -- this pig sty at 1933 Western, correct?
A Yes.
Q And you later found out that was not true, correct?
A Or hearsay, no facts.
Q You found out that he fleeced his wife and ran off with money from her?
A No facts, no.
Q Is that what you heard?
A I heard that, not from him.
Q You told the jury that the last time you saw

Peter was the evening of November the 4th about 10:30 when he left?

A Yes.

Q And on November the 5th about 1:00 o'clock, you went over and found Jack asleep or passed out, or a combination of the two on the floor of 1933 Western, correct?

A Yes.

Q And he was wearing a white shirt and jeans, correct?

A Yes.

Q He wasn't dirty?

A No.

Q He didn't appear to have dug a grave?

A No.

Q Wasn't dirt all over him?

A No.

Q And this was at about somewhere around the lunch hour of November the 5th, correct?

A To the best of my recollection, yes.

Q And you had spoken to him that morning about 8:30; him being Jack Seka?

A Yes.

Q You had spoken to Jack about 8:30, and you had a conversation about him being depressed because he

saw his girlfriend involved with another man?

A Yes.

Q Back east?

A Yes.

Q At any time during the conversation you had with Jack on November the 5th, did he tell you he had shot Peter Limanni?

A No.

Q At any time during any subsequent conversation, did Jack indicate that he had harmed Peter Limanni?

A No.

Q In your opinion, Peter Limanni was Jack's only friend, correct?

A Yes.

Q In all the times the DA asked you about the time at the Palace Station, and the time with the luggage you saw Peter being mean or disrespectful to Jack, correct?

A Yes.

Q You never saw Jack demean or be disrespectful or get angry or threaten Peter, did you?

A No.

Q In fact, you were sort of sympathetic to Jack for getting verbally abused, for lack of a better

term, by Peter?

A Yes.

Q The situation you told the jury already about was the paint situation where Jack spilled some paint and Peter goes nuts, screaming and yelling at Jack. And your conversation with Jack he tells you that's just the tip of the iceberg, he really gets angry, he's got a bad temper?

A Yes.

Q And is that consistent with your experience with Peter Limanni?

A I never had an experience with him like that. I've seen it with Jack.

Q Peter appeared to be controlling; is that correct?

A Yes.

Q He controlled Jack?

A Yes.

Q He gave you a phone so he could keep tabs on where you were all the time, correct?

A Probably.

Q You guys called each other pretty frequently, right?

A Uh-huh.

Q You have to say "yes" or "no" so she can

take it down.

A Yes.

Q Peter told you he was the owner of Cinergi, correct?

A Yes.

Q Peter never told you that a man Takeo Kato had given him a hundred-thousand dollars that he had blown in four months. He never told you that, did he?

A No.

Q And when you meet Peter, we're talking August, so that's the eighth month of 1998, right before Labor Day weekend I think you told me is when you met him?

A Yes. Not right before Labor Day weekend. I met him the first week in August.

Q Peter treated you well?

A Yes.

Q He told you that nothing but the best for you and he, correct?

A Yes.

Q And you told the police that back in 1998 when you gave the statement to them? Do you think that's what you told them back then?

A I could have said that.

Q He took you out to nice dinners?

A Yes.

Q He flew you to Lake Tahoe?
A Yes.
Q And in Lake Tahoe he discussed with you about opening a cigar shop, slash, heating business up in Lake Tahoe?
A Yes.
Q Now, when he took you to Lake Tahoe, he didn't take the dog on the plane with you guys, did he?
A No. The dog stayed.
Q With Jack?
A Yes.
Q And when you guys went out on dates out to dinner, things of that nature where you can't bring dogs like in the Palace Station, for example, the dog stayed sometimes with Jack, right?
A Or by himself.
Q At 1933 Western?
A Western, uh-huh.
Q And so it wouldn't be completely out of the realm of possibilities that Peter left the dog at 1933 Western on the morning of November the 5th when you came and found the dog there and Jack passed out on the floor, right?
A Possibly not.
Q And your first thought when Peter

disappeared wasn't that he had been killed. It was that he just up and gone, right?

A Yes.

Q Peter talked frequently about traveling light because he could disappear and go to another city, correct?

A Yes.

Q Peter told you he lived in China, he lived in Arizona, California. He moved lightly; is that fair?

A Yes.

Q And you thought that was what had happened back in November when you were no longer able to get a hold of him?

A Yes.

Q In fact, part of I think what you told me as the impetus or the reason you went over to 1933 Western on morning of November the 5th, because you thought Peter may be with another woman, correct?

A Yes.

Q And if Peter was seen alive on November the 6th, which would having Friday in the afternoon, with a blonde shapely woman, that wasn't you, was it?

A No.

Q And if Peter was seen alive on November the 6th in the afternoon, he had been successfully dodging

your phone calls for 48 hours at least, correct?

A To the best of my memory, yes.

Q I think you told Mr. Fattig that Peter lived at this business on 1933?

A Yes.

Q And he told you he did that because he didn't want to go to the expense of getting an apartment and having expenses of that nature?

A Because he was going to build a house.

Q Peter also told you that he was going to take Cinergi international, didn't he?

A Yes.

Q He was going to take it to all these different cities across the country and go public with it. He had big dreams for Cinergi?

A Yes.

Q And as you saw Cinergi, the heating business, and your objective view of how the business was going, did it seem like that was happening any time in the near future? We're November of '98.

A Not in November.

Q Business was going downhill, wasn't it?

A I don't know where this was.

Q You and Peter weren't eating out as much?

A No.

Q He couldn't take you on trips?
A No.
Q He didn't have much money left to spend?
A I don't know about that.
Q He didn't spend it on you, did he?
A Not like that.
Q In fact, Peter had contemplated and had even taken you with him to Lake Tahoe about setting up a new business up in Lake Tahoe, heating, air conditioning, slash, cigar store?
A Yes.
Q And you later came to find out he signed a lease in Lake Tahoe?
A Yes.
Q And on that lease he put you as a reference, did he not?
A I saw that he did.
Q He put that he had known you for two years, right?
A That's what you showed me.
Q And that's not true, was it, back in November of '98?
A No.
Q You knew Peter and Jack had taken one of the vans up to Lake Tahoe?

A Yes.
Q And that was one of the vans that you were under the impression Peter Limanni owned, correct?
A Yes.
Q And so if I told you those vans weren't owned by him, but were owned by a gentleman name Takeo Kato, that was not the impression Peter gave you?
A Well, I recognize that name.
Q Were you ever told he was the money behind Peter's business?
A I don't remember.
Q You were, after Peter disappeared, called by a lady named Peggy Eichorn, who is a real estate agent up in South Lake Tahoe, correct?
A Yes.
Q And she asked you if you had heard from him, and you said you had not, correct?
A Correct.
Q And that was sometime in the middle or late November of 1998, to the best of your recollection?
A I don't remember.
Q It was after the 5th when you went over to 1933 and Peter wasn't there?
A Yes.
Q And it was before the 7th of December when

you gave this taped statement to the police officers?

A Yes.

Q Peter had other business associates that he was dealing with back in November and earlier when you knew him, isn't that correct?

A Not that I remember.

Q There was a gentleman name Amir that Peter dealt with in the jewelery business?

A Dealt with for something.

Q And you had an understanding that this Amir was somebody who ripped off $50,000 worth of checks and then disappeared?

A No.

Q Where did Peter tell you he was from? Where did he live last?

A He lived last in California.

Q Was it Santa Monica, California?

A To the best of my memory, yes.

Q So if there was an identification, California identification of Peter listing Beverley Hills as his address, that wouldn't be an accurate reflection of what he told you?

A Could be.

Q Did you know that Takeo Kato came to Las Vegas and repossessed one of the vans from Peter prior to

November the 5th, '98?

A No.

Q In terms of people that had access to the vans and the trucks, Peter and Jack drove interchangeably, correct?

A Yes.

Q In fact, there was a period of time when your car was broken down that you drove the truck for a while?

A The Toyota, yes.

Q The little brown Toyota pickup?

A Uh-huh.

Q The business went into a down turn, the heating business from -- you met Peter in August, so August, September and the fall of 1998. At some point Peter got the idea to start a cigar shop there at that address on Western, correct?

A Yes.

Q I keep pointing to that map. I'm sorry.

A That's okay.

Q And Peter and Jack worked frequently in this business sawing boards, and putting up this humidor, and things of this nature?

A Yes.

Q And it was physical hand work, carpentry,

and the like, correct?

A Yes.

Q And would oftentime Peter have the natural consequences of that work reflected on his hands; cut hands, nicks, scratches?

A Yes.

Q You noticed it because you probably held his hand once in a while, right?

A Yes.

Q Did there come a time when Peter asked you to borrow $2,000 for his cigar business?

A Yes.

Q And you didn't loan him that $2,000, right?

A No.

Q And he had a big story about how he was in California, but they wouldn't take his Nevada check. And that was the story he told you, and you didn't feel comfortable, right?

A Right.

Q And so you didn't give him the money?

A No.

Q To an extent you thought Peter was a con man, correct?

A To an extent.

Q And we spoke about this, but in hindsight

looking back on things, there were a lot of indicators that that's what he was, that now you look back and you see a lot clearer than you did in November of '98?

A Yes.

Q And I apologize, I'm not trying to attack you, I'm just trying to get the facts out as best I can.

Peter told you he wasn't close to his family, to everybody but his mother?

A Not to everyone, no.

Q And I think you told Mr. Fattig that the derogatory term, the racial term that Peter referred to Jack as, was only in your presence. He didn't say: Hey Jack, you're the --

A No, he didn't say that at me, he said it more in a -- just commenting.

Q But to you, not to Jack?

A Correct.

Q Peter was also an actor, was he not?

A Yes.

Q He had a portfolio?

A Yes.

Q And, in fact, he acted as an extra in the TV movie "Rat Pack"?

A Yes.

Q And that was the movie you watched with

Peter and Jack on a couch at 1933 Western sometime in the fall of 1998?

A Yes.

Q Peter also told you that his reason or justification for treating Jack the way he did, was that this was the best life Jack has ever known?

A Yes.

Q Peter was under the impression, at least from his comments to you, that Jack was living better than he ever had?

A Yes.

Q He had food and a roof and beer, or what have you, correct?

A Yes.

Q You never saw Jack with a gun?

A No.

Q You never saw Jack do anything in a violent capacity, did you, in all the time you knew him?

A No.

Q And when Jack talked to you about the police, and I'm talking now about the 17th of November when he calls you up and says: Come meet me in the parking lot of 24-Hour Fitness, Jack told you the police were trying to pin something on him that he hadn't done?

A Yes.

Q And that a black guy had been killed and the police were trying to say he did it?

A Yes.

Q And he told you he didn't do it?

A Yes.

Q And that's in August from Arizona that Jack calls you and he says he's underground, that was because of the situation with the black gentleman who was found dead, correct?

A And that was after I remember seeing Peter's picture on TV. And I remember asking Jack what's going on, Peter's picture is all over TV, it's in the paper. And he's, like: I don't know what's going on.

Q He never gave an indication to you that he had harmed Peter in any fashion whatsoever, correct?

A No.

Q His belief, or at least what he relayed to you was exactly what you thought, which is that Peter just upped and moved, right?

A Yes.

Q Incidentally, when Jack calls you and says that: Hey, I just got done talking to the police, he tells you that he had to give the police your name, right?

A Yes.

Q And he tells you he had to tell the police

the truth, that's why he had to give them your name, correct?

A No. I don't remember that.

Q If I showed it to you in your statement, might it help refresh your recollection?

A Yeah.

MR. CHRISTIANSEN: Court's indulgence. Let me see if I can find it as we go.

Q (By Mr. Christiansen) When you were questioned by the police in December of 1998, you told the police officers that you were concerned that somehow whoever had killed or done whatever harm to Peter may, in fact, harm you?

A Yeah.

Q You thought it had something to do with the Mafia, right?

A I was thinking all kinds of things.

Q You've never been involved in a situation where somebody just upped and disappeared?

A No.

Q You never expressed to the police your concern of any repercussions or retributions on behalf of Jack, like Jack was going to come and get you, right? You never told the cops you were scared of Jack?

A I don't remember.

Q Did you tell the police officers in your statement that Peter was mean?

A I don't remember.

Q Did you tell them you knew he was a bullshitter, to use your words?

A Yes.

Q Look on Page 32, if you would, in terms of the question about that Peter was mean. And read the last answer on the page to yourself, and look up back at me when you're finished.

You told the officers Peter was mean, didn't you?

A Yes.

Q Look at Page 37. I found the part about telling the truth, and it's the first answer about a third of the page. Read that to yourself, if you would, please, and tell me when you're finished.

Does that refresh your recollection? Jack told you that he said to tell the police the truth, and that's how he gave them your name, correct?

A That I worked for the Frontier Directory.

Q He said that he wasn't going to lie?

A That I work at Frontier Directory, correct.

Q Did you tell the police that you had some concerns that the man you knew as Peter Limanni was not

really Peter Limanni, was somebody else?

A Yes.

Q And did you tell the police that you thought he was the kind of guy who took money from women and just took off?

A I don't remember saying that.

Q Turn to Page 61 for me, if you would, of your statement. And, Ms. Harrison, I'm not beating you up for not remembering something two years later. That's why I gave you the statement just so we get out what it was you told the police back then.

A Okay.

Q Read the first answer that goes two-thirds of the page to yourself, and tell me when you're done, if you would. You're smiling. I imagine that's because you're remembering how things went down back when you talked to the police officers; is that right?

A Yes.

Q In fact, on Page 61, back just about a month after Peter had disappeared, you told the police officers you thought he was just some con, correct?

A Yes.

Q That he probably packed up and went off to Tahoe?

A Yes.

Q That's because he set this business up in Tahoe?

A Yes.

Q And that he probably knew you weren't going to play the game because you could have confronted him on what you thought was true, or what could have been true, and he was saying things and they weren't making sense. And you were even worried Peter Limanni might not be this guy's real name?

A Yes.

Q You were worried that he was the kind to take women, and just take them and not get nothing? And you thought to yourself and told the police: He's not going to get a penny from me?

A Yes.

Q And that reflects your desire or your decision to not give him that $2,000 when he called you from LA and wanted to borrowed money, and had that concocted story about his check?

A Yes.

Q And Peter even attempted to talk you into going into business with him on numerous times, didn't he?

A Yes.

Q And always something in your gut or in your brain told you this wasn't a guy you wanted to be in

business with, correct?

A Yes.

Q And, in fact, in November of 1998, you had sort of made a decision that you were going to go separate ways with Peter Limanni?

A Yes.

Q I wrote a note down, I'm just not sure I heard you right. Did you say that Peter called you his camel?

A He referred, not to me personally, but to a girlfriend. "A man cannot live without his dog and his camel."

Q And a camel is a female?

A Referring to his woman.

Q Let me ask you a question. Did Peter and Jack often make lists of things to do, or Peter make lists of things for Jack to do?

A Peter made lists of errands for Jack to run.

Q Was that uncommon at all?

A Not that I remember.

Q You didn't learn anything about these Japanese individuals that I've been talking to you about today until Jack told you about them after Peter had disappeared and Jack had left, correct?

A Referring to who?

Q The Japanese investors that I've talked about, Takeo Kato.

A No. When you mentioned that name, I do remember seeing that name on a contract at Frontier Directory.

Q So Mr. Kato may have had to sign the Frontier Directory contract?

A He had that, yes.

Q Do you know why it was that Peter Limanni didn't put his name on the Frontier Directory contract?

A I already had the contract. That's how I met Peter, that's the reason why I recognize the name now. That's who signed the contract. I called for him. He, from the best that I can remember, that Peter owned the company, had bought it from him.

Q Peter told you he had bought the company from Kato?

A The best of my memory.

Q You told the State and jury that Jake was with Peter a lot, except the times when you went to Tahoe, or you guys would go to dinner or what have you?

A That's correct.

Q And yet when you spoke to the police just a month after Peter disappeared, it was your opinion that Peter would have left Jake if he had to disappear, right?

A I don't think I would say that.

Q Turn to Page 69 of your statement for me, if you would, and read last questions and answer on the page.

A "And so you're thinking --

Q I'm sorry. You have to read it to yourself and then look up at me. That's okay. I should have explained it better.

In this portion of the statement you're talking to the police officer, to Detective Thowsen about your thoughts when you couldn't find Peter on November the 5th, which was that he must have just disappeared with another woman or taken off somewhere else, correct?

A Not so much with the other woman. That was a thought. That was a thought. But that it was he had just taken off.

Q And in response to a question by a police officer you said, "Something is going on that I don't know about, something. And like they say, love shakes but, you know what, he'll get another dog." That's what you said, right?

A Yes.

Q And you thought Tahoe was a likely place he would disappear because he had set that new business up and taken one of the vans from the old business and put it up there, correct?

A Yes.

Q And he talked all the time about traveling lightly, and being able to just pick up and go at any second?

A Yes.

Q And so until somebody called you, and you told me it was his sister, until she called you some months or a couple months after he disappeared, your entire thought process was that Peter had just up and taken off?

A Yes.

Q You never thought that Jack Seka had shot or hurt or harmed his only friend, did you?

A No.

MR. CHRISTIANSEN: Nothing further. Thank you, Ms Harrison.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. FATTIG:

Q Did you ever see Peter with any gaping wounds or anything that would require stitches?

A No.

Q You testified you saw minor scrapes on his hands?