IN THE SUPREME COURT OF THE STATE OF NEVADA

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

APPELLANT'S APPENDIX
Volume 4

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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:

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Chief Deputy District Attorney

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

AC/Skyler Sullivan/ed

A. Yes, I was.

Q. Did have occasion to learn of the discovery of a body near Nipton, California?

A. Yes.

Q. What time of day did you learn of that?

A. On that day I got called approximately 9:00 o'clock in the morning for a callout out into the Mountain Pass community, one mile east of interstate 15 off of Nipton Road regarding a dead body.

Q. Where were you at when you got the call?

A. I was in San Bernardino.

Q. Is that where your normal office is at?

A. Yes. The Sheriff's Department has its homicide unit out of downtown San Bernardino.

Q. What did you do after you got word of that?

A. I was assigned to the case with other detectives to roll out of San Bernardino and we responded from there to the scene.

Q. How long of a drive was it from San Bernardino up to where the body was at?

A. I know I arrived at about 1:40 p.m., by the time we got there.

Q. It was several hours?

A. Yes.

Q. When you - - could you describe where exactly the scene is at?

A. Yes.

The scene or the gravesite which was reported is approximately a mile east of interstate 15 off of Nipton Road.

The gravesite is approximately 21 feet south of the south edge of the roadway in a dirt area. In this dirt area there are two berms and the body was found between these two berms facing down in a partial grave.

Q. How close is Nipton Road to the Nevada border?

A. I would say between six and 10 miles, I believe.

Q. When you got on the scene what was going on?

A. When I got on scene a patrol deputy from the Baker station was on scene. He had secured the scene.

He informed myself and other detectives and forensic specialists, Jeffrey Smink who is from our crime lab, informed us of the person who found the body.

Q. What did you do after you got that information?

A. After I obtained the information that Peter Borden had found that body earlier in the morning, I then started my crime scene investigation.

Q. What did that entail?

A. That entailed photographing the scene, collecting the evidence, trying to find out who this person was, making an area search also.

Q. Did you do that in conjunction with Jeff Smink?

A. Yes.

MR. FATTIG: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. FATTIG:

Q. I'm going to show you a series of photographs that have been marked State's proposed 65 through 69.

If you could just look through those first and tell me if you recognize them.

A. Yes, I do.

Q. And what do they show?

A. These are pictures that depict the gravesite along with the body location of the crime scene.

Q. Do they fairly and accurately depict the

gravesite and the location when you arrived that afternoon?

A. Yes.

MR. FATTIG: Move to admit photos 65 through 69.

MR. KENNEDY: No objection.

THE COURT: They are received. Thank you.

BY MR. FATTIG:

Q. If you could, Detective Wolf, starting with 65, could you look at the photo and describe what is shown, reading the number on the back of it?

A. Number 65 depicts the berms from the roadway looking in a southeasterly direction.

Number 66 is another color photograph which depicts the body looking in a westerly direction.

Number 69 is a color photograph of the body. This photograph shows the skull and what appear to be two gunshot wounds to the skull area of the victim.

Number 68 is another photograph of the victim lying in the dirt facing down. His left arm is pointing in a northerly direction and his left arm is to his side and there is animal activity to the body.

Photograph number 67 depicts the gravesite looking in a northerly direction.

Q. Could you generally describe the placement

of how the body was in the gravesite?

A. Yes.

The victim was face down.

He was partially buried - - from the bottom of the legs down was buried. His left arm was extended out, away from his body, as I indicated, pointing in a northerly direction.

His right arm was down to his side. His right hand was partially buried.

On the other side of the berm there was what appeared to be two tire marks or two tire impressions, not in detail, that we could find detail tire tread marks, but it appeared as if a vehicle had driven away from the body in a westerly direction.

Q. What was the general condition of those tire tracks?

A. Very poor. There was no detail to the tire treads. All you could do is measure wheel base and you could just indicate that there was a vehicle there.

Q. Could you generally describe the condition of the body you saw?

A. The body was badly decomposed with animal activity to the head and to the torso area.

Q. Could you describe the general location, what it looked like out there?

A. This area is a very desolate area in the part of our county. It's part of the Mountain Pass community.

It's very desolate, no homes.

There is a mine out in this area going toward Nipton Road. The railroad is the nearest industry in this area.

There is a couple of mines out in there, but I did not see any other homes. So it's pretty desolate.

Q. Were you there when the body was actually removed fully from the ground?

A. Yes, I was.

The coroner arrived sometime after 1:30 p.m. and the coroner, what we refer to in homicide as a body roll, where the body is actually moved very carefully, methodically, as to not lose any trace evidence.

I was present when that occurred.

Q. Was the body wearing any clothes that you saw?

A. The only clothing or article of clothing that the body had was a pair of boxer shorts with the brand Joe Boxer.

Q. Did the body have any jewelry or any rings

or anything on it?

A. I did not note any.

However, I did not attend the autopsy, but from the prima facia I could not determine that the victim was wearing earrings, rings, jewelry.

Q. Was there any ID on the body at all?

A. There was no identification on the body or around the body.

Q. Was identification of, eventually obtained on the body?

A. The only identifiable item or things that I could tell the body had was two tatoos, one on the right arm and the other on the other arm. There was a tatoo of vulture on one arm, I believe it was the right, and there was another tatoo on his left arm of an eagle.

The fingerprints that forensic specialist Jeffrey Smink was able to obtain was I believe from the right hand. We submitted those latent fingerprints to the sheriff's crime lab.

Q. Did you eventually get word back as to who those linked up to?

A. Yes.

Q. After you got that what did you do?

A. The fingerprints were submitted on the 23rd, on that same day, to our lab and on the 24th I got

a phone call from our sheriff's crime lab indicating they had made a positive identification.

Q. And what did you do after you received that information?

A. I forwarded the information to the agency where the victim was - - our victim who we had listed as a John Doe 33 - 98, we had him identified as Peter Paul Limanni out of the Las Vegas area.

Q. At a certain point in time did you contact the Las Vegas Metropolitan Police Department?

A. Yes, I did.

Q. When did you do that?

A. That was on December 28.

I called the Las Vegas Metro Homicide and spoke to Detectives Jim Buczek and Tom Thowsen and I told them that their fingerprint showed a match on their case Number 98111600443.

MR. FATTIG: May I approach the witness?

THE COURT: You may.

BY MR. FATTIG:

Q. Directing your attention to Exhibit 65, can you describe specifically what that photo shows?

A. This one shows the dirt berm next to the gravesite.

Q. And is the body visible in that

photograph?

A. No, it's not.

Q. And is that fair to say that that's the view from the road?

A. Yes, it is.

MR. FATTIG: Nothing further at this time.

THE COURT: Cross-examination.

EXAMINATION

BY MR. KENNEDY:

Q. Did your investigation reveal that the individual you identified as Mr. Limanni had an address in Santa Monica, California or in Beverly Hills?

A. No.

Once we found out that the fingerprints came back to Mr. Limanni and that Las Vegas Metro had a case that they were working, we then decided that they were going to go ahead and take the investigation after.

Q. So no further background work was done because it was another jurisdiction's case; that is fair to say?

A. That's fair, yes.

Q. The body itself, you - - when you arrived

at the site was the body still partially buried in the ground?

A. Yes.

Q. And I believe in your report you - - the indications, at least to the naked eye, was the body was 180 to 200 pounds; is that about right?

A. Estimating, yes.

Q. Did the body itself even in its decomposed state look somewhat large?

A. Yes. The body as it breaks down it starts appearing and giving out an appearance to be much more heavier.

MR. KENNEDY: Pass the witness.

THE COURT: Anything further?

MR. FATTIG: No.

THE COURT: Thank you, very much. You're excused.

THE WITNESS: Thank you, Your Honor.

MR. KANE: Your Honor, we have no more witnesses, but I do have a stipulation of expected testimony in connection with the testimony of this witness.

We had intended to call Rick H-o-u-l-e who is an ID technician with the San Bernardino County Sheriff's Department.

It has been stipulated that, if he were called as a witness, he would testify that as an ID technician with the San Bernardino County Sheriff's Department he examined the fingerprint recovered from the scene by Jeff Smink and positively matched it to the known right thumb print of Peter Limanni.

MR. KENNEDY: That is the stipulation we agreed to, yes.

THE COURT: Thank you.

Counsel then concede that we would excuse the jury at this juncture?

MR. KANE: Yes, Your Honor.

We have no other witness that could be accommodated in the time remaining.

MR. KENNEDY: No objection, Your Honor.

THE COURT: We will remain. There's some matters we need to discuss.

(Whereupon, the Court admonished the jury.)

THE COURT: Thank you for your accommodation to my schedule. We will begin Tuesday - - as you probably know, Monday is a holiday. We will begin Tuesday at 1:00 o'clock. It's a long weekend.

I hope you will keep in mind the admonition. It's vitally important.

Have a nice weekend. We'll see you back here Tuesday,

We will remain in session.

(Whereupon, jury exited the courtroom.)

THE COURT: Let the record reflect the jury has exited the courtroom.

Now, your last statement, you have other witnesses, they are just not scheduled today; is that right?

MR. KANE: That's correct.

We had planned to call Randy McPhail. He processed 1933 Western and a couple of other crime scenes. We have all his evidence and we've got it marked.

If we started with him, we wouldn't scratch the surface.

THE COURT: Is he your last witness you're going to call.

MR. KANE: No, judge we have probably half a dozen witnesses, just about all police officers. I think we can easily be finished on Wednesday.

THE COURT: All right.

MR. KANE: That's the case in chief.

THE COURT: Right. All right then. We will stand adjourned. I'll see you Tuesday.

MR. KANE: Thank you.

MR. CHRISTIANSEN: Thank you, Your Honor.

(4:30 p.m.)

ATTEST that this is a true and complete transcript of the proceedings held, DATED this 18th day of February 2001.

J. A. D'AMATO CCR #017

DISTRICT COURT

CLARK COUNTY, NEVADA

IN OPEN COURT
FEB 21 2001
19
SHIRLEY B. PARRAGUIRRE, CLERK
BY, Judy Norman
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 I

February 20, 2001
1:10 p.m.
Department XIV

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WITNESS INDEX

Page

THOMAS CRAMER:

EXAMINATION by Mr. Kane 3
EXAMINATION by Mr. Kennedy 20

VINCENT ROBERTS:

EXAMINATION by Mr. Kane 39
EXAMINATION by Mr. Kennedy 54

ROBERT KROLL:

EXAMINATION by Mr. Fattig 56
EXAMINATION by Mr. Christiansen 69

RICHARD NOGUES:

EXAMINATION by Mr. Fattig 80
EXAMINATION by Mr. Christiansen 91

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

Ms. Clerk, will you call the roll of the jury, please?

(Whereupon, the clerk of the court called the roll of the jury.)

MS. CLERK: The panel is present.

THE COURT: Good.

Good afternoon, Ladies and Gentlemen.

The State's next witness, please.

MR. KANE: Thomas Cramer.

THOMAS CRAMER,

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

EXAMINATION

BY MR. KANE:

Q. Please state your full name and spell your last name for the record.

A. Thomas Cramer, C-r-a-m-e-r.

Q. Mr. Cramer, do you know Jack Seka?

A. Yes, I do.
Q. How long have you known Mr. Seka?
A. Now? About 12 years now.
Q. Is me present here in Court?
A. Yeah.
Q. Point to him and tell me what he's wearing.
A. Right there, dead in the middle, with the sweater on.
MR. KANE: May the record reflect identification of the Defendant, Your Honor?
THE COURT: It shall.
BY MR. KANE:
Q. Before I get into the facts let me ask you a couple questions about yourself.
You're currently under treatment for alcohol addiction; is that correct?
A. And depression.
Q. And do you take medications for those conditions?
A. Yes, I do.
Q. You're under the care of one or more physicians?
A. Yes.
Q. Tell us what medications you're currently

taking, please.

A. I'm taking Remalon (phonetic), Tracadine (phonetic) Ritalin and Xanax.

Q. What do they do for you?

A. Tracadine and the Remalon are anti-depressants and he's using the Ritalin as an anti-depressant, because like it keeps my mind from drifting and the Xanax are for a tranquilizer, to stop me from shaking.

Q. Without those medications would it be possible for you and I to carry on a conversation like this?

A. Definitely not; it's good.

Q. Do those - - have you taken those medications within the last 24 hours?

A. Yes.

Q. Do they - -

A. I take them every day.

Q. - - do they interfere with your ability to understand what I'm saying?

A. Absolutely not.

Q. Are you able to respond to my questions?

A. Yes, I am.

Q. I want to talk to you about 1998.

Were you friends with Jack Seka from the

time you met him up through 1998?

A. Yes.

Q. In 1998, were you aware he was living and working here in Las Vegas?

A. Yes.

Q. Were you aware of who he was working for?

A. Yes.

Q. Who was that?

A. Pete Limanni.

Q. Had you met Pete Limanni before 1998?

A. One time at a car dealership, and I knew of him.

Q. During 1998 when Jack Seka was working out here in Las Vegas would you two talk on the phone?

A. Yes.

Q. How often?

A. Once a week, once every two weeks.

Q. And in any of those conversations did you ever speak to Mr. Limanni?

A. No.

Q. Did you ever hear Mr. Limanni in the background speaking to Mr. Seka?

A. Yes.

Q. Once or more than once?

A. Once.

Q. And when was that, as well as you can remember?

A. Let me think. It's either September or October. It was in between like right around in there.

Q. What was the nature of the remarks that Mr. Limanni was making that you heard?

MR. CHRISTIANSEN: Hearsay objection, Your Honor.

A. I never - -

THE COURT: I'm sorry.

MR. CHRISTIANSEN: That would be a hearsay objection. He's talking about the comments of Mr. Limanni.

MR. KANE: Not offered for the truth.

Simply to indicate the relationship between Mr. Limanni and Mr. Seka.

MR. CHRISTIANSEN: If Mr. Limanni is in the background saying anything, that's classic hearsay.

THE COURT: Approach the bench.

(Discussion off the record.)

THE COURT: The Court will overrule the objection. I do want you to be very aware of the testimony as it proceeds.

BY MR. KANE:

Q. What did you hear Mr. Limanni saying to

Mr. Seka?

A. It was so, um - - I never heard anybody in my entire life talk to somebody like he talked to him.

Q. In what way?

A. Like he says "Like you piece of shit what are you doing on the phone? You're supposed to be working. You fuck-up, how can you do this? Do you know what you're supposed to be doing?"

I really can't remember, because I never heard anything like it. Never heard anything like it in my life to anybody in my whole life.

Then right after that, I got back, I was on the phone and I said "Jack, do you let him talk to you like that? And you're working for this guy?"

I was stunned.

Q. All right. I want to change gears now and I want to talk to you about a man named Lee Polski.

A. Yes, I know Lee.

Q. Towards the end of 1998 did you get a call from Lee Polski?

A. In November, yeah.

Q. And what did Lee Polski tell you?

And again this is not offered for the truth, but to show why you did what you did.

What did he say to you?

MR. PETERSON: Same objection, Your Honor.

THE COURT: Same ruling.

Go ahead.

THE WITNESS: He called me at work, which often we would talk about Jack and what he was doing, like he would check up on him and whatever, and he said "Did you hear anything about Jack killed Pete Limanni out in Vegas?"

I said no.

Then he said "Do you think he could do it?"

I said Lee - -

BY MR. KANE:

Q. Please don't give me your response.

So he told you something about Pete Limanni getting killed in Las Vegas, correct?

A. Implying Jack.

Q. Was that the first that you'd heard about that?

A. Yes.

Q. Did Mr. Polski tell you anything else about it, how Jack was or how Pete was supposedly killed or when, or any other details?

A. No.

Q. I want to talk to you now about

Christmastime time of 1998, around the Christmas Holidays.

Did you see Jack Seka around that time?

A. Yes.

Q. Where?

A. Um, at my grandmother's house and at my ex-girlfriend's house.

Q. Now, where are they located in the country?

A. She lives in Flowertown, Pennsylvania, and she lives in Philadelphia, Pennsylvania.

Q. And when you saw Mr. Seka did you ask him about this thing with Pete Limanni?

A. Yes, I did.

Q. Where did that conversation take place the very first time that you saw him and asked him about Pete Limanni?

A. I'm not sure. It would either be at my grandmothers or at Marvin's, most likely, because that's where we hung out.

Q. And do you know when?

A. Around Christmas when he came back. It was like one of the first things on my mind.

Q. Now, were there other people in the residence at the time that you had this conversation?

A. No.

It was just me and him, personal.

Q. Just the two of you?

A. Yes.

Q. Tell us what you said and what he said.

A. I said Jack, I heard they were looking for you for killing Pete Limanni out in Vegas. I said, did you do it?

He said "No." Then he goes "They didn't even find the body."

I said to myself, wait a minute. How would he - -

MR. PETERSON: Objection to what he said to himself.

THE COURT: Just a minute, sir.

THE WITNESS: I'm sorry.

THE COURT: Objection?

MR. PETERSON: Objection to what he said to himself, in his mind what he was thinking.

It's irrelevant, judge.

THE COURT: Response?

MR. KANE: Non-responsive, judge.

THE COURT: Listen to the question, once again.

BY MR. KANE:

Q. So Mr. Seka said to you "They haven't even found the body yet."?

A. Yeah.

Q. Was there a later occasion, after the Christmas Holidays, when you and Mr. Seka had a confrontation that turned violent?

A. Yes.

Q. When did that occur?

A. January 23rd.

Q. Where?

A. At my grandmother's.

Can I have a glass of water?

Q. And that's your grandmother's house and that's in Flowertown, Pennsylvania?

A. Yes.

Q. And were there other people in the residence at the time that you and Mr. Seka were having this argument?

A. They were in the residence.

Q. Was there anybody right there where you two were arguing?

A. No. It was me and him.

Q. What was the argument about?

A. Well, um, like over the last few years, two, three years, like I did a lot of things for him.

Like he got in trouble with the law.

I testified for him.

MR. CHRISTIANSEN: Objection. Your Honor.

It's irrelevant, non-responsive to the prosecutor's question.

THE WITNESS: I'm trying to explain.

THE COURT: Just a minute. All right.

MR. KANE: I did not seek to elicit that response. I simply wanted to establish they were arguing over their personal relationship.

MR. CHRISTIANSEN: Move to strike.

THE COURT: No objection?

MR. KANE: No objection.

THE COURT: It is stricken.

Next question.

BY MR. KANE:

Q. Without going into the details of what you were arguing about in the course of the argument did the name of Pete Limanni come up?

A. Yes.

Q. By yourself or by Mr. Seka?

A. By Mr. Seka.

Q. And what did he say?

A. He - - the argument got very heated. I got up and he was standing at the top of the steps in my

room. We were upstairs.

I got up in his face and he said to me "Do you want me to do to you what I did to Pete Limanni?"

At that point I looked in his eyes and never saw anything. I never looked in - - I never saw - -

MR. CHRISTIANSEN: Objection, Your Honor.

THE WITNESS: - - I never saw anything like it.

THE COURT: Just a minute.

MR. CHRISTIANSEN: I don't believe the witness is going to be able to give statements of that type.

MR. KANE: He's known him for 12, 13 years. It explains what happens next in the course of the altercation.

THE WITNESS: And why I did what I did.

THE COURT: Just a moment. All right.

Are you offering the response to give some basis for the next response or responses or are you asking the individual here to indicate what look he saw in his eyes.

MR. KANE: I'm offering it for two reasons: to reflect Mr. Seka's attitude and demeanor at the time he said this and to explain Mr. Cramer's

following actions.

THE COURT: Your response, Mr. Christiansen, Mr. Kennedy?

MR. CHRISTIANSEN: I'd only note the witness is providing more than just statements here. He's providing a color commentary, which I think is not only irrelevant, it's preducial to my client.

I think the witness should be instructed to answer the questions directly and not to give color commentary to every statement that he's making.

THE COURT: I'm going to allow the response that would indicate the demeanor of the declarant so you can elicit that question.

BY MR. KANE:

Q. When he said to you "Do you want me to do to you what I did to Pete Limanni", what was his demeanor?

A. His eyes went black. It just seemed like there was nothing inside and all in a split second I knew he meant it and it scared the shit out of me.

I grabbed him by the neck. My loved ones were downstairs, my ex-girlfriend and my grandmother.

Q. And what did you do?

A. I felt threatened. I grabbed him by the neck and threw him down the steps as hard as I could.

Q. As a result of this altercation you were arrested, correct?

A. Yeah.

Q. And - -

A. Not arrested; committed to a mental institution.

Q. For how long?

A. Um, couple weeks.

Q. After you got out, after that commitment, did you have any further conversations with Mr. Seka about Pete Limanni?

A. Yes.

Q. One or more than one?

A. Um, more than one.

Q. Tell me the next one that you remember after you were released from your commitment, where it was and whether there was anybody else present.

A. It's hard to explain that directly without other information. Do you know what I mean?

Q. I don't want you to tell me other information. I want you the to tell me - - listen to me, please, Mr. Cramer.

After you were released from your confinement when was the next time you talked to Mr. Seka, anything about Pete Limanni?

A. When I was in the hospital.
Q. I'm not asking you that.
I'm asking after you were released when was the next time?
A. After I was released? Two, three weeks.
Q. Where did that conversation take place?
A. In my grandmother's house.
Q. Again was there anyone present besides the two of you when you were having this conversation?
A. No. Just me and him.
THE COURT: Wait until the question is asked.
BY MR. KANE:
Q. Did the conversation concern Pete Limanni?
A. Yes.
Q. What did you two talk about?
A. At that point I was trying to find out exactly what happened and get information out of him and it was like major cat and mouse game.
I felt that I had just become a loose end at this point, that he would - -
MR. PETERSON: Objection, Your Honor.
THE COURT: Tell us - -
MR. PETERSON: May we approach?
THE WITNESS: This is important.

THE COURT: Just a minute, sir. Come forward.

(Discussion off the record.)

THE COURT: Mr. Cramer, I want you to answer the questions specifically. Don't volunteer a lot of things.

Just very succinct, just very short answers to the questions.

The question now is what?

MR. KANE: I want to get back to this conversation that you had with Jack Seka about Pete Limanni after you were released from your commitment.

THE WITNESS: Okay.

BY MR. KANE:

Q. I don't want to know what you were thinking or what you think he was thinking. I want to know what you said to him and he said to you.

Can you tell me that?

A. Yeah.

I was sitting on the chair opposite the sofa. He was sitting on the sofa.

I said to him, I said 'Well what happened?" You know, trying to get - - seek information, and he told me that Pete came at him with a gun, accusing him of money being missing.

He said he wrestled the gun from Pete, shot him. He fell against the wall; he was gurgling; blood was coming out of his mouth and he just kept shooting him.

Q. Now, at some point after this were you contacted by agents of the Federal Bureau of Investigation?

A. Was I?

Q. And without going into a lot of detail were they seeking information about Mr. Seka's whereabouts?

A. Yes.

Q. And did you tell them what you knew?

A. Yes.

Q. And to your knowledge, was he arrested shortly after that?

A. Yes.

MR. KANE: Nothing further, Your Honor. Tender the witness.

THE COURT: Cross-examination.

EXAMINATION

BY MR. KENNEDY:

Q. Mr. Cramer, in January 1999 you were committed to a mental institution for a couple weeks, but that wasn't the first time you had been committed to an institution for mental health reasons; is that correct?

A. That's correct.

Q. You had actually, prior to January 1999, been admitted I believe three occasions; is that right?

A. To a mental institution?

Q. Yes.

A. One. I was in rehab, twice, which was dual diagnosed. They treat mental and alcoholism.

Q. Do you recall testifying at a preliminary hearing on June 28 of 1999 here in Las Vegas?

A. Yes, I do.

Q. And do you recall - - may I approach the witness?

THE COURT: You may.

BY MR. KENNEDY:

Q. I just asked you, Mr. Cramer, had you been treated in the past at a mental institution and your answer to me was one time.

Counsel, I'm looking at page 68 of the preliminary hearing transcript.

With the aid of your glasses could you read to yourself lines 17 through 19?

A. That includes rehabs.

Q. So when I asked you at the preliminary hearing had you been treated at mental hospitals at least five times your answer was three.

Now you're saying your answer was one?

A. Okay. They were dual diagnosed.

They treat mental illness and alcoholism, so that's right.

Q. So the correct answer is you have been treated three times at mental hospitals just for different reasons.

Is that what what you're trying to say?

A. And alcoholism, yes.

Q. How long have you been diagnosed as an alcoholic?

A. I knew I was an alcoholic since I was 19.

Q. You've been diagnosed as a bipolar manic depressive, as suffering from that; is that correct?

A. A doctor did say that. That's not my diagnosis now.

Q. Your diagnosis now is clinically depressed?

A. I have major depressive disorder and

Post-Traumatic Stress Disorder.

Q. When were you diagnosed with Post-Traumatic Stress Disorder?

A. My psychiatrist right now.

Q. The one you're seeing now?

A. Yeah. I've been diagnosed with major depressive disorder by three or four doctors.

Q. The doctor you're seeing now, he's a psychologist?

A. Psychiatrist.

Q. Psychiatrist, excuse me.

Is he the same one you saw back in 1999 when you went back to the mental hospital in January?

A. No.

Q. He's a different one?

A. No.

Q. He's a different doctor?

A. Yes.

Q. At the preliminary hearing that we had back in 1999 you testified that you were taking three medications at that time.

Q. Paxil, Ativan and Xanax?

A. Yeah.

Q. That's what you testified then.

Today you've told us you're taking some

different medications although you're apparently still taking the Xanax; is that right?

A. Yes.

Q. I believe you had previously testified that the Paxil, the Ativan and the Xanax you were taking those at the time, let's see, the early part of 1999, January, February, March; is that correct?

A. Yes, yeah.

Q. You were also taking them into April as well; is that correct?

A. Yes.

Q. Now, you gave a statement to the police back there in Philadelphia; do you remember doing that?

A. Yeah.

Q. They came and they took an interview from you?

A. Yeah,.

Q. That was on April 9 of 1999.

You may not remember the day.

A. I don't remember the exact date, but probably around there.

Q. And that's about a little over a week after Jack was arrested there in Philadelphia. He was arrested on March 31.

Is that fair to say?

Are you aware of that?

A. I would agree with that.

Q. And do you recall telling the police at that time in that statement that you asked Jack what had happened and he said he didn't know. He didn't know where Pete was, that Pete was missing.

Do you recall Jack telling you that?

A. Yeah. Followed by "They haven't found the body yet" which made me think.

Q. Now, that's not in the statement you gave to the police. Is that something you recall now?

A. I was just hysterical when I was down there, crying my eyes out, completely confused.

You can get the detective that I talked to and he will validify (sic) that.

Q. You were completely confused?

A. I was in a - - I was an emotional wreck.

Q. The drugs you've been taking, Paxil, the Ativan, the Xanax, those three medications you were taking back then, were you aware that those drugs have certain side effects?

A. Yeah.

Q. Are you aware - -

A. Mostly the Paxil.

Q. - - are you aware that those drugs have

varying side effects, including confusion, loss of memory, delusions, hallucinations, erratic behavior?

Are you aware those medications have all those side effects?

A. I never experienced them from that.

The only thing I experienced from the Paxil was it made me feel sort of violent, it really did.

When I was in building 50, they can validify that because they gave me an 80-milligram dose one night.

I could not sit still and I didn't know what to do. I wanted to kill myself in the hospital.

Finally, somebody took me to the desk and they gave me a shot and calmed me down.

Q. You told us in the past at the preliminary hearing and you told us here today that you are a recovering alcoholic?

Are you recovering - - are you in a treatment program for alcoholism?

A. I go to three or four AA meetings a day. I worked hard for it. I'm in therapy twice a week.

I have a therapist, a psychiatrist and I make three groups a day, twice a week. I have two sponsors and I worked real hard to get this - - just what I got today.

Q. It's a good program.

Were you in that program back in January through April of 1999?

A. I was sober nine years at one time.

Q. Were you sober in January through April of 1999?

A. January '98?

Q. 1999.

A. January '99?

No, I wasn't sober.

Q. So at that time you were taking alcohol, along with your medications?

A. No. I hadn't started drinking yet. I was taking pills.

Q. What kind of pills?

A. Soma, Percosette, Xanax and Valium.

Q. You were taking those medications in addition to the Paxil and the Ativan and the Xanax?

A. No.

I would go in the hospitals; I'd see doctors. I'd follow up a little bit and I just stopped taking them because I didn't think they were working, because I was still depressed.

I tried all kinds of anti-depressants, Prozac, Serazone, Paxil, they had - - I've been in and

out of hospitals.

I was in hospitals for five times this year, trying to get help.

Q. The medicines you take, do you take them on a daily basis?

A. Yeah.

Q. Now, Mr. Cramer, you have had a relationship with a lady by the name of Margaret Daley; is that right?

A. Yes, I did.

Q. Back in January of 1999 did you have relationship with her at that time?

A. Yes, I did.

Q. Is it a romantic relationship?

A. Yeah.

Q. And in January 1999 after you went, you were committed on January 23rd, you told us, isn't it true that she placed a Restraining Order against you?

A. Yeah, but let me also add that - -

Q. Just answer my question, Mr. Cramer.

A. I broke up with her.

Q. Mr. Cramer - - Your Honor, could you please instruct the witness to answer my question?

THE COURT: Just answer the question, sir.

BY MR. KENNEDY:

Q. Mr. Cramer, January 1999?
A. Yeah.
Q. Did Margaret Daley put a Restraining Order against you?
A. Around that time, yeah.
Q. Are you aware that Mr. Seka had assisted her in trying to get that Restraining Order?
A. I figured that out.
Q. You had a relationship with Margaret; is that correct?
A. Yes.
Q. How long - - prior to January of 1999 how long was your relationship?
A. Roughly five years.
Q. The Restraining Order that went in effect in January 1999, it was still in effect when you gave the statement to the police in April of '99; isn't that true?
A. Yes.
Q. And, in fact, that Restraining Order still is in effect today; is that right?
A. She got another one, yeah.
Q. She got another one against you?
A. Um-hum.
Q. You're aware that Jack was arrested on March 31, 1999. He was there with Margaret at Margaret's

house; is that correct?

A. Right.

Q. Did that upset you in some way, that he was there at Margaret's house?

A. Um, a little bit, yeah, but I didn't think there was anything going on.

Q. Okay. Did that make you - -

A. This all happened after the fact of January 23rd.

Q. Okay.

A. I did not put two and two together, like they would be together.

Q. Isn't it true that Mr. Seka was instrumental in getting you institutionalized back in January 1999?

A. Yeah.

Can I make a comment?

Q. No, you can't make a comment. You can answer my question.

THE COURT: Just answer the question. The other side may ask you.

THE WITNESS: I'm just saying - -

THE COURT: Don't say anything, say yes or no right now.

THE WITNESS: Yeah, Jack had me put away.

BY MR. KENNEDY:

Q. Had that happened in the past, before January of 1999, were you forcibly put in a mental institution for treatment?

A. No.

Q. In other words, involuntarily put into a mental hospital?

A. Right. I signed myself in.

Q. You always signed yourself in?

A. Yes.

Q. You told us here today, let's see, that on one of the occasions, I guess it was probably February of '99, after you got out of the hospital, you said you were in the hospital for a couple weeks?

A. Um-hum.

Q. You got out and you told us here today that you had some further conversations at, I believe your grandmother's house, with Jack. And you told us that in one of those conversations you said that Jack told you that Pete came at him with a gun over money being missing and the blood was coming out of his mouth.

You said that here today; is that right?

A. Yeah.

Q. You never told that to the police back in Philadelphia; are you aware of that?

A. Like I said, I was as bad as you could ever see anybody.

Q. Mr. Cramer, you never told that to the police back in Philadelphia in 1999, did you?

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

I do remember in February that I said that. I was completely distraught.

THE COURT: Just a minute. Wait for the next question, sir.

BY MR. KENNEDY:

Q. Mr. Cramer, you didn't tell us that at the preliminary hearing in June of 1999, did you, that Pete came after Jack because money was missing and the blood was coming from his mouth?

A. Um, I thought I did.

Q. I can represent to you I was at that preliminary hearing and that wasn't testified to.

When did this come to you that you understood that Jack was involved in an argument with Pete over money and that blood was coming from his mouth?

When did you remember this?

Is today the first time you remembered that?

A. No, no. I'm not in mental therapy. I know what happened.

Q. But you didn't tell that to the police?
A. The first time I heard it was right after I got out of the hospital.
Q. Mr. Cramer, you didn't tell that to the police, did you, Mr. Cramer?
A. Which police, the Phidelphia police?
Q. Did you tell that - -
A. To the FBI?
Q. Mr. Cramer, did you tell that to the police when you gave a statement to them, in Philadelphia, on April 1999?
A. I don't remember. I cried through the whole thing.
Q. You were hysterical; is that right?
A. I was hysterical.
Q. You took your medication that morning; is that right?
A. I don't remember.
Q. Does your doctor advise you to take your medication every day?
A. Yeah, and I'm following that.
Q. Did you follow his advice back then in 1999?
A. Through all the times I went into the hospital for depression, I would take it for a little

while and then I'd stop. I just would stop, but I made up my mind to do it.

I thought it would help me, give me a chance so like right now I'm trying to do everything I can.

Q. Mr. Cramer, please.

THE COURT: Wait for next question. Just a minute.

BY MR. KENNEDY:

Q. I believe you testified as well just moments ago that Jack told you, I guess at his grandmother's house, that Mr. Limanni was shot and there was blood all over the place; is that right?

A. Yeah. He fell against the wall and he was bleeding.

Q. You testified on direct that he was shot and I believe you said that there was blood coming out from the gunshot wounds in the business; is that correct?

A. Well, maybe I made a mistake that he was just gurgling. Maybe there wasn't blood coming out, but he did say he was gurgling. I remember that.

Q. Mr. Cramer, the question isn't maybe.

The question is what do you recall?

You're here testifying under oath.

You do understand what it means to take

that oath; is that correct?

A. Right, and it's very important to me.

Q. It is very important.

We just want to know what you know.

Now, did Jack Seka tell you, in February of 1999, that Peter Limanni came at him over missing money, that he was shot and there was blood all over the place?

A. Came in with a gun. He wrestled it from him; he shot him; he fell against the wall, shot him a few more times.

Q. Did Jack tell you where all this occurred at?

A. That I don't remember. I couldn't swear on that.

Q. Now, you said you met Peter Limanni on one occasion; is that right?

A. Yeah.

Q. You testified one time back east, back in Philadelphia or Pennsylvania?

A. Yeah.

Q. And when you met him on that one occasion did you get a chance to physically look at him and, I mean, how close were you?

Did you talk with him?

A. I didn't like him right away.

Q. I didn't ask whether you liked him or not, but you got a chance to look at him; is that right?

A. Well, when I don't like somebody I don't pay that much attention to them, so I can't really say I can draw a picture of them.

Q. I'm not asking you to draw a picture.

Do you remember whether he was a big man, a large man?

A. I remember he was not skinny, but not fat. He was more than skinny side.

Q. Was he tall?

A. I don't remember.

Q. Was he bigger than Jack Seka?

A. I don't want to speculate on that, because I don't remember.

It was like a short thing. I was in and out and, you know. I didn't like the guy.

Q. You testified as well on direct about overhearing him in the background say some negative things about Jack.

A. Negative is a kind word.

Q. That's the word I choose.

A. Okay.

Q. Did you - - do you remember when you had

those phone conversations that you overheard Pete Limanni in the background?

A. I'd say it was between September and October.

Q. And on how many occasions did you hear him do that?

A. Only that one time.

Q. Only one time?

A. Yes.

Q. And you said you spoke to Jack on about a weekly basis by way of telephone; is that right?

A. A week, every two weeks.

Q. Every two weeks. He was your friend?

A. Yeah.

Q. You're no longer taking the Paxil and the Ativan; is that correct?

A. No.

Q. Your present psychologist doesn't think those are necessary?

A. I would never touch Paxil.

Q. They had some bad effects on you?

A. Terrible.

Q. Do you remember when you were first prescribed the Paxil?

A. After I found out a kid I thought was mine

that I raised for seven years - - I had a funny feeling. I took him for a blood test and it came back it wasn't mine.

Q. When was that?

A. I got the letter on my birthday, September 7th of '97, I believe.

Q. So you were taking Paxil for at least a year and a half prior to all this going down with this incident with Jack in January of '99; is that correct?

A. No. Because I didn't go to see a doctor right away.

Q. How come you were taking the Paxil?

I'm trying to figure out how long you were taking the Paxil.

That's really my question.

A. Um, I'd say about four months.

Q. Only four months?

A. Maybe five months.

Q. So you got off of it then?

A. And it was a low dose.

Q. You got off of it then in 1999; is that right?

A. I was already way off of it.

Q. You testified at the preliminary hearing you were on Paxil, Ativan and Xanax during the first four

months of 1999.

So was it later on in 1999 that you got off of it?

A. I was on it and then I was off it. I went on it when I found out about the kid, found the doctor prescribed it, and when Jack had me committed they put me back on it.

Q. When you gave that statement in April of 1999 to the police you were certainly on the Paxil as well as the Ativan and the Xanax; is that right?

THE COURT: Is there a response to the last question?

MR. CHRISTIANSEN: It hasn't been answered yet.

THE WITNESS: I'm thinking. I'm trying to get it right. Very, very confusing three years, the last three years.

Um, after I got out of the hospital, that was what Doctor Neal me on.

Q. You were on those three medications through 1999; is that correct?

A. Yeah.

Q. That is true?

A. Yeah.

Sometimes I would skip a day and not take

it. It was a low dose. When they gave me the 80 milligrams in the hospital I felt like killing myself.

MR. CHRISTIANSEN: Pass the witness, Your Honor.

THE COURT: Anything further on re-direct?

MR. KANE: No re-direct.

THE COURT: You're excused. Thank you, very much, sir.

Next witness, please.

MR. KANE: Vince Roberts.

VINCENT ROBERTS,

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

EXAMINATION

BY MR. KANE:

Q. Sir, would you please state your name and spell your last name for the record?

A. Name is Vincent Roberts, last name spelled R-o-b-e-r-t-s.

Q. By whom are you employed?

A. I'm employed with the Las Vegas Metropolitan Police Department in the crime scene bureau.

Q. How long have you been employed by that department?

A. A little over three years.

Q. And how long have you been in the crime scene division?

A. Same amount of time, little over three years.

Q. That's been your assignment the whole time?

A. Yes.

Q. Now, we've heard testimony from crime scene analysts who go out to search, collect evidence, make sketches.

Is that what you do?

A. Yes, I do.

Q. I want to talk to you about November 16, 1998. Were you called to a suspected crime scene about 2.1 miles south of Route 146 on Las Vegas Boulevard South?

A. Yes, I was.

Q. And were you the only crime scene analyst there or were there others there as well?

A. There were others there as well.

Q. And what was your specific assignment?

A. My specific assignment when I arrived at

the scene was to collect the evidence and to do the diagram for the scene.

Q. Were you aware that photographs were being taken at the scene?

A. Yes.

Q. Were some of those photographs taken at your direction?

A. No, they were not.

Q. Have you viewed the photographs that were taken at the crime scene?

A. Yes, I did.

Q. And the ones that you reviewed fairly and accurately depict what happened out there?

A. Yes.

Q. Would you tell the Ladies and Gentlemen of the Jury what you did personally when you first arrived there?

A. When I first arrived there I was with supervisor Gary Reed, and at that point we tried to determine how we were going to start the diagram for the scene. Homicide detectives were there as well.

Senior crime scene analyst Dave LeMaster was also there, who was the senior crime scene analyst on the scene.

In our field when you work a scene you

In our field when you work a scene you have a senior crime scene analyst and you have a lesser crime scene analyst, which was my position, working the scene together.

You work at the direction of the senior crime scene analyst and of the supervisor. So what we did there was we went through and we determined how we were going to diagram the scene, to place the victim's body and items in evidence that we had found.

Q. Did you personally impound certain items of evidence?

A. Yes, I did.

Q. Were there tire tracks found at the scene?

A. Yes.

Q. Did you personally take any action with respect to those tire tracks?

A. Myself, along with senior crime scene analyst Dave LeMaster, located some tire impressions and a cast was made of a certain section where we thought the tread pattern was fairly good that we can cast forever.

Q. Would you explain to the jury, first of all, how you selected the particular area that you used to make the cast?

What was different about that than the rest of the tire tracks?

A. The way we did it was we surveyed the entire tire track length, the portion that was before the victim's body and the portion that was after, and what we try to look for is is there any detail in the tread pattern itself that we feel can give it a depiction of what that tire track might be?

Once we determine that, it was marked off with cones, photographed by senior crime scene analyst Dave LeMaster and at a later point we went in and cast the actual pattern that we thought was going to be the best pattern.

Q. And would you describe for the jury the physical process that you used to make the cast or tire impression?

A. We have a casting material which is kind of like a dental casting stone type material. You mix it up and then you pour your little frame, you set your frame up of what you're going to cast and you mix the material and pour it in there.

It has to harden and dry and then it can be recovered, once it gets hard, and then it can be placed into evidence.

Q. When you were done making the cast did you impound that just like you would have impounded an item of physical evidence that you actually found at the

scene?

A. Yes.

Q. And by that I mean placed it in a package with your signature and other identifying marks on it?

A. Yes.

MR. KANE: May I approach, Your Honor?

THE COURT: You may.

BY MR. KANE:

Q. Show you what has been marked for purposes of identification as State's exhibit 70 and ask if you recognize that.

A. Yes, I do.

Q. What is that?

A. This is a cast of the tire impression that was taken at the scene.

Q. What about the outside of that package causes to you recognize it?

A. There's evidence labels which have my P number and initials on them and then the date and it also has the label for the package itself.

Q. And are there any signatures and seals on there other than your own?

A. Yes, there are.

Q. Is that a person that you know?

A. Yes.

Q. Who is that?

A. Looks like it's gonna be Fred Boyd and his P number and it's from the forensic laboratory.

Q. Does Fred Boyd work in the forensic laboratory?

A. Yes, he does.

Q. Other than the addition of Mr. Boyd's signature and seals does that item appear to be in the same condition it was in when you last observed it on November 16, '99?

A. Yes, it does.

MR. KANE: Offer 70, Your Honor.

MR. CHRISTIANSEN: No objection.

THE COURT: Received. Thank you.

BY MR. KANE:

Q. Would you open that please and display the entire cast for the Ladies and Gentlemen of the Jury.

A. (Witness complied with request of counsel.)

Q. Would you hold that up so the jury can get an idea of why you taped that and what we're going to be using that for?

A. (Witness complied with request of counsel.)

Q. Now, if you'd resume your seat.

For what purpose do you take a tire impression like that?

A. The purpose of taking a tire impression is to try to obtain a replication of the actual tire tread pattern into the cast itself.

Q. As part of the process of identifying the area to cast and taking the cast do you also take somewhat specialized photographs of the particular area that you're casting?

A. Yes, photographs will be taken of that area.

Q. How do you photograph that, if you do, any differently from the way you photograph the rest of the scene?

A. We use a large format camera which is called a 4x5 camera, field use type camera.

It photographs in black and white on polaroid film, allows you to try to get the wider area. It exposes to a film that's 4x5 and then in that way it's photographed so you can actually depict it with a scale.

Q. And did you take photographs like that of this area that we've been talking about that you eventually made the cast from?

A. Senior crime scene analyst Dave LeMaster actually took the photographs of the footwear (sic) and

there's also a photograph showing where the tripod was placed showing where we took that footwear (sic) cast.

Q. Let me relieve you of some of that stuff and we'll pack it up after you're done testifying.

Now, this person who was found at this scene was assigned the identifying name of John Lumber Doe.

You were aware of that; were you not?

A. Yes, I was.

Q. That was because pieces of lumber were piled on top of his body?

A. That is correct.

Q. Did you impound those pieces of lumber?

A. Yes, I did.

MR. KANE: May I approach, Your Honor?

THE COURT: You may.

BY MR. KANE:

Q. I show you what has been marked for purposes of identification - - and I'm not going to ask you to open this up - - as State's proposed exhibit 71.

I ask if you recognize that.

A. Yes, I do.

Q. How is it that you recognize that?

A. There's another seal on the front of the package. It also has seals with my initials and P number

and the date.

Q. And is the - - does the item bear any signatures or seals besides your own?

A. Yes, it do.

Q. Whose?

A. Once again, the forensic lab seal, the grey seal here and it also has the initials for Fred Boyd on there.

Q. That's the same Fred Boyd we talked about on the previous exhibit?

A. Yes.

Q. Other than the identification of Mr. Boyd's signature and seals do those items appear in the same condition as when you observed them on November 16, 1998?

MR. KANE: Move the admission of State's 71.

MR. CHRISTIANSEN: No objection.

THE COURT: They are received. Thank you.

BY MR. KANE:

Q. Did you yourself perform any physical testing or examination of these items?

A. No, I did not.

Q. You just impound impounded them so that that could be done at the - - back at the lab?

A. Yes.

Q. Finally I'd like to show what you has been marked as State's proposed exhibit 72 and ask if you recognize that.

A. Yes.

Q. What's that?

A. This is going to be a SKU UPC tag, and this was one of the tags that was taken from one of the boards.

Q. What was your reason for taking the tag?

A. Sometimes these tags might be able to identify that board, perhaps to a location or a distributor.

MR. KANE: Offer Exhibit 72, Your Honor.

MR. CHRISTIANSEN: No objection.

THE COURT: Received. Thank you.

BY MR. KANE:

Q. I want to show you a series of photographs which have been marked for purposes of identification as State's proposed 73, 74, 75 and 76.

I'd ask that you just look at those for a minute, then I'll ask you a few questions about them.

Do those appear to be photographs of certain aspects of the scene that you observed back on November 16, 1998.

A. Yes.

Q. Do they fairly and accurately depict the scene as you observed it on that date?

A. Yes, it does.

MR. KANE: Offer 73 through 76, Your Honor.

MR. CHRISTIANSEN: No objection.

THE COURT: They are received.

BY MR. KANE:

Q. Would you display those to the jury, please, one at a time, read the number on the back and then what's depicted in the photograph.

A. This is number 73. What's depicted in this photograph is an aerial view of the scene. This area here would be - -

THE COURT: Well, let's indicate what they are. If you want to distribute them at a later time and continue your questioning, you can do so.

MR. KANE: They are going to go back to the Grand Jury room.

BY MR. KANE:

Q. There is a roadway running along the middle of that?

A. Yes.

Q. That's the roadway along which John Lumber

Doe was found?

A. Yes.

Q. If you'd do the rest of the photographs.

A. Number 74 is the same roadway and also depicts the victim's location on the roadway in relationship to one another.

Seventy-five is gonna be showing the tire track impression cast as we set it up and put the material in to do the casting.

THE COURT: All right. The only part of the people seeing that are about four or five at this end.

Just describe what it is, lay them down and they can take a look at it later.

THE WITNESS: Seventy-six is showing the tripod location for the photograph of the tire impression.

BJY MR. KANE:

Q. Show you what has been marked for purposes of identification as State's exhibit 79. I ask you if you recognize that.

A. This is the diagram I completed for the scene.

Q. Obviously that's a blow-up of the diagram that you originally did, correct?

A. Yes, it is.

Q. It's not drawn to engineering or construction scale; is that correct?

A. No, it's not.

Q. But does it fairly and accurately describe the special relationship of objects to one another - -

A. Yes.

Q. - - and is that why you prepare it?

MR. KANE: Offer 79.

MR. CHRISTIANSEN: No objection.

THE COURT: Received. Thank you.

BY MR. KANE:

Q. I'm not going to bother with the tripod, because this won't be that long.

If you can just come down off the witness stand and just describe this to the jury and indicate where these items that we've been talking about were found in relation to the diagram.

A. State Route 146 would be in this direction and we're going 2.1 miles south to locate where the victim is located.

We have a reference point which we use as a marker indicator so anything that's measured from the reference point and these would be items of evidence that were collected.

The tire marks would be in this area. I did not put a number there.

Q. Can you resume your seat?

You mentioned a reference point.

What's a reference point?

A. A reference point is used so that you can - - when you do your measurements everything is going to be related to a particular point or what is called a baseline so that when you do all your measurements in a photograph you're going to have a picture of the reference point so that you can show where everything was measured from in relationship to one another.

Q. When you pick something as a reference point you pick something, a physical aspect of the landscape that's not going to move?

A. That's correct.

Q. Then you measure everything from that spot?

A. Yes.

Q. Aside from the items that we've talked about, the tire impressions, the impounding of the lumber and the crime scene sketch, did you do anything else in terms of processing this crime scene?

A. At this particular scene, no.

MR. KANE: Nothing further, Your Honor.

Tender the witness.

THE COURT: Cross-examination

EXAMINATION

BY MR. KENNEDY:

Q. Mr. Roberts, the scene itself when you got out there you had a chance to walk around and basically take a look and get a handle on the scene; is that correct?

A. Yes.

Q. Around the body area where the body of John Lumber Doe was found you didn't see any footwear impression, did you?

A. No, I did not.

Q. If you had you would have taken impressions of that footwear; is that correct?

A. Yes, we would have.

Q. On your evidence impound report it says you found two empty Beck's beer bottles; is that right?

A. Yes.

Q. You're certain they were Beck's beer bottles as opposed to Heinekin beer bottles?

A. Yes, just because of the label.

Q. You collected those items of evidence

yourself?

A. Yes.

MR. CHRISTIANSEN: Pass the witness.

THE COURT: Anything further?

MR. KANE: Just one further thing.

BY MR. KANE:

Q, Is it a part of your responsibility at crime scenes to process the scenes for latent prints as well?

A. Yes.

Q. Do you recall if you did that at this time?

A. Not at this particular time.

MR. KANE: Nothing further.

THE COURT: Anything further?

BY MR. CHRISTIANSEN:

Q. To the best of your knowledge were the beer bottles submitted for processing at later time?

A. Yes, they were.

Q. You didn't do the processing, did you?

A. No, I did not.

MR. CHRISTIANSEN: Pass the witness.

THE COURT: Anything further?

MR. KANE: No.

THE COURT: Thank you, very much, Mr.

Roberts.

Next witness, please.

MR. FATTIG: Robert Kroll, K-r-o-l-l.

ROBERT KROLL,

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

EXAMINATION

BY MR. FATTIG:

Q. Sir, will you please state your name and spell your last name for the record?

A. My name is Robert Kroll. The spelling of my last name is K-r-o-l-l.

Q. How are you employed?

A. I'm employed as a patrol officer with the Las Vegas Metropolitan Police Department.

Q. What is your assignment?

A. Patrol.

Q. Do you have a particular area that you patrol?

A. I do. I patrol the downtown area command and what they call the Charlie Area. They divide it into sector beats downtown.

Q. How long have you been so employed?

A. Approximately three and a half years now I've been so employed.

Q. Were you on duty back on November 17, 1998?

A. I was.

Q. And did you have the same assignment at that point?

A. I did.

Q. Did you get a call to go out to 1929 Western here in Las Vegas, Clark County, Nevada?

A. I did.

Q. What was the nature of the call?

A. I believe the business owner at a trophy shop said he believed he saw a suspicious situation.

That's the way the call came into me and my partner.

Q. Who is your partner?

A. Officer Rick Nogues.

Q. Are you guys in separate vehicles?

A. Yes.

Q. Did you each of you respond to the scene?

A. We did.

Q. What did you do upon responding?

A. Upon arrival we made contact with the

owner of the trophy store and he brought us to a storefront a couple doors down from his building, from his business, and he showed us a plate glass window next to a doorway which had been broken and there was what we now know to be blood on the ground and inside of that, the entryway to that business inside of the broken glass.

Q. What did you do after you saw that?

A. We thought that maybe there was somebody that might be injured inside or in the area, because of the blood there, so my partner and I entered the business through the broken glass.

We checked out the interior of this business. It was vacant at that time and unoccupied, but we checked the other rooms inside the business to make sure there was nobody in there that needed medical attention.

Q. What did you generally see inside the business?

A. Generally we saw I believe more blood on the carpet inside of that window and we also saw a dark colored, dark blue jacket rolled up off to one side inside of the business and a baseball cap as well, dark colored baseball cap.

Q. Did you see any bodies or any people there?

A. We did not.
Q. In that business?
A. No.
Q. That was 1929 Western?
A. It was, yes.
Q. What did you do after you surveyed the business?
A. We took a closer look inside and we saw what we believed to be expended bullets that were also on the floor inside of that business.

We called our supervisor out to the scene and explained to him; at that time we thought maybe somebody had tried to break in to the business, had injured themselves, and may be lying, bleeding some place in the area.

Our supervisor advised that we should have the identification technicians come out to the scene and process the scene.
Q. Did you call an ID tech out?
A. We did.
Q. Would that be Dave Ruffino?
A. Yes, it was. Dave Ruffino responded.
Q. What did you do after you called the ID tech out?
A. We took a look around the perimeter to see

- - seeing how we didn't find a body or anybody in need of medical attention inside of the business, we took a look around this strip mall, the perimeter of all the businesses that are contained in that one strip mall, to see if there was anybody in the in the area that might require medical attention.

Q. At some point - - about what time of day was this?

A. I believe it was late morning.

Q. At some point did someone arrive to the complex you're talking about?

A. They did.

Q. And what were they - - what were they driving?

A. They were driving a small tan Toyota pickup truck.

Q. And do you see the person that was driving that Toyota pickup truck that day here in Court today?

A. I do.

Q. Can you please point to him and identify a piece of clothing he's wearing today?

A. Sure.

It's the gentleman with the multicolored sweater in the center of the two men with the jackets there.

MR. FATTIG: May the record reflect the identification of the Defendant?

THE COURT: It may.

BY MR. FATTIG:

Q. When the Defendant came up with the Toyota pickup truck what did you do?

A. I believe that I informed him of why we were there, the reason we were at the business, because we had the suspicious situation next door with the blood, and I asked him if he had been in the area, if he had been around.

Q. What did the Defendant tell you?

A. I think that he told me at that time he had just gotten back from somewhere back east, maybe New Jersey or Philadelphia.

I really don't recall at this time.

Q. Do you remember whether or not he indicated to you he had seen anything or heard anything suspicious in the area?

A. I know that I asked him him if he had seen or heard anything suspicious and he said that he had not.

Q. Did he indicate whether or not he worked with anyone there at the business?

A. He did.

He said he had a partner at the business

they were in. I believe at that time it was a heating, HVAC, heating and air conditioning business, and he said he had a partner.

I believe the partner's name is Peter Limanni.

Q. Did he indicate whether or not he had seen Mr. Limanni?

A. I remember I asked him and he said he believed Mr. Limanni was in Reno or Lake Tahoe with his girlfriend.

Q. Do you remember if he indicated when the last time he had seen Mr. Limanni?

A. I don't remember if he indicated the last time he had seen Mr. Limanni.

Q. Did you make a report in this case?

A. I did.

Q. Would looking at that report refresh your recollection as to whether or not he had - - when was the last time Mr. Seka indicated he had seen Peter Limanni?

A. That would help to refresh my recollection, yes.

MR. FATTIG: May I approach the witness, Your Honor?

THE COURT: You may.

BY MR. FATTIG:

Q. I want you to - - do you recognize this document?

A. I do.

Q. And what is it?

A. This is an officer's report which I dictated reference this incident.

Q. If you can refer to the second page and read it to yourself and indicate to me after you've read the middle paragraph there whether or not it refreshes your recollection.

A. It does.

Q. What did Mr. Seka indicate in terms of the last time he saw Peter Limanni?

A. He said that he hadn't seen him since November 5.

Q. What happened next?

A. At the time - - I know it was late morning and my partner and I, there were several different things going on. We saw a dog inside this heating and air conditioning business.

We had asked the owner on the trophy store if this was unusual, that the business hadn't been opened yet this morning, he indicated it was.

When Mr. Seka arrived I explained to him why we were there and I wanted to make sure there was

nobody inside his business that also may need medical attention, in light of the circumstances.

Q. Did you eventually go into the business?

A. I did.

Q. And was that with the consent of the Defendant?

A. It was.

Q. And what did you see upon entering?

A. Upon entering the business I didn't see anything unusual in the very front area.

I remember looking off to the left and seeing some wood laying around and I believe Mr. Seka explained that they had changed the business; they were going to start a cigar humidor business and there was some cedarwood and other things laying around.

It was obvious they were constructing a humidor in there.

Q. Did you see anything unusual that struck your attention?

A. Not in that immediate area, I didn't.

Q. Did you continue back into the office?

A. I did.

I continued past the reception area where the desk was. There was a doorway that entered into the back of the business and upon entering that area there

were two desks to my left and in the middle of the left most desk there was a bullet that was standing on its end, on its base, standing straight up in the middle of the desk.

Q. Can you describe what the bullet looked like?

A. It was about two, two and a half inches in length and it had a rounded top.

Q. After seeing the bullet did you see any other weapons or guns or anything?

A. I saw some knives in there as well.

Q. What did you do?

A. At that point I explained to Mr. Seka that for my safety and the safety of my partner that I was going to Pat him down to make sure he didn't have any weapons that could be used against us.

I believe I also handcuffed him at that point of time and informed him he was not under arrest, but we needed to look further into what was going on inside of that business.

Q. And after you placed him in handcuffs what did you do?

A. I had him sit down on a couch which is in the reception area, then I continued back into the business to see if there was anybody in there that needed

medical attention.

Q. What were you looking for when you went through the business?

A. People, making sure there was nobody in there waiting to ambush me or my partner and also making sure there wasn't somebody laying in there that maybe was injured.

Q. Did you find anyone in there?

A. I did not.

Q. Eventually, did a crime scene analyst come onto the scene?

A. He did, Mr. Dave Ruffino did.

Q. Did you leave the scene at some point?

A. We did.

Q. Did you and your partner leave?

A. We did.

Q. Why did you leave the scene?

A. They didn't need us there anymore. I believe that the homicide detectives had arrived.

My understanding of the chain of events which occured was Mr. Ruffino gave a courtesy call out.

MR. PETERSON: Objection to hearsay. He can testify to what he did, not to what other people did or.

MR. FATTIG: I'm not asking for that.

THE COURT: What's your next question?

BY MR. FATTIG:

Q. Did you unhandcuff Mr. Seka?

A. Yes.

Q. Then you and your partner left?

A. We did.

Q. And you were at lunch at that time?

A. We were.

Q. Did you eventually respond back to the scene?

A. Yes, we did. We received a callback for us to return to the scene.

Q. Who called you?

A. I believe it was a homicide sergeant.

Q. And did, in fact, return to the scene?

A. We did.

Q. How much time elapsed while you were away, approximately?

A. I would say an hour and 15 minutes.

Q. When you went back to the scene what did you do?

A. I remember somebody asking me about the bullet they had seen. I went into the business and looked right where I had seen it earlier and the bullet wasn't there. I believe Mr. Seka was still present and I

said 'There was a bullet there. What happened to it?'

He said that he acknowledged that there was a bullet there, but he didn't know what had happened to it. He said that the owner of the buildings had been inside and maybe he had moved it.

At that point I contacted the owner of the building and asked him if he had been inside and if he had touched a bullet.

He said that he had not.

Q. So Mr. Seka acknowledged that there had been a bullet, but basically didn't know what happened to it?

A. That's right.

Q. Did you disturb the bullet at all when you were there earlier?

A. No, I didn't.

Q. Where was it when the last time you saw it?

A. Still right in the middle of the desk, standing on its base.

MR. FATTIG: Nothing further at this time.

THE COURT: Cross-examination.

MR. PETERSON: Thank you.

May I get the lectern?

THE COURT: You may.

EXAMINATION

BY MR. CHRISTIANSEN:

Q. Good afternoon, Officer Kroll.

A. Good afternoon.

Q. My name is Pete Christiansen. I've been asked to represent Mr. Seka. I have a few questions for you.

How long had you been a police officer on the day - - I believe you responded to this scene was 11.17.98?

A. 11.17.98, I had been a police officer with Metro for 10 months.

Q. And prior to becoming a police officer you have to go through the academy, correct?

A. Yes, I do.

Q. The academy is pretty extensive training?

A. It is.

Q. And they explain to you at the academy the policies and procedures you are to follow as a police officer when you're on the street?

A. They do.

Q. When you're at the academy, I imagine they inform you that you're to do reports soon after incidents or you're involved in a call, so that what you put on paper is fresh in your mind?

A. Yes, that's correct.

Q. This happened November 17, 1998.

Can you tell the people in the jury what day you dictated your report?

A. I don't recall. I know it is on the report.

MR. PETERSON: May I approach?

THE COURT: You may.

BY MR. CHRISTIANSEN:

Q. If I showed you the report, could you tell me?

A. Absolutely.

Q. Does that help you?

A. It says December 10 of 1998.

Q. Does it appear that it was dictated?

A. It was dictated on the 5th of December.

Q. You don't transcribe them, do you?

A. No.

Q. You just dictate them and some staff member at your office transcribes them?

A. That's correct. In Metro records somebody transcribes them.

Q. So you dictated this report December 5 and that would be about 20 days after the events that you've just testified to here today?

A. Yes.

Q. And you dictated this report after somebody from homicide called you up and told you you needed to do a report about the events at 1929 Western?

A. That's correct.

Q. Okay. You hadn't done a report, correct?

A. That's correct.

Q. Did Detective Thowsen or Detective Buczek call you up and say "Officer Kroll, get this report done. Get it done now", right?

A. That's correct.

Q. The sergeant that came out there, that was your supervisor, was that Sergeant B-e-c-h-y-n-e?

A. That's right, Bechyne.

Q. So just so I understand, there are three police officers in uniform and three separate patrol cars, black and whites with sirens; is that right?

A. I don't believe that Sergeant Bechyne was there for very long.

Q. Did he show up?

A. He was there. At one point in time there were three marked patrol cars on the scene.

Q. The first two people that got called out were yourself and Officer Nogues?

A. Nogues, yes.

Q. And Officer Nogues was in a car much like yourself, dressed like you are here today?

A. Yes.

Q. And you told the jury on direct when you got out there with Officer Nogues after you sort of went inside 1929, you then went around with him to the back and made sure everything was okay and there were no bodies, et cetera?

A. That's correct.

Q. When you were around the back of the building, 1929 and 1933 - - because they are all connected, right?

A. Yes, they are.

Q. When you went around the back did you have a conversation with the gentleman who had called the incident in, Mr. Ferguson, the gentleman from the trophy store?

A. I don't remember if I had a conversation in the back with him. I seem to recall that it was actually in the front.

Q. When you were around back you didn't look in the dumpster, did you?

A. I didn't, no.

Q. If you did, you would have put it in your report, wouldn't you?

A. Not necessarily.

Q. If there was nothing significant, possibly you would have left it out?

A. Exactly.

Like I said, we were looking for a body. There were many places in the back that I looked that didn't have a body and I didn't mention those in my report.

Q. The incident call was to 1929, the business with the broken storefront?

A. That's correct.

Q. And that is where you found the blood and then you found a jacket and some expended rounds inside of that business; is that correct?

A. That's correct.

Q. And you guys had a concern that possibly somebody had been shot or hurt getting into the business, correct?

A. Yes.

Q. And then I thought I heard you tell the jury that after you looked in 1929 and you then went around the perimeter and then made contact with Mr. Seka, who was coming into 1933, that crime scene analysts had arrived and you left them there with homicide?

A. That's correct.

Q. An so it's your recollection that homicide - - there was no lapse in time between when you patrol officers left that scene and when homicide arrived?

A. There wasn't a lapse. They were there before I left.

Q. So there would have been no time for Mr. Seka to do anything out of the eyesight of the Las Vegas Metropolitan Police Department, either yourselves, Mr. Nogues, Mr. Bechyne, Detective Hefner or Detective Thowsen or Detective Buczek?

A. He couldn't have done it when I was there.

I can't speak for after when I left what was done and wasn't done.

Q. That's a bad question. That's all I'm asking you to do is tell me what happened when you were there.

Mr. Seka was cooperative with you?

A. Absolutely.

Q. He allowed you into a business that was not even the subject of the call, correct?

A. That's correct.

Q. Absent that permission, would you have been allowed to go into that business pursuant to your understanding of your rights as a police officer?

A. That's correct.

I mean, it wasn't an issue because he did okay us to go in and take a look around.

Q. At some point you saw a two and a half inch live round; is that correct?

A. That's correct.

Q. I'm not a gun expert, but two and a half inches would have to be some type of rifle round, wouldn't it?

A. I don't know.

Q. What's the round like in your .40?

A. It's a nine millimeter handgun. It's got a ball. Actually mine are hollow point.

Q. How long is that?

A. I would say maybe an inch and quarter, inch and a half.

Q. You have to have some familiarity with handguns to become a police officer, right?

A. You have to at least become familiar with mine.

Q. The round you saw looked to be twice the length of your round?

A. It looked twice the length of mine.

Q. Would that be consistent with a rifle round?

A. I always thought the rifles had pointed

tips. I'm like you, I don't have familiarity with rifle rounds.

Q. Did it appear like people were living at 1933 Western where Mr. Seka was at?

A. Yes, it did.

Q. You had an opportunity to look around there; did you not?

A. Yes, I did.

Q. There was there was a bathroom type area and a kitchen type area?

A. I don't specifically recall a kitchen.

I remember a mattress on the floor and I believe that they had an ironing board set up in the same room with the mattress and there was clothing in there as well.

Definitely appeared somebody had been sleeping on that mattress at some time.

Q. Was there a tv with some cable work hooked up?

A. May well have been.

MR. CHRISTIANSEN: Can I approach?

THE COURT: You may.

BY MR. CHRISTIANSEN:

Q. Showing you what has been marked for identification purposes as Defendant's exhibit G.

Does that appear to be what that looked like that day when you responded to the call from Mr. Ferguson?

A. I don't specifically remember a room that looked like this picture, not that it wasn't there.

Q. If you don't remember, that's a fair answer. Fair enough.

A. I don't.

Q. Mr. Seka had told you that he had returned from New Jersey within a week of the day you're talking to him, November 17, 1998; is that right?

A. He did.

Q. And he told you that he hadn't seen his partner since November 5, 1998; is that correct?

A. That's correct.

Q. And Mr. Seka also told you that he had been staying with a different friend in Spanish Trails for a period of time between the 5th and the 17th, correct?

A. I believe he did. He said he was staying there on and off.

Q. All of those are things you put in this report after homicide called you up and told you to prepare a report; is that right?

A. Correct.

Q. When you were there at 1929 or 33, at that building, if Mr. Seka had tried to go out back and burn a bunch of stuff in the dumpster would you have noticed?

A. I believe so.

He was in my custody the entire time he was there. From the time I initially saw him until the time I cuffed him up and sat him on the couch in the reception area, that's where he was until I uncuffed him and left.

Q. Crime scene analyst Ruffino responded to this call after you and Officer Nogues put a call into him, correct?

A. That is correct.

Q. And did crime scene analyst Ruffino tell you he thought the scene at 1929 was a potential murder scene?

A. No, he did not.

Q. In your training would you ever leave a crime scene analyst alone at a potential murder scene and go have lunch?

A. I wouldn't, no.

Q. You would stay to make sure there was at least some backup, some protection, some officers there to watch the crime scene analyst's back while he's doing his job processing a scene, correct?

A. On that particular scene or in general?

Q. A murder scene in general.

A. Sure.

Q. And this scene, you went to lunch because homicide was there?

A. That's correct.

Q. And homicide called you back to ask you about the bullet that you'd seen, the one we talked about two and a half inches long, correct?

A. Yes.

Q. And it was Detective Buczek?

A. I believe it was Detective Buczek, yes.

Q. The reason he knew to call you back is because you told him you'd seen a bullet in 1933 before you left, correct?

A. I believe so.

Q. I mean, he would have no reason to know, Officer Kroll saw all this bullet, unless you relayed that information to him?

A. Correct.

Q. As you sit here today that's the recollection of how you arrived and homicide arrived and your interaction with homicide and the crime scene analyst was back in November 17, 1998?

A. That's correct.

Q. Was Jack Seka ever violent toward you?

A. No.

Q. Was he ever anything but a cooperative individual?

A. Not with me, no.

MR. CHRISTIANSEN: Pass the witness. Thank you.

THE COURT: Re-direct?

MR. FATTIG: Nothing further.

THE COURT: Thank you, sir. Approach, please.

MR. FATTIG: Richard Nogues.

RICHARD NOGUES,

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

EXAMINATION

BY MR. FATTIG:

Q. Sir, will you please state your name and spell your last name for the record?

A. Richard Nogues, N-o-g-u-e-s.

Q. How are you employed?

A. With the Las Vegas Metropolitan Police

Department, patrol.

Q. For how long?

A. Three and a half years now.

Q. Were you on duty back on November 17, 1998?

A. Yes.

Q. Did you respond to a call at 1929 Western here in Las Vegas?

A. Yes.

Q. What was the the nature of the call?

A. We got a call there was a glass window that was broken out of a business there and there was what appeared to be blood and glass on the outside of the business.

Q. Did you have a partner?

A. Yes.

Q. Who was that?

A. Robert Kroll.

Q. Did you and Mr. Kroll respond to the scene?

A. Yes.

Q. What did you do upon arrival?

A. We - - first of all, as we were pulling up we looked around the area, just as a safety precaution, make sure there wasn't somebody still around, in case

there was anybody with a gun or knife or anything unusual due to the details stating there was blood.

We didn't see anything unusual.

We approached the business and the business, it's basically - - looks like a four-plex, from left to right, one through four.

This business was number two from the left-hand side.

Q. The one that you saw the broken - -

A. The one the call was referring to, yes.

Q. - - glass was that 1929 Western?

A. Yes.

Q. Did you look around the scene at 1929 Western?

A. Yes.

We walked up to the window and noticed that there was indeed a big hole in the glass, right next to the front door, and that there was blood and glass on both the inside and the outside of the door.

Q. Did you go inside the business?

A. Yes.

We determined that we needed to find out if there was somebody that was injured or needed medical aid, and so we decided to go in and make sure there wasn't anybody inside that was hurt.

Q. There was no one in side?

A. No, sir.

Q. What did you do after looking at the business at 1929 Western?

A. We decided to check the perimeter of the building, make sure there wasn't anybody around in the parking lot or to the rear.

I believe Officer Kroll stayed in the front and I went around to the rear and looked around the area in the back and just did some general investigation looking around back there looking for - -

Q. Can you describe what you saw in the back?

A. Sure.

When I came around from the southeast corner of the business I noticed a chain link fence, appeared to be a business, maybe of pallets or of some business that was actually separated from the four-plex, and there was a little alcove in there that contained a dumpster and doors to the rear of the businesses.

Q. Did have occasion to look in the dumpster?

A. Yes.

I figured I should check it out and make sure there wasn't anything inside or somebody that might have been thrown in there or injured or an animal.

I wasn't sure what might be in there.

Q. What did you see inside the dumpster?

A. I saw some miscellaneous papers on the bottom of the dumpster, not very many papers, enough so that I could see the bottom of the dumpster at several different points within the dumpster.

Q. Did it look like the dumpster had been actually dumped out at some point?

A. Yes.

Actually, the business owner of business number four came out and I believe he told me that it had just been emptied either that morning or the night prior. So he didn't expected to see anything in the dumpster

Q. Was that the trophy shop guy?

A. Yes.

Q. Did you look elsewhere throughout that back area?

A. Yes, just basically a peripheral, you know, there wasn't a lot of obstructed views besides the dumpster, so just in that general area in the back.

Q. Did you notice anything unusual in that back area?

A. Not that I can recall.

Q. After you surveyed the area around the businesses there what did you do next?

A. We decided that we didn't have a victim,

but we did feel there was some kind of crime scene or somebody that had been injured there, so we decide to call out our sergeant and he responded.

Q. And after your sergeant responded did you have occasion to contact an ID tech or a crime scene analyst?

A. Yes.

Q. And do you know if one eventually arrived on the scene?

A. Yes, one came out.

Q. Would that be David Ruffino?

A. Yes.

Q. What happened next?

A. Our sergeant suggested that we try to contact the fire department, AMR, and do our own dispatch to determine whether or not there had been any calls surrounding or near that scene where there might have been any reports from citizens in the area of gunshot or some kind of loud disturbance.

Q. Did you learn of any calls?

A. No, sir.

Q. Did someone eventually arrive on the scene?

A. As we were waiting, the ID tech I believe was doing some work, a gentleman from business number

three showed up in a small pickup truck.

Q. Where was the ID tech doing his work at?

A. He was doing his work at business number two, where the broken glass was and all the blood and some other miscellaneous items inside of the business.

Q. Because that's where the crime scenes are?

A. Yes.

Q. Did the individual that drove up - - do you see that person in Court today?

A. Yes, sir.

Q. Can you please point to him and identify a piece of clothing that he's wearing?

A. Yes.

He's sitting in the middle of the table with a dark sweater with some grey patches on it.

MR. FATTIG: May the record reflect identification of the Defendant?

THE COURT: It may.

MR. FATTIG: Thank you.

BY MR. FATTIG:

Q. After the Defendant came up did eventually you and your partner leave - -

A. Yes.

Q. - - the scene?

A. Yes.

Q. About how long had you been on the scene when you left?

A. Couple of hours, if I recall.

Q. Why did you and your partner leave?

A. Well, at the time we couldn't determine that there was, again, there was no victim and the ID tech was there to process the scene and it didn't appear that we were needed there any longer, so we left to go eat lunch.

It was our lunch time.

Q. And eventually were you called back to the scene?

A. Yes.

Q. And who called you back?

A. We were called back by homicide and we were called as we were finishing lunch, so we packed up and headed back to the scene.

Q. When you went back to the scene were you directed to any particular areas?

A. Yes.

The homicide detectives asked us if we had checked the dumpster area to the rear of the business and I said that I did specifically.

Then they asked me to go back with them to take a look in that area.

Q. You went back to the same dumpster you had looked at earlier?

A. Yes.

Q. Was that the only dumpster in that back area there?

A. Yes.

Q. And what did you see in the dumpster this time?

A. I immediately noticed that there was some clothing, maybe a few pieces of clothing, a shoe and a number of inches worth of papers, probably four to six inches worth of papers, that were now filled, that now filled the bottom of the dumpster and miscellaneous papers, I guess, clothing.

Q. All that stuff you were describing, none of that was there earlier when you looked in the dumpster?

A. Well, no, nothing that - - I mean, the papers that were on the bottom of the dumpster the first time I saw it were miscellaneous and still strewn about.

I could see the bottom. I didn't specifically look at items, but the things that were there when I came back most obviously were the clothing and the shoes and then a large amount of paper, identification, things like that that I know that I

didn't see the first time I was there.

Q. Were you looking - - did those types of things, the identification, the clothing, the burnt items, did that strike you as unusual?

A. It did, just because I knew that it wasn't there when I was there hours earlier.

MR. FATTIG: May I approach the witness?

THE COURT: You may.

BY MR. FATTIG:

Q. Showing you proposed exhibit 60, a photograph, do you recognize that?

A. It appears to be the dumpster that I came back to.

Q. And is that in the condition it was the second time when you observed it?

A. As far as I can recall, yes.

Q. Is that a fair and accurate reflection of what it looked like when you looked in there?

A. Yes.

MR. FATTIG: Move for admission of Exhibit 60.

MR. CHRISTIANSEN: No objection.

THE COURT: Received. Thank you.

BY MR. FATTIG:

Q. Did you notice any cards in the area, the

second time when you went back to the dumpster?

A. Inside of the dumpster or surrounding it?

Q. Or surrounding it.

A. I recall in the dumpster I did see a picture or an identification. I don't remember seeing any cards or anything outside of the dumpster.

Q. When you were looking around in the area of that back area by the dumpster the first time, were there identification cards or anything strewn about, would that have struck you as unusual?

A. Yes.

Q. And why is that?

A. Well, we get numerous calls of identification, picture ID, credit cards, anything of that sort to come out and do reports or to retrieve them and place them into evidence. They are usually the result of maybe a crime, so we'll impound those things.

If I was to go back in that area and I saw a credit card or something laying on the ground, I would immediately notice it and realize it would be my duty to find out what it is and maybe get it back to the rightful owner.

Q. So you didn't see any of that the first time you were out there?

A. No, sir.

Q. After your - - after you looked in the dumpster what did you and Officer Kroll do that particular afternoon?

A. The second the second or first time?

Q. The second time.

A. I believe they asked me if there was anything in there that wasn't in there before and I told them - - I guess they told the ID person, and we were basically instructed to stay on the scene now and protect the scene, make sure that there wasn't anybody that entered or touched anything that needed to be processed.

MR. FATTIG: Nothing further.

THE COURT: Cross-examination.

EXAMINATION

BY MR. CHRISTIANSEN:

Q. Good afternoon, Officer Nogues.

A. Good afternoon.

Q. I'm Pete Christiansen. I have a few follow-up questions for you about the events of November 17, 1998.

A. Yes.

Q. How long had you been a police officer on November 17, 1998?

A. I would guess about a year and a half.

Q. And prior to that you entered and completed the academy?

A. Yes.

Q. And in the academy and on your daily routine you're taught about formalities and procedures you're supposed to follow as a police officer; is that correct?

A. Yes.

Q. One of those procedures is that after you are a responding officer to an incident you are to do a report on that incident, correct?

A. Yes.

Q. You're to do that report close in time to the actual incident so the events are fresh in your memory, correct?

A. If it's a call that requires a report, yes.

Q. You didn't do a report on this call on your own accord, without any prompting.

You didn't go back to your office or to dispatch or to the substation or whatever and prepare a report, did you?

A. Not that I recall, no, sir.

Q. In fact, your report wasn't done until

December 5, some 20 days after you were out there at this scene, correct?

A. I don't recall, sir.

Q. If I approach and showed you - - Your Honor, may I approach?

THE COURT: You may.

THE WITNESS: Yes.

BY MR. CHRISTIANSEN:

Q. That's about 20 days after the day you were actually out there, correct?

A. Approximately. I don't know what the amount of days are from the 17th of November to the 5th day of December.

Q. On November 17, did have any idea that Peter Limanni was a victim or a missing person?

A. No, sir.

Q. Okay. On December 5 did homicide tell you Peter Limanni was missing and/or a victim?

A. Not that I recall, sir.

MR. PETERSON: May I approach?

THE COURT: Indeed.

BY MR. CHRISTIANSEN:

Q. Officer Nogues, I'd like you to look at the first page of your report where you report the victim/person missing and tell me the name you typed down

on there.

A. Peter Limanni.

Q. As you sit here today do you remember whether it was homicide that told you - - by homicide I mean the detectives in homicide, was it one of those detectives that told you Mr. Limanni was missing and/or a victim?

A. No, sir.

Q. Did you just - - how did you glean that information?

You didn't know on November 17 and you knew when you did your report December 5.

A. On December 5th when we went over and talked to the gentleman that arrived at the business to number three.

We did some investigation just trying to find out whose business it was and where everybody was that was there, and my partner was doing more of the investigation.

I was more of a cover officer and I didn't hear all of the conversation, but I knew we were trying to locate somebody else that belonged to that business.

I knew it was a Peter Limanni after some investigation, and so I knew - - we had asked the person that arrived at business number three where the other

person was.

He had given some miscellaneous different stories to the other officer, I believe.

Q. By the person, you mean Jack Seka, right?

A. Yes.

Q. So your recollection is that, for the record, your partner was Officer Kroll, the young man that just walked out of here?

A. Yes.

Q. And your recollection is that Mr. Seka had told Officer Kroll some different stories about where Peter Limanni was and so that's why you listed him as a victim/missing person on your report that you did some 20 days later?

A. Yes.

Q. Did you get a call from homicide saying "Officer Nogues, do a report about the events at 1929 and 33."?

A. Yes.

Q. I don't imagine that call was a friendly call, was it - -

A. I don't recall.

Q. - - in the hierarchy police officers or homicide detectives, the top notch detectives?

A. Hum-um.

THE COURT: Is that yes?

THE WITNESS: I didn't understand the question, sir.

BY MR. FATTIG:

Q. In terms of the hierarchy of a police officer, with Jerry Keller being the highest, there is -- and the patrol officer being the new guys and having to work their way up, is homicide somewhere towards the top?

A. Yes, yes.

Q. Were the homicide detectives happy with you when they called you and said "You haven't done a report for 20 days. Just get one done."?

A. They asked me to do an officer's report about the detailed events of that day, the best I can recall.

Q. The original call was made by Mr. Ferguson, the person in business, I think you said number three?

A. I'm sorry, number four.

Q. And your recollection was the call was made about 10:00 o'clock in the morning; is that fair?

A. Yes.

MR. CHRISTIANSEN: May I approach, Your Honor?

THE COURT: You may.

BY MR. CHRISTIANSEN:

Q. Do you know what a dispatch Incident Report is?

A. I'm assuming an overview of calls.

Q. Do you recognize the document I've handed you that's been previously admitted as Defendant's C?

A. No, sir.

Q. Do you know how to read one of those incident recalls?

A. I'm sure I could figure it out.

Q. Did you have a call number back on November 17, 1998?

A. A call sign?

Q. Yes. I'm sorry.

A. 2 Charlie 34.

Q. Do you see a column on that exhibit that I've handed you that shows entries for 2 Charlie 34?

A. Yes.

Q. And where is the first entry for 2 Charlie 34? Tell me the time that occurred that you see.

A. It looks like 10:18.

Q. And prior to that you don't see any of your call signs on the five or six entries above that; is that accurate?

A. No, sir.

Q. And this appears to be the incident recall for 1929 Western Avenue, and the broken glass front store window, correct?

A. Yes.

Q. What is Officer Kroll's - - was Officer Kroll's call sign; is that right?

A. Yes, 2 Charlie 12.

Q. Do you see one for 2 Charlie 12 on exhibit D?

A. Yes.

Q. What time do you see that?

A. 10:18.

Q. Right next, just to the right of those two call signs at 10:18 is there some type of abbreviation you can display to me?

A. Yes, AS.

Q. What's that?

A. That means assigned.

Q. That means dispatch assigns yourself and Officer Kroll to 1929 Western?

A. Yes, sir.

Q. A call is within - - is placed with the front store window broken out and blood in the store and blood on the ground?

A. Yes.

Q. Can you tell me what time you and Officer Kroll show up by looking at that Incident Report?

A. It looks like 10:24.

Q. Okay. Pretty quick turnaround, seven, eight minutes; is that about right?

A. From 10:18 to 10:24, six minutes. That's our area there in Charlie 2.

Q. Math wasn't my hobby.

How long were you there?

When did you leave?

A. Looks like 12:08.

Q. That's where it says 2 Charlie 34 clear, correct?

A. Yes.

Q. CL, which is the abbreviation for clear?

A. Yes.

Q. And prior to you leaving the crime scene analyst David Ruffino shows up and his call sign looks to me to be C 1002, correct?

A. Yes.

Q. He arrives about 11:33?

A. Yes.

Q. Does David Ruffino tell you he has 20 years experience and the scene at 1929 was a homicide scene?

A. No, sir.

Q. Because if he told you that you would have never left him alone, would you?

A. Again, we did all the investigation of our area. If we had any reason to suggest anything that was in danger to him we would have stayed.

Q. When is the - - when, as a patrolman, you're at an crime scene and there is a couple crime scene analysts there is the protocol to stay or leave?

A. Not if it's a verified scene.

Q. I'm trying to find out what the protocol is.

A. If it's a verifiable crime scene, then we stay.

Q. Your recollection is that this was not a verifiable crime scene and that's why you left?

A. Well, we didn't have a victim.

Q. That is the reason you left?

A. Yes.

Q. In your report - - and you've testified for the Ladies and Gentlemen of the Jury - - you say you walked by yourself around the back of 1933 Western to take a look in the back yard?

A. Yes.

Q. Correct?

A. Yes.

Q. If Officer Kroll remembered going back there with you then you two have different recollections of the same event?

A. Possibly.

MR. CHRISTIANSEN: May I approach?

THE COURT: You may.

BY MR. CHRISTIANSEN:

Q. In your report you also have a recollection of Mr. Ferguson, the gentleman from business number four, being back there at the same time and telling you that the dumpster had been emptied the night before, correct?

A. The night before or that morning.

I don't recall what he told me.

Q. I'm handing you what has been marked for identification defense proposed exhibits, K, L and M.

I ask you if that area looks familiar to you, Officer Nogues?

A. Yes.

Q. Does that appear to be the eastern side of the building 1933 Western?

A. Yes.

Q. And on that eastern side - - do you have the pins right there with you to the left?

Judge, would you mind him stepping down?

Draw how that building is set up and where the dumpster is at on that piece of paper so the jury has a good idea.

A. (Witness complied with request of counsel.)

Q. Thank you. Do a little arrow so the jury knows which way north is, if you don't mind. I think it's straight left.

A. Yeah.

Q. You've drawn a bunch of "X's" to what would be the east of this building.

Is that the yard you describe behind the chain link fence?

A. Yes. There is a chain link fence that basically comes out. It comes to the rear.

Q. Is that depicted in one of those pictures I just showed you?

A. Yes.

Q. Which one is that?

Turn it over, if you would.

A. There's actually two of them. L and M.

Q. Does that fairly and accurately depict the area as you saw it back in November 1998?

A. That's far as I can recall.

MR. CHRISTIANSEN: I would offer L and M as defense exhibits.

THE COURT: Any objection?

MR. FATTIG: No objection.

THE COURT: They are received.

BY MR. CHRISTIANSEN:

Q. From the southernmost and easternmost point of the building, building number four, you can see that entire area, correct?

That's depicted in those pictures that you looked at beforehand?

A. Yes.

Q. And from that point you couldn't see inside of that dumpster, correct?

A. Correct.

Q. I'm talking right at the corner.

A. Yes.

Q. Is that correct?

A. Yes, that's correct.

Q. It's your recollection, as you sit here today, when you're back there Mr. Ferguson comes out and tells you the dumpster has been emptied, but you look in it anyway?

A. Yes.

I went up to the dumpster and was

beginning the look into the dumpster when he said "You're probably not going to find anything in there. It's been emptied."

Q. You were wearing a uniform at the time in question?

A. Yes.

Q. Timewise that would have been, if you arrived, I think you told me about 10:30, that would have been before 11:00 a.m.?

A. I don't know. I don't recall how long it was.

Q. I'm not looking to nail you down on exact times.

Would it have been within an hour of when you arrived?

A. If I had to guess, I'd say about an hour probably by the time we cleared the scene.

Q. So by then 11:30 a.m., you arrived about 10:30 then around 11:30 you secured this entire scene and looked in the back and noticed the dumpster being empty?

A. If I had to guess, yes.

Q. You can have your seat again. I'm sorry. I didn't mean to keep you standing there.

You also wrote down in your report that there is another gentleman in that back area that you

spoke to about this area, this building and the parties that were going on in the building, correct?

A. Yes.

Q. That gentleman told you there were parties going on in the building on a regular basis?

A. Yes.

Q. And the building he identified as the one having the parties was 1933, correct?

A. Yes.

Q. That would have been the business that Mr. Seka went into when he pulled up and then eventually let you guys search and go through, correct?

A. Yes.

Q. That would be business number three on the chart that you have drawn here?

A. Yes.

Q. Now, you were called to testify at the preliminary hearing in this matter; is that correct?

A. Yes.

Q. Incidentally, in your report do you ever say that the second gentleman told you the dumpster had been emptied?

A. I don't know.

MR. CHRISTIANSEN: Can I approach, Your Honor?

THE COURT: You may.

BY MR. CHRISTIANSEN:

Q. Point you to the second full paragraph.

A. What's your question again?

Q. I asked you did the gentleman that you spoke to around back here ever tell you that the dumpster had been emptied and did you put that in your report?

A. I don't remember him telling me anything about the dumpster. I can't recall.

Q. Fair enough.

That gentleman appeared to you to be somebody that worked inside of that area behind the chain link fence?

A. Yes.

Q. Maybe the manager or something like that?

A. He appeared - - didn't appear to be a lot of employees there. He seemed to be in control of that area.

Q. You testified at preliminary hearing in this matter back in 1999; is that correct?

A. Yes.

Q. At that preliminary hearing you had to get up on the witness stand and take the same oath that you took in here today, correct?

A. Yes.

Q. You were asked about that gentleman from the chain link fence at the preliminary hearing in 1999; were you not?

A. I believe so, yes.

Q. At the preliminary hearing you testified that that gentleman also told you that that dumpster had been emptied, correct?

A. I don't recall.

MR. CHRISTIANSEN: May I approach?

THE COURT: You may.

MR. CHRISTIANSEN: Page 31 of the preliminary hearing transcript.

BY MR. CHRISTIANSEN:

Q. Read that sentence to yourself.

A. Okay.

Q. It appears that you did testify at the preliminary hearing that the gentleman from the chain link fence area, the manager, also told you like Mr. Ferguson, that the dumpster had been emptied?

A. He was back there at the same time.

He might have nodded yes or he might have basically agreed with the other gentleman number four that had - - that it had been emptied.

Q. Timewise, just so the jury is very clear, the incident happens November 17 and I think you told him

it was a non-incident and that's why you didn't do a report until homicide called you, right?

A. Yes.

Q. Okay. You went inside 1929 Western, the broken store front, the one you've written as number two on your chart; did not?

A. Yes.

Q. You found drag marks?

A. Yes.

Q. Correct?

A. Yes.

Q. Blood?

A. Yes.

Q. A jacket with bullet holes in it?

A. Yes.

Q. And a broken store front window?

A. Yes.

Q. And bullets?

A. Yes.

Q. And then you called out crime scene analyst Ruffino?

A. Yes.

Q. And it's your testimony today that neither yourself - - you didn't think that was crime scene that merited a report, correct?

A. I don't think it was a crime scene that didn't merit a report, but the homicide detectives were there and the ID tech was there. Basically at that time I didn't think I needed to do a report on it.

Q. Had you thought a report was necessary it would not have taken homicide calling you some 20 days later to get you to do a report, correct?

A. Possibly.

Q. Did Mr. Ruffino ever tell you "Hey, in my 27 years this looks like a murder scene to me."?

A. Not that I can recall.

Q. And you and Officer Kroll left this scene to go to lunch; is that accurate?

A. Yes.

Q. You got a call from Detective Buczek from homicide saying "Get back to the scene and get back now after lunch."

Correct?

A. Not in those words. Just asked us to return to the scene.

Q. And it's your testimony that after going to lunch and leaving a crime scene analyst at a murder scene by himself, that Detective Buczek was in no way irritated with you and Officer Kroll, to your knowledge?

A. Yes.

Q. And then when you came back Detective Buczek asked you if you'd seen anything unusual in the dumpster, correct?

A. I don't recall what words he asked me.

He asked me to go back and take a look, if we had looked around. I told him yes, we looked around and basically told him a synopsis of what we've discussed.

Q. He asked you - - he said something to the effect "Did you guys look around back?"

You respond "Yes, we did."?

A. Yes.

Q. Did you see anything unusual - - you know that you just went to lunch and left the crime scene analyst alone and you said no, you didn't see anything unusual, correct?

That's what you answered, correct?

A. I answered no, that I did not see anything unusual.

ATTEST that this is a true and complete transcript of the proceedings held, DATED this 21st day of February 2001.

J. A. D'AMATO CCR #017

64

DISTRICT COURT

ORIGINAL

CLARK COUNTY, NEVADA

* * * *

FILED IN OPEN COURT
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SHIRLEY B. PARRAGUIRRE, CLERK
BY JUDY NORMAN DEPUTY

STATE OF NEVADA,

Plaintiff,

vs.

JOHN JOSEPH SEKA,

Defendant.

Case No. C159915
Dept. XIV

VOLUME II

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

BEFORE THE HONORABLE DONALD M. MOSLEY

DISTRICT JUDGE

Taken on Tuesday, February 20, 2001

At 3:05 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

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INDEX

WITNESSES ON BEHALF OF THE STATE:	PAGE
RICHARD NOGUES	
Cross-Examination by Mr. Christiansen	3
JEFF SMINK	
Direct Examination by Mr. Fattig	18
Cross-Examination by Mr. Kennedy	23
JEFFREY LOWERY	
Direct Examination by Mr. Fattig	24
Cross-Examination by Mr. Kennedy	27
RANDALL MCPHAIL	
Direct Examination by Mr. Kane	28
Cross-Examination by Mr. Christiansen	66

EXHIBITS

STATE'S	DESCRIPTION	MARKED	ADMITTED
5	Photograph	26	
25	Photograph	54	55
36	Hair and Fingernail Samples	31	32
37	Evidence Package	32	33
38	Diagram	36	36
39	Evidence Package	51	52
40	Evidence Package	51	53
41	Casino Cards	43	44
42	Cartridges and Cases	45	46
43	Evidence Package	46	54
44	Levi Jeans	47	47
45	Blood Sample	48	49
46	Blood Samples	49	49
47	Blood Sample	59	60
47A	Blood Sample	59	60
48	Business Cards	62	63
49	Projectiles and Fragments	63	64
50-59	Photographs	54	55
61	Photograph	54	55
62-64	Photographs	54	59
65-69	Photographs	20	
77-78	Photographs	54	55
DEFENSE			
K	Photograph	16	16
O	Chart	17	17
P	Photograph	70	70

LAS VEGAS, NEVADA. TUESDAY, FEBRUARY 20, 2001, 3:05 P.M.

* * * *

CONTINUED CROSS-EXAMINATION

BY MR. CHRISTIANSEN:

Q And then the detective walked you back around to the dumpster and said: Look in here, doesn't this look unusual?

A I don't know if those were his words. I think he asked me to look in the dumpster and see if there was anything different than when I looked a little while earlier.

Q And your response to that question is: That stuff wasn't there when we went to lunch and left the crime scene analyst there alone?

A That wasn't my response. I said, yes, there appears to more -- there's a lot of stuff in the dumpster now than there was when I left for lunch.

Q It appeared to you from the picture you looked at that some of the items had been burnt in that dumpster, correct?

A Yes, sir.

Q And when you were at the scene, did you smell burning paper, or burning clothing, or burning anything?

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Docket 80925 Document 2020-32845

A Not that I recall, sir.
Q Did you see smoke?
A No, sir.
Q Had you seen or smelled any of this, would you have left the crime scene analyst there alone?
A No, sir.
Q How many times in your career has homicide called you up and told you to get back to a scene that you just left to go to lunch?
A Once.
Q And that was this time, correct?
A Yes, sir.
Q And how many ID techs were at the scene when you left?
A When I left to go to lunch?
Q Yes, sir.
A I believe there was just one.
Q Just Ruffino?
A I believe so.
Q Did you go inside of 1933, No. 3 on your chart?
A Yes, sir.
Q With Officer Kroll?
A Yes.
Q Did you have a chance to see Mr. Seka?

A Yes, sir.
Q Did he appear cooperative to you?
A Initially, yes, sir.
Q Did he ever tell you to get out of his place, you're not allowed to be in here?
A Not that I can recall, sir.
Q He let you come in and look around?
A Yes, sir.
Q Did it appear to you that people were living there?
A There was clothing and couches and things like that. I didn't pay attention to whether somebody had been living there or not.
Q From looking at that incident recall, can you tell me what time it was you cleared and went to lunch with Officer Kroll?
A Looks like the same time I cleared at 12:08.
Q And can you tell from looking at the incident recall what time homicide arrived?
A It looks like 12:33.
Q About 25 minutes after you cleared; is that accurate?
A Yes, sir.
Q And did a second crime scene analyst arrive in the middle?

A Yes, sir.
Q At 12:09?
A Yes, sir.
Q So there were two Metro crime scene analysts at 1929 the entire time, if there was a time between when you left and when homicide got there, right?
A It appears the second crime scene analyst arrived at 12:09, and homicide arrived at 12:33.
Q Are you sure you left that crime scene analyst there by himself?
A As far as I can recall.
Q Did you ever tell Homicide Detective Buczek, the gentleman that called you back, that you had seen a bullet inside of 1933 prior to being called back?
A Yes, sir.
Q When did you tell him that?
A Prior to being called back?
Q Prior to being called back.
A No, sir. Not that I can recall.
Q Detective Buczek asked you when you came back about this bullet that had come up missing, right?
A I don't recall. I believe so.
Q If Officer Kroll remembered leaving only after homicide arrived, would that be consistent with your recollection of the events?

A I can't remember if they showed up just before we left. I thought we had already left the scene.

Q But as you sit here today you don't remember, do you, sir?

A No, sir.

THE COURT: Mr. Christiansen, would this be an opportunity to break?

MR. CHRISTIANSEN: Yes, sir, it would.

THE COURT: Ladies and gentlemen, it is your duty not to discuss among yourselves, or with anyone else, any subject connected with the trial; or read, watch or listen to any report of, or commentary on the trial or any person connected with the trial by any medium of information, including without limitation, newspapers, television and radio; or form or express any opinion on any subject connected with the trial until the matter is finally submitted to you.

We will return in approximately 30 minutes.

(Whereupon, a 30-minute recess was taken.)

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 absence of the jury is noted.

Counsel, I want you to check in my chambers

if you want something outside the presence. Go ahead.

MR. CHRISTIANSEN: I apologize to the Court. Judge, the objection deals with Thomas Creamer. We made timely objections, and by my count there were three different things Mr. Creamer said in response to questions posed to him by the State that were all grounds for mistrial, were all improper, and I'll cite the reasons.

The first was when Mr. Creamer, in response to a question by Mr. Kane, said that Jack had law trouble, or trouble with the law back in Philadelphia. We objected. Mr. Kane tried to redirect, or said something to the effect: I'm not interested in that, that's not what I'm eliciting, and got the guy back on track, the guy being Mr. Creamer.

And the Court admonished the gentleman, Mr. Creamer. And I want to point out to the Court, this is a gentleman who came to the preliminary hearing back in '99 and testified, and they had to take a break in the preliminary hearing. I wasn't counsel of record, I hadn't been appointed yet.

But after the lunch break, he comes back and started the exact same type of nonsense he pulled in front of the Court earlier this afternoon. He even started screaming at Mr. Kennedy, from my reading of the

transcript.

So this is somebody who had been admonished in another courtroom. Your Honor admonished him after the first time when he tried to spit out something about Mr. Seka's legal problems back east.

Now, the truth of the fact, Jack Seka had no problems back east. Detective Thowsen ran this gentleman. He had no warrant or arrests or anything else. There's an old conviction, but the jury is now left with the impression that Jack Seka had some criminal activity back east.

And that is especially harmful in a case where one of the jurors in voir dire expressed his disdain for the legal system in Colorado when he found out something along those lines about a defendant on a jury he sat as the foreman on. So that is the first problem.

The second is, when Mr. Creamer, in response to a question by the State, claimed that in his confrontation with Mr. Seka in January of 1999, he felt threatened, that he thought that he was a loose end, and that Jack was going to tie up a loose end, and that Jack was a threat to him. That, again, came in response to a question by the State.

There has been no notice to us that Mr. Creamer was ever going to allege that he had been

threatened, his uncharged misconduct and stuff that is completely irrelevant and prejudicial.

The case law about threats is that you have to show beforehand that you're going to introduce it from the State's perspective, and that there has to be some argument where by clear and convincing evidence it's linked to a defendant before threats to a potential witness can come in, because they're so prejudicial. So that came out in response to a question proposed by the State.

The final thing that he did, and probably equally as harmful as the other, but in combination or addition to the other two is what pushed it over the edge, is when he turns to the jury and responds to the Court, and I think it was the Court telling him to answer the question that is posed.

He turns to the jury and says: But I have important stuff to tell the jury. He might not have said "jury." I think he said, "I have important stuff to tell." And he turned and looked to the jury to do that. That, again, leaves the jury with this impression that we, the Defense, are hiding the ball.

And this uncooperative witness, Your Honor tried to admonish him a number of times, and sort of thumbing his nose at the Court he just continued to refuse

to do what was requested of him.

All of these amount to severe injustice to Mr. Seka. He's entitled to a trial where only relevant evidence comes in, and not these unsolicited color commentary by a witness who has a huge axe to grind with the defendant, because the defendant had him incarcerated or committed to an insane asylum.

On those grounds I move for a mistrial.

THE COURT: Response?

MR. KANE: Real briefly, it's obvious that Tom Creamer is a problem witness. I said that to the jury at the beginning of the trial and made no secret about it. As far as the three things that are alleged that he said, let me deal with them in turn.

One, is that Mr. Seka had some sort of other case which he; that is, Mr. Creamer testified for him. That was a single reference not elicited by me, and I don't think in any way calls for a mistrial.

THE COURT: Isn't that the item you struck?

MR. CHRISTIANSEN: Yes, sir.

MR. KANE: You ordered it struck. And the at the time that Mr. Creamer mentioned it, he said: I testified for him. So it wasn't as if he was trying to say there was something bad that he did that I want to get

in front of the jury. It was more in the context of him trying to help him out and demonstrate any relationship between them.

Secondly, as to whether he felt threatened, the Defense has known all about this altercation between the two of them where Creamer throws the defendant down a flight of stairs. They cross-examined him about it at the preliminary hearing.

The testimony by Creamer is: I'm standing face to face with a guy who later tells me that he's murdered Peter Limanni, and he says to me do you want me to do to you what I did to Peter Limanni, and I throw him down the stairs.

To add to that, "I felt threatened" adds very little to the description of that incident. It doesn't prejudice the defendant at all. It would be inhuman for anybody not to feel threatened under those circumstances.

Finally, as to the statement to the jury: This is important and I want to say this, all jurors understand and are instructed that the trial operates under strict rules of evidence. No witness can simply take the witness stand and say anything that the witness wants.

Mr. Creamer is certainly not the first

witness who has in my presence in the course of a trial fought against an objection by saying: What I want to say is important. The fact is, he didn't say whatever it was. He was admonished to just answer the questions, and eventually he did so.

The first dealing with the other case is the only thing that I think even rises to the level of requiring a cautionary instruction. And the other two certainly don't call for corrective action by the Court, or a mistrial.

THE COURT: Well, coincidentally, that's exactly how I interpreted the matter. I have written here the three things that Mr. Christiansen alluded to. The first one is the troubling one, if you could say it's particularly troubling, and I would say that, certainly, there could be some damage there. It's hard to say, exactly.

I would entertain at the proper time a cautionary instruction, and we'll cross that bridge when we come to it, counsel, and be mindful of something that we would consider.

As to his feeling threatened, I think that is a rather natural inference and it merely justifies in the witness's mind this fight that ensued. I don't know if it's of any particular import him saying that he had

important stuff to tell.

If anything, it militates -- well, I suppose it can be looked at in two ways, but it certainly can be said to militate in favor of the Defense, and that it shows a motive to fabricate. He's going to do his thing here, he wants to get this across, and he's out here to tell his story so he can get his licks in, in a sense.

I don't know that it has any significance one way or the other, really. This is a murder trial. I think the jury understands it's important, it's all information on the part of the witness. It merely shows that the witness has an axe to grind, which I think counsel as competent as we have here for the Defense can take it in closing and use it against him, along with his other problems, his demeanor and other things, of course.

I think the striking of the reference to the legal trouble is prudent, and I'm glad counsel brought it to my attention at the time and asked that it be stricken. The rest of it I'm sure, in my mind at least, does not amount to a basis for a mistrial.

I would point out to counsel that the law requires a fair trial, not a perfect trial, and these things that have come out through Mr. Creamer were inadvertent. I don't think anything suggests otherwise here. The man, obviously, had some problems, his demeanor

and alcohol problem, whatever else may be occurring there. So it's very difficult to elicit testimony that is just absolutely admissible throughout.

The Court declines the motion for a mistrial. Anything else outside the presence?

MR. CHRISTIANSEN: No, sir.

MR. KANE: No, Your Honor.

THE COURT: Mr. Bailiff, please.

(Whereupon, the jury entered the courtroom.)

THE COURT: Would counsel stipulate that all members of the jury are present and properly seated?

MR. CHRISTIANSEN: Yes, sir.

MR. FATTIG: Yes, Judge.

THE COURT: The State's next witness, please.

MR. CHRISTIANSEN: Judge, I think we're still on cross.

THE COURT: Officer Nogues, have your seat. Let me admonish you that you're still under oath.

Proceed, please.

MR. CHRISTIANSEN: Thank you, Judge.

Q (By Mr. Christiansen) Officer Nogues, I showed you three pictures and I asked for the admission of two, and neglected to ask for the admission of three. I

show you what's been marked for identification purposes as Defense Proposed Exhibit K. Is that a picture of the back of 1933 as you've drawn it on the board?

A Yes.

Q And does that fairly and accurately depict how it appeared to you back in 1998?

A As far as I can recall, yes.

MR. CHRISTIANSEN: I move for the admission of Defense Proposed Exhibit K.

MR. FATTIG: No objection.

THE COURT: It is received. Thank you.

Q (By Mr. Christiansen) Officer Nogues, the gentleman that was in the chain link area that you believed was the manager, did you ever secure his name?

A No, sir.

Q And, specifically, on the day in question you didn't secure his name, that being November the 17th '98?

A No, sir.

Q And even when called upon by homicide to do a report about 20 days later, as we've talked about on December the 5th, you never went back and secured that gentleman's name?

A No, sir.

Q And that was the gentleman that told you

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there were parties going on in 1933, and people were there at nighttime on a regular basis?

A Yes, sir. I don't recall that he was telling me specifically, or if he was just telling Officer Kroll. I remember he was telling us that there had been parties there on a nightly basis; yes, sir.

Q So everybody is clear, you've drawn for the jury a model of what the building, 1933 and 27 and 37 looks like they're on Western Avenue; is that right?

A As far as I can recall, yes.

Q And that's not to scale by any engineering or construction standards, is it?

A No, sir.

Q But does that fairly and accurately depict the building and the location of the dumpster, and the location of that chain link fence as it relates to Western back in November of 1998?

A Yes, sir.

MR. CHRISTIANSEN: Judge, I would move for the admission of -- and I don't have it marked yet, but I think the next one would be Defense Proposed Exhibit O, and I will have it marked.

MR. FATTIG: No objection.

THE COURT: It is received.

MR. CHRISTIANSEN: Thank you. I have

no further questions from Officer Nogues.

THE COURT: Anything further?

MR. FATTIG: No.

THE COURT: You're excused. Thank you, sir. State's next witness.

MR. FATTIG: Jeff Smink.

Whereupon,

JEFF SMINK,

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 Sir, would you please state your name and spell your last name for the record.

A Jeff Smink, S-m-i-n-k.

Q How are you employed?

A With the Las Vegas Metropolitan Police Department.

Q What's your position?

A A crime scene analyst.

Q Back in December of 1998, where were you employed?

A The Sheriff's Department of San Bernardino

County.

Q And what was your position there?

A A Forensic Specialist 2 assigned to crime scene investigation detail.

Q And on December 23rd of 1998, were you assigned to a particular case?

A Yes.

Q And where was that case at? Where did you go?

A The scene was actually located on the south shoulder of Nipton Road about a mile east of I15 in southern California.

Q And did you proceed to the scene?

A Yes.

Q About what time did you get there?

A Approximately 1:45 in the afternoon.

Q And was that because you were in San Bernardino and had to drive up?

A That's correct.

Q When you got to the scene, what did you see?

A There were several units on the scene. There was a Sheriff's Department unit, as well as Highway Patrol. And the scene entailed a dirt shoulder, areas of raised dirt in a desert area on the south of the roadway.

Q And what was your assignment that day?

A To document the crime scene with photography and locate items of evidence.

Q And could you generally describe the crime scene?

A The crime scene included the Nipton Road which was traveling east and west in that area, and a dirt shoulder that traversed south from the roadway, and two areas of raised dirt berm. There were also areas of tire tracks which were into the soil, the victim's body, a hole adjacent to the victim's body, and some cotton material at the scene.

Q Could you generally describe what the victim's body looked like?

A The victim was positioned with the head towards the east, the legs towards the west. The legs were buried with dirt. The head was face-down. The left arm was exposed, and it had animal activity. And the victim was partially dressed with a pair of pants and a shirt, as I recall.

MR. FATTIG: Could I approach the witness, Your Honor?

THE COURT: You may.

Q (By mr. Fattig) Showing you what has already been marked as Exhibit 65 through 69, some photographs. Would you look through those and tell me if

you recognize them?

A Yes, I do.

Q Do they fairly and accurately reflect the crime scene when you arrived that afternoon?

A Yes.

Q Specifically referring to No. 65, could you describe what is shown in that photograph?

A No. 65 shows the view of the crime scene looking from the roadway towards the south. Specifically depicted in the center portion of the photograph are a series of tire tracks in the dirt berm area, and then a raised dirt berm area to the south rear of the tire track.

Q Could you describe the condition of those tire tracks?

A They were very poor quality. They were not of significant quality to photograph with detail or for a plaster cast. You can merely make out that there was a tire impression, but not a discernable pattern.

Q After you documented the crime scene taking photographs and those sorts of things, what did you do?

A A soil sample was collected, and the cotton material was collected.

Q After those were collected, what did you do?

A After that I received permission from the responding Deputy Coroner, and I attempted to obtain a

fingerprint from the victim's right hand.

Q And how did you attempt to do that?

A The victim's hand was unearthed from the soil area. The skin had dehydrated as a process of decomposition, so I used a syringe full of water, and I injected water to the right thumb area.

That night it was particularly cold, so as I injected the water into his hand, the water would freeze. So I had to hold onto it for a period of time to thaw out the water, and then the water had liquefied to the point where I was able to place ink on the right hand of the victim and obtain his fingerprint.

Q And were you trained to do that on a body?

A Yes.

Q Did you have occasion to use a metal detector that day?

A Yes, I did.

Q What did you do?

A Prior to the body being recovered, and subsequent or after the body was recovered, the area surrounding the body, as well as the area underneath the body was sifted, meaning be a shovel was used and it was sifted through a screen, as well as metal detector in an attempt to locate additional evidence.

Q Did you find anything?

A No.

MR. FATTIG: Nothing further.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. KENNEDY:

Q Mr. Smink, that area where the body was found, of course, you testified it was partially buried?

A Yes.

Q And there were extremely large piles of dirt berms in the area; is that correct?

A That's correct.

Q And were you the one that used the shovel to shift through the soil around there?

A Yes.

Q Is that something -- did you get dirty doing that work in the soil around there?

A Yes. Whenever you have soil you get soil on yourself, and it does get a little messy.

Q So you, yourself, got a little messy that day on your clothing just from doing that?

A Yes.

Q Were there any footwear impressions located in the area at all?

A There were no footwear patterns with a

discernable pattern. I don't know if there were any specific areas, other than the tire tracks that were deemed appropriate to mark for evidentiary value.

Q Certainly, you didn't take any footwear impressions?

A That's correct.

Q Are you trained to do that?

A Yes.

MR. KENNEDY: Pass the witness, Your Honor.

THE COURT: Anything further?

MR. KANE: No.

THE COURT: Sir, thank you very much.

MR. FATTIG: Jeff Lowery.

Whereupon,

JEFFREY LOWERY,

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 Sir, will you please state your name and spell your last name.

A It's Jeffrey Lowery, L-o-w-e-r-y.

Q Back on November 16th of 1998, how were you employed?

A I was driving a truck for C and N Transport.

Q And where was that located?

A It was located at Mandalay Bay.

Q Did you have occasion to get some information from a coworker that morning?

A Correct.

Q And who was that?

A I don't know his last name. I believe his first name is Mike.

Q And what information did Mike tell you?

A Well, he came up there and said --

MR. CHRISTIANSEN: Objection. Hearsay.

MR. FATTIG: Offered not for the truth, Your Honor, just to explain what Jeff, this particular witness, did.

THE COURT: For that limited purpose I'll allow it. Proceed.

THE WITNESS: He just said that he thought he had seen a body on the side of the road.

Q (By Mr. Fattig) Based on that information, what did you do?

Q Well, on the way back to Mandalay Bay to get loaded, I took Las Vegas Boulevard and looked down on the

left-hand side and seen a body on the side of the road.

Q And was that reported to the police?

A Yes.

Q Were you on the scene when police arrived?

A Correct.

Q How much time passed until police arrived?

A Half hour, hour.

Q Did you disturb any of the scene by the body?

A No.

MR. FATTIG: May I approach the witness, Your Honor?

THE COURT: You may.

Q (By Mr. Fattig) Showing you what has been admitted as Exhibit No. 5, a photograph, do you recognize that?

A Yes.

Q What does that show?

A That shows the body.

Q Is that in the condition it was in with the lumber on it?

A Correct.

Q When you found it?

A Correct.

MR. FATTIG: Pass the witness.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. KENNEDY:

Q Mr. Lowery, did you have an opportunity to approach the body before the police got there?

A Yes, I did.

Q And how far away were you from it?

A About five feet.

Q You could see everything pretty well?

A Pretty much, yes.

Q Did you notice a diamond ring on the individual's right hand?

A Correct.

Q Did it appear to be a large diamond ring?

A Correct.

Q And in the area, when you went up there to the area to look at the body, were you by yourself for a period of time?

A Yeah; for about five minutes.

Q And during that period of time did you see any footprints in that area, other than your own?

A Not that I know of. I wasn't really even looking for footprints or anything like that.

Q Sure. Were you looking at the ground

though?

A The body.

Q The body itself?

A Yeah.

MR. KENNEDY: Pass the witness, Your Honor.

THE COURT: Thank you very much. Next, please.

MR. KANE: Randy McPhail.

Whereupon,

RANDALL MCPHAIL,

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 Yes. My name is Randall Mark McPhail, last name is spelled M-c-P-h-a-i-l.

Q And by whom are you employed?

A Las Vegas Metropolitan Police Department.

Q How long have you employed by that department?

A Approximately 13 years.

Q And what's your current assignment?

A I'm a crime scene analyst, senior level.

Q How long have you been in that assignment, crime scene analyst?

A I've been a crime scene analyst for four years, just over four years.

Q We've already heard testimony about the processing of crime scenes. I want to ask you about a couple other things that crime scene analysts do. One of them is attending autopsies?

A Correct.

Q Would you explain why a crime scene analyst attends an autopsy, and what he does at such a scene?

A The interest of the crime scene analyst at an autopsy is almost like a separate scene on its own. We view the body as a scene almost. We document the overall condition of the body, show that the body was transported intact with the body bag with the tag on it and seal.

We document any injuries on the victim, collect any kind of biological samples on the outside of the body, not anything internal, all the doctors do that. We collect any clothing items that have any significance to the case whatsoever.

Basically, like I said, the body is a scene

and we treat it with full documentation like a scene.

Q What is a DNA kit?

A A DNA kit is composed of -- usually it's a sample of rib and kidney that the doctors collect for us. We place those samples in a vial, and then they get frozen where they stay until they determine they need them for DNA analysis.

Q The first incident that you were involved with in this investigation that I want to talk to you about was the autopsy of an individual then identified as John Lumber Doe back on November 16th of 1998.

Did you attend his autopsy?

A Yes.

Q Did you obtain one of those DNA kits that we've been talking about?

A Yes.

Q You didn't bring that to court with you, right?

A No. It's not suitable to bring into court.

Q Why?

A Because it's frozen and must say in a frozen state to preserve the evidence.

Q Did you also obtain other evidence in the course of that autopsy of John Lumber Doe?

A Yes, I did.

Q What else did you obtain?

A I obtained, first of all, fingerprints from the John Doe known as John Lumber Doe. I obtained hair samples, blood samples, the DNA kit that we talked about.

I also obtained a note that was inside of his jeans. The note had the name "Jack" on it with a phone number. That was in the right pocket of his jeans. And I think there was some other -- oh, his clothing, I obtained the clothing as well.

MR. KANE: Judge, this witness will be testifying about approximately 15 or 16 items of evidence and about photographs. Just for this witness, may I have blanket permission to approach?

THE COURT: Certainly. And is counsel familiar with these items?

MR. KENNEDY: Yes, Your Honor.

THE COURT: Yes, sir.

MR. KANE: Thank you.

Q (By Mr. Kane) I Show you, first of all, what's been marked for purposes of identification as State's Proposed Exhibit 36, and ask if you recognize this item?

A Yes, sir.

Q What is State's Proposed 36?

A They are hairs that I collected from the

victim's hand, and multiple fingernail clippings from the victim's hand.

Q And what is it that causes to you recognize that?

A It's my evidence package that I wrote out at the scene. And I had the signature, the event number, all the particulars on there that helped me identify it. It's also sealed in my name in the back.

Q Does the package bear any signatures or seals, other than your own?

A Yes, it does.

Q Is the signature of the person known to you?

A It looks likes it's Dave Welch from the forensic lab.

Q What does David Welch do in the lab?

A He works at DNA.

Q Other than the addition of Mr. Welch's signature, does that exhibit appear to be in the same condition as when you observed it back in November of 1998?

A Yes, sir.

MR. KANE: Offer 36, Your Honor.

MR. KENNEDY: No objection.

THE COURT: It is received. Thank you.

Q (By Mr. Kane) I want to next show you

what's been marked for purposes of identification as State's Proposed Exhibit 37, and ask if you recognize that?

A Yes. This is a package containing a small section of copper-colored scouring pad, and a piece of hanger that came from the victim's front left pocket in his jeans. There's also a green piece of paper with the name "Jack" on it, and a phone number.

Q And does that exhibit also bear your identifying signature and seal?

A Yes, it does.

Q Are there any other signatures or seals on there besides your own?

A Yes. There is a seal and, I'm sorry, I can't make it out. It's from a forensic lab, maybe Fred Boyd.

Q Other than the addition of Mr. Boyd's signature, does that appear to be in the same condition as when you observed it back in November of 1998?

A Yes, sir.

MR. KANE: Offer 37, Your Honor.

MR. CHRISTIANSEN: No objection.

THE COURT: It is received.

MR. KANE: I ask that you open that leaving the seal in tact, and just display to the jury the

note with Jack and the phone number. And the note itself is in a separate package within that exhibit?

A Yes, it is.

Q For the benefit for the ladies and gentlemen of the jury, since you're handling it without gloves I assume it's safe for them to do so as well?

A Yes.

Q If you would replace that item.

I next want to talk to you for a while about 1933 Western Avenue. Were you assigned to process that scene on November the 17th of 1998?

A Yes, sir.

Q And what time was it when you originally got the call; if you recall?

A I am not sure when I originally got the call. I arrived just after 2:00 o'clock.

Q And what information were you given?

A The reason I was asked to that scene --

MR. CHRISTIANSEN: Objection. Speculation. He can't testify why somebody else called to ask him to a scene.

MR. KANE: I'll rephrase the question.

Q (By Mr. Kane) What information were you given that caused you to respond to the scene?

A I was told there was a break-in to an

adjacent business which was at 1929 South Western. And I was asked due to the fact that I had just returned from the autopsy on a homicide victim, whether the two scenes might somehow correlate.

And I was asked to come down and look at the scene at 1929, and see if I recognized anything that would join the two together, the homicide and that scene.

Q And you know Dave Ruffino?

A Yes.

Q Was Dave Ruffino the crime scene analyst working 1929?

A Yes, sir.

Q And was he primarily responsible for that office?

A He was entirely responsible for that office.

Q Did you assume responsibility for the office next door, that being 1933?

A Yes, sir.

Q And when you processed that crime scene, what were you going in there looking for?

A We really didn't know what we were looking for. I guess originally we were looking for any kind of firearms evidence that might be there, and something that would tie the victim to that scene at 1933 South Western.

Q Now, in the course of your processing of

1933 Western Avenue, did you recover a number of items of physical evidence?

A Yes.

Q Did you also prepare a crime scene diagram indicating the location of the various items of evidence you recovered?

A Yes, sir.

Q I'm going to show you what's been marked for purposes of identification a State's Proposed Exhibit 38, and ask if you recognize that?

A That's the diagram I created.

Q That's a blow-up of your actual diagram?

A Correct.

Q Not drawn to engineering specifications, correct?

A Correct. But it's still drawn with a scale in mind.

Q And does it fairly and accurately depict the scene and the items that you recovered?

A Yes, sir.

MR. KANE: Offer 38, Your Honor.

MR. CHRISTIANSEN: No objection.

THE COURT: It is received. Thank you.

Q (By Mr. Kane) If you could come down from your seat, Mr. McPhail, and sort of walk the jury through

the scene. You'll note that there are two items that don't have anything to do with the case that are blocked out, and we won't be asking you to refer to those.

A This is the scene at 1933 South Western. It was a heating and cooling business, repair business called Cinergi. It consisted of the storefront, which was the northwest office, the southwest office. There was additional office spaces just behind the southwest office.

There was a large storage area, and I believe there was other desks and office equipment in this area, including a xerox machine and a storage area for tools and other equipment associated with the business, I would assume.

There's a small hallway leading into another office area which was the northeast office. Now, this office in the northeast corner of the building appeared to have been used as a bedroom. There was a mattress on the floor. There was an ironing board with items on top, including an iron; clothing items in the room, and this armchair was also in the room.

Back up at the northwest office it looked like the whole thing was under construction. There was a lot of work going on in the office. They apparently just completed work on a humidor, and it was made out of cedar. It was a large humidor for cigars that you could actually

walk in.

The work was either completed or just nearing the stages of completion on that. So there was a lot of wood and other objects laying around in the northwest office toward the front of the storefront. There was also in the southwest office a lot of cedar wood, specifically on the floor here.

Additionally, there was damage to the wall where I'm not sure if construction was going on and there was some kind of damage to the wall, but the wall board was missing behind the couch here in the south central office.

And this wall here used to be a doorway and they were, apparently, in the process of making an archway that opened into this southeast office area. So there was a lot of construction and construction materials laying around.

We found several firearms evidence. Perhaps, I don't want to get out --

Q You didn't find any firearms, correct?

A No firearms, meaning guns?

Q You found some firearms-related evidence?

A Yes.

Q Go ahead and describe that.

A First of all, I have to kind of give you the

nomenclature on the firearms. We've all been watching TV and they show you a bullet, and a bullet can mean anything from the thing that comes out of a gun, a lead piece that hits somebody, to the whole contraption, which would include the base and everything.

So I just wanted to kind of explain our nomenclature on this. For us a complete cartridge is the whole thing. It's composed of the cartridge case, which is a metal cup. The metal cup is usually made out of a chrome-colored metal or brass. It holds the powder or propellant.

And then on top of that metal cup is the actual bullet. The bullet also has a couple of components. It has a core and it's lead, and oftentimes it will have a jacket over it fully covering it, or partially covering it with the bullet. And then it has a primer somehow on the cartridge case.

Anyway, we found a cartridge case, it was a 357 magnum size in the false ceiling near the center of the north wall in the northeast office -- northwest office, I'm sorry.

We also found a cartridge case 357 magnum size on the light fixture that was in front of the double doors leading to the humidor. We also found another cartridge case near the center of this south wall in that

northwest office, and they were all 357 magnum size.

Additionally, firearms evidence would include a bullet that was lodged inside the wall, the drywall of the south central office in the west wall. The bullet had apparently traveled through the couch, the back of the couch gathering up stuffing material as it went, and lodged itself in the wall. When I recovered this, I pulled the stuffing material out to get the bullet out, and that's how that was found.

Additionally, there was a .32 caliber cartridge, complete cartridge that had everything in it that could have been fired, put into a gun and fired. It was located inside the toilet in the restroom area in the bottom of the bowl.

There was an additional .24 caliber cartridge up in that false ceiling above his chair in the northeast corner of the northeast office.

Q If you just go through the list of items that you have on your diagram, I'll show the physical items later. But if you could briefly go through them at this point.

A Okay. We found numerous items out there. I'll start with the dumpster in the back area. There were numerous items out there, including photos and personal papers in the name of Peter Limanni. There was also a

computer disk. There was a phone card and other personal items inside that dumpster.

There were clothing items, a shirt in particular, a green shirt that appeared to have been burnt. And there on the ground we found some playing cards from different casinos; a Bally's cards, Sam's Club and Palace Station were all there.

Q Now, just to stop you. You don't mean playing cards like a deck of cards that you deal?

A That's correct. They're kind of slot club cards that you get from the casinos.

Q Go ahead.

A Apart from the firearms evidence, a piece of broken glass I impounded from the floor area here. There was a wall calendar with several dates circled that I impounded from the wall of the south central office.

There were some personal belongings, photos, papers inside a plastic bag in the garbage can in this south central office. Some of those photos were of Peter Limanni and family, I would assume.

There was also a bill fold, not a bill fold, it's more of a business card holder, a leather business card holder in the ceiling above this desk in the south central office. And there were different cards in there, business cards, and also a birth certificate in the name

of Peter Limanni in that area.

I collected several pieces of wood in this area here. And the reason for that is, again, seeing if we could tie it to the body that was found in the desert, and we weren't sure if they matched or not so we collected some of those.

There were numerous apparent blood stains. I say apparent blood stains, because we found a stain that looked like blood to us, so on the scene, or maybe even after the scene at the lab, I'm not sure exactly when I did it, but I checked it for a presumptive test that allows us call that stain, instead of a reddish/brown stain, we can call it apparent blood. It passed that field test for that.

The apparent blood stains, most of them at the stage that I recovered were not drops per say, or pool or anything like that. Most of them were more of a transfer where you have an object, shirt, hand, whatever, that becomes -- it has some blood on it and it touches something else, a wall in many of these cases, and transfers the blood to the wall from the hands or shirt or another object.

And that was the case throughout the building, but there was actually a couple of drops. There was a drop here on the door frame. There were numerous

drops in this box, it was just an empty cardboard box in front of the store.

Most of these other areas in red here were just transferred blood stains, except this one here on the covered doors below the counter, there was a drop again. So something had enough of it on there to actually drop off and hit the cabinet door.

There was transfer up here. Most of these other areas were transfers. And this area here that's labeled B7, there was another type of transfer. It looked to me possibly like a hand, fingers rubbing against the wall making a semi-arch pattern right there in front of that rear door of the southeast office.

About the only other thing, there was quite a high -- 81 inches off the floor was this B10 on that east wall of the northeast office. And it was, again, a transfer but quite high, seven feet off the ground.

Q If you would resume your seat. I neglected to ask you the players club cards that you found out on the pavement, was there a name on those?

A You know, I can't recall right now. I'm sorry.

Q I'm going to show you a series of exhibits, and we'll start for purposes of identification as State's Exhibit 41. And I'll utilize, basically, the same

procedure with each of these so we can get through them.

First of all, do you recognize 41?

A Yes, sir.

Q What is that?

A These are the playing cards we just spoke of, the Bally's card and Sam's card and Palace Station card.

Q And they are in an envelope bearing your signature and seals?

A Yes, sir.

Q And do they bear any signatures or seals besides yours?

A No; just mine.

Q They appear to be in the same condition as when you observed them back on November the 17th of 1998?

A Yes.

MR. KANE: Offer 41, Your Honor.

THE COURT: Objection?

MR. CHRISTIANSEN: No, sir.

THE COURT: It is received. Thank you.

Q (By Mr. Kane) Would you open those up, and if you can then answer my question about whether they bear anyone's name?

A Yes. Two of them have the name Peter Limanni on them, and one of them I can't see a name on it

at all.

Q Okay. If you would replace those in the envelope. Next, I want to show what's been marked for purposes of identification as State's Proposed 42, and ask you if you recognize that?

A Yes, sir.

Q And what is 42?

A These would be two complete .32 caliber cartridges that were recovered from 1933 South Western, and three cartridge cases that were recovered from the scene we talked about, and also one bullet.

Q Do they bear your signature and seals?

A Yes.

Q Any signatures other than your other than?

A Yes. It looks like, again, forensics. Looks like Fred Boyd signed one of them off, and the other looks like it might be Torrey Johnson.

Q And do you know who Torrey Johnson is?

A He's a firearms examiner from the Criminalistics Bureau.

Q Other than Boyd and what appears to you to be Johnson's signature, does that appear to be in the same condition as when you first observed it?

A Yes, sir.

MR. KANE: Offer 42, Your Honor.

MR. CHRISTIANSEN: No objection.

THE COURT: It is received. Thank you.

Q (By Mr. Kane) I show you next what's been marked for purposes of identification as State's Proposed Exhibit 43, and ask if you recognize that?

A Yes, do I.

Q What is 43?

A It's a package bearing my label that I made for it and indicating the inside is a wall calendar, black leather business card holder, athletic shoe, red plastic cartridge holder, and a press board piece of cedar wood, and a piece of pine wood.

Q And does that item bear your signature?

A Yes.

Q Any signatures other than your own?

A No, sir.

Q Does it appear to be in the same condition as it was when you observed it back on November the 17th of 1998?

A Essentially, yes.

Q I'm going to ask you to extract the contents, but if you could open it in case the ladies and gentlemen of the jury should want to view the items later.

And, also, would you indicate for the ladies and gentlemen of the jury by reference to the diagram

where that item fits in.

A I would have to step down. I spoke of this before. We talked about the wall calendar that was on this wall. We also had the business card holder inside that was inside the ceiling area above this desk in that office. It has pieces of wood that came from this area here. And it has a tennis shoe, a H-Swiss tennis shoe that came from the northeast office here.

Q I want to show you next what's marked for purposes of identification as State's Proposed Exhibit 44, and ask if you recognize that?

A Yes.

Q What is 44?

A It's a pair of Levis blue jeans.

Q Does that item bear your signature?

A Yes, sir.

Q Does it bear signatures or seals of anybody else?

A Yes. It looks like Dave Welch examined this as well.

Q And aside from the addition of Mr. Welch's signature, is it in the same condition as it was when you saw it on November 17th of 1998?

A Yes.

MR. KANE: Offer 44, Your Honor.

MR. CHRISTIANSEN: No objection.

THE COURT: It is received. Thank you.

Q (By Mr. Kane) Without opening it, could you refer to your diagram and just indicate where in the business you found that, either a number or location.

A In the south central office there's a picture of a couch there, and it was right on the left arm of that couch where this was recovered from.

Q Showing you next what's been marked for purposes of identification as State's Proposed Exhibit 45, do you recognize that?

A Yes.

Q What is 45?

A Forty-five is a package containing numerous samples of blood, apparent blood. Normally we don't have them this large, they're usually on Q-tips. And I'm sure there was a significant amount of Q-tips with blood samples on them. This actually contains a section of that cardboard box located in front of the store that had apparent blood on it, and that's why it's shaped like this.

Q Does 45 bear your signature and seal?

A Yes, sir.

Q Anyone's signature or seals in addition to your?

A Dave Welch.

Q And other than the addition of Mr. Welch's signature and seal, does it appear to be the same condition as when you saw it on November 17th, 1998?

A Yes, sir.

MR. KANE: Offer 45, Your Honor.

MR. CHRISTIANSEN: No objection.

THE COURT: It is received. Thank you.

Q (By Mr. Kane) Showing you next what's been marked for purposes of identification as State's Proposed Exhibit 46, do you recognize that?

A Yes, sir.

Q What is 46?

A It's a sample of apparent blood, four different samples that, again, was labeled 1933 South Western, and bears my signature and seal.

Q Any signature or seals in addition to yours?

A Yes, sir; Dave Welch.

Q And other than Mr. Welch, is that in the same condition when you last saw it in on November the 17th, 1998?

A Yes, sir.

MR. KANE: Offer 46, Your Honor.

MR. CHRISTIANSEN: No objection.

THE COURT: Received. Thank you.

Q (By Mr. Kane) Will you tell the jury the specific location from which the items in 46 were recovered?

A Yes. I'm going to have to refer to my notes on this, specifically, to find out, if that would be okay.

Q Let me lay the foundation for that. Do you recall from your own independent recollection exactly where those items were recovered from?

A No.

Q Did you prepare a report after recovering it?

A Yes.

Q Would referring to that report refresh your recollection?

A Yes.

Q Do you have a copy of your report if front of you?

A Yes.

Q Would you refer to it, please.

A Did you want me to step down?

Q If you need to demonstrate it on the diagram, I'd appreciate it.

A I have four samples inside this package. The first one labeled 44A, slash, B is a sample of the blood or apparent blood with the sample control. We

always take the two of them together. This 44A was on the south wall of the rear hallway east of the drinking fountain. So it's going to be this one right here, B9.

The next one was 45A, slash, B. That's on the east wall of the northeast bedroom. I call that the bedroom on my report, because it was being used as such, apparently. And there was approximately 81 inches high, that was the one that was up off the floor on this east wall here.

46, the sample of reddish/brown stain on the fabric. I call that one a reddish/brown stain because it did not test positive for apparent blood. But I did pick it up because I photographed it earlier, and that was on the armchair here. And the last one in this package, again, is on the fabric of this armchair.

Q If you would resume your seat, please.

Next, I want to show what has been marked for purposes of identification as State's Proposed Exhibit 39 and 40. And let's start with 39, do you recognize that?

A Yes.

Q Does it bear your signature?

A Yes.

Q Any signatures or seals besides your own?

A No, sir.

Q And does it appear to be in the same condition as when you first observed it on November the 17th of 1998?

A Yes.

Q What's in it?

A There are photos and personal papers, a three-and-a-half computer disc, MCI Friends and Family phone card, a New Jersey Boat Operator's License, and checks labeled Cinergi, a blue checkbook, black-colored appointment book, and keys.

And this came from the general area -- or it came from inside the dumpster.

MR. KANE: Offer 39, Your Honor.

MR. CHRISTIANSEN: No objection.

THE COURT: Received.

Q (By Mr. Kane) I won't ask you to remove the contents, but would you open that in the event the jury may want to look at it. And, again, there's no biohazard sticker there?

A No, sir.

Q And with respect to State's Proposed Exhibit 40, do you recognize that?

A Yes, sir.

Q Does that also bear your signature and seals?

A Yes.
Q Any signature or seals besides your own?
A No.
Q Does it appear to be in the same condition as when you last saw it on November the 17th of 1998?
A Yes.
Q What's in that package?
A There's a K-Swiss tennis shoe, right one. There is a burnt blue Limanni mechanical shirt inside of it. There's a brass-colored belt buckle, and a green-colored shirt that has burn marks on it.
MR. KANE: Offer 40, Your Honor.
MR. CHRISTIANSEN: No objection.
THE COURT: It is received.
Q (By Mr. Kane) Would you open that and display the items of clothing that you described as appearing to be burnt to the jury.
A Here's the green shirt. And here's the blue one.
Q And, again, that material does not bear the biohazard sticker, and it's safe to handle?
A Correct.
MR. KANE: Your Honor, the clerk was kind enough to indicate that I forgot to move the admission of State's Exhibit 43, and I would do so at this

point.

THE COURT: Objection to 43?

MR. KANE: It was the stuff on the wall.

MR. CHRISTIANSEN: No objection.

THE COURT: It is received. Thank you.

Q (By Mr. Kane) I talked to you about some photographs. Let me just give you the stack and have you look through them, and I'll ask you some general questions about them and get more specific.

Now, are all those photographs that I've shown you, and I'll identify them for the record, but are they all photographs of the area of 1933 Western as you observed it back on November 17th of 1998?

A Yes; with the possible exception of the van that may have been taken at the crime lab, the interior sides of that.

Q I apologize. I'll pull those out. Exhibit 62, 63 and 64 were photographs taken at another location?

A Possibly. I couldn't tell by looking at them, but they possibly were.

Q Let me cover the ones that you do recognize, and those are for purposes of identification, 25, 50 through 59, 61, 77, and 78. Are those all pictures from 1933 Western?

A Yes, sir.

Q And do they fairly and accurately depict the areas that are depicted in the photographs as you observed them back on November the 17th of 1998?

A Yes, sir.

MR. KANE: Your Honor, I would offer those just listed exhibits, and I can relist them.

MR. CHRISTIANSEN: Judge, I don't have an objection. May I just approach and flip through them real quickly?

No objection, Your Honor.

THE COURT: Those are the received. Thank you.

Q (By Mr. Kane) Now, the jury will have access to these photographs at a later point, so you needn't display them to the jury. But for their benefit, if you could go through them, read the number from the back, and then tell them what's depicted in the photograph.

A No. 25 is showing the south central office. No. 25 is showing specifically the desk that was in the northwest corner of that office.

Q If it would help at any time to refer to your diagram as you're explaining, please do so.

A Thanks. No. 50 is showing the exterior

AA 000928

front side of the business, so we're looking at the west side of the business. And it also has three vehicles in front; a Cinergi van, a 1998 Toyota pickup truck, golden in color, and an additional van.

No. 51, again, same shot, but it has more of the other side, so it shows a different van in front of the business.

No. 52 is showing the south central office. Once again, this would be the east wall. It's showing the location of the calendar that was collected or recovered.

And No. 53, that would be the south central office again.

No. 54 is showing a picture of the toilet bowl with the cigarette butt inside of it, and .32 caliber cartridge complete.

No. 55 is showing the rear side of the business just to the south of the door that was in here. So it's just this area here, the southeast office area on the exterior east side of the building.

No. 56 is a view of the couch in south central office against the west wall. And there's a scale in there showing where a bullet hole is in the top cushion of the couch.

No. 57 shows the bullet hole going through the couch and into the wall. And you can see a mass of

material in the wall, and that's what the bullet had enshrouded itself in as it traveled through the couch.

No. 58 is showing a complete cartridge that was a .32 caliber. That was in that northeast office above the chair in the northeast corner of the office.

No. 59 shows a view of the rear side of the business. It shows where the dumpster is, the pile of wood that was in one of these other photos also that we talked about earlier.

No. 60 shows the overall condition of the dumpster, showing the beer bottles inside, clothing items, burnt items, and the items in that bag that we talked about earlier.

No. 61 is a photo of a birth certificate and social security card, other cards in the name of Peter Limanni. And it would also have the shoe that was recovered from -- I believe it's a left shoe, so that would be from the office, the inside office, not the dumpster. The dumpster had the right shoe in it.

No. 77 has the gaming cards we opened up here, and they were located just on the north side of the dumpster near the side of the building.

And No. 78 shows the burnt clothing items that we just pulled out of the bag.

Q Now, in addition to the crime scene sketch

and the items of physical evidence that you recovered from 1933 Western, did you participate in processing that scene for the recovery of latent fingerprints?

A Yes.

Q And were you able to recover any?

A I don't think so. No, I didn't recover any.

Q I want to next talk to you about November the 18th. On that date, did you participate in the processing of a 1998 Dodge van?

A Yes, sir.

Q And did you recover certain items of physical evidence in the course of that process?

A Yes.

Q Where did it take place?

A We processed the van, like we do most vehicles, at the Criminalistics Bureau garage. We have a garage attached to our facility that we can have a controlled environment in and examine these vehicles.

Q Let me show you those photographs again, the ones marked for purposes of identification as State's 62, 63 and 64, and ask if those depict the van whose processing we were just talking about?

A Yes, sir, they do.

Q And do those fairly and accurately depict the condition of the van as you observed it at the police

garage on November 18th of 1998?

A Yes, sir.

MR. KANE: Offer 62, 63 and 64, Your Honor.

MR. CHRISTIANSEN: No objection, Your Honor.

THE COURT: Received. Thank you.

Q (By Mr. Kane) Next show you what has been marked for purposes of identification as State's Proposed Exhibit 47 and 47A. Do you recognize those?

A Yes, sir.

Q And what are they?

A They're samples of apparent blood recovered from the interior side of the van.

Q And each of them contains some of the samples that you recovered from the van on that date?

A Yes, sir.

Q Does each envelope bear your signature and seal?

A Yes.

Q Does each envelope bear an additional signature and seal, other than your own?

A No. The second envelope doesn't. The 47A does not, but 47A does. And it would be Dave Welch that sealed and signed it.

Q Officer, which one does bear Mr. Welch's seal?

A Forty-seven.

Q And other than the addition of Mr. Welch's seal to 47, do both 47 and 47A appear to be in the same condition as when you last saw them back in November of 1998?

A Yes.

MR. KANE: Offer 47 and 47A.

MR. CHRISTIANSEN: I'm confused, Your Honor. I thought he said that Mr. Welch's signature was not on 47A. I may have just misheard.

MR. KANE: That's correct.

MR. CHRISTIANSEN: No objection.

THE COURT: Those items are received. Thank you.

Q (By Mr. Kane) As to 47, the envelope which does appear to bear Mr. Welch's signature, could you indicate where those samples that are contained in there were recovered?

A Yes, I could. To do it correctly I would have to look at my notes.

Q Again, you have no independent recollection of it?

A Not specifically.

Q Would referring to your report refresh your recollection?

A Yes.

Q Would you do so.

A Okay. With respect to 47, sample 1A would be the interior side of the removed plastic threshold cover to the right side doors of the '98 Dodge van. And 2B is also on the interior side of that threshold.

On the side of van as you step up into the cargo area, there's a threshold or step. And on the step it's covered -- this particular step was covered with a plastic material. I removed that plastic material, and there was large blood stain underneath the bottom side of that plastic material. And that's what these samples represented.

No. 3 was the interior side of the rear left door near the bottom of the leading edge, and that's the very rear side of the van far behind driver of the cargo door.

No. 4 was the interior side of the right wall of the rear cargo area, and it was right above the rear right wheel well in the van.

No. 5 was on the floor to the left and behind the rear wheel well inside the rear cargo area. So it was on the left side behind the rear wheel well of the

van.

No. 6 was on the floor in the rear cargo area, and it was near the center of the right rear wheel well.

No. 7 was on the floor near the center of the rear cargo area of the van, so it was more toward the front, but it was near the center of the van.

No. 8 was on the floor in the rear section of the van, and it was in front. No. 7 was more toward the front of the van.

Q Next I want to show you what's been marked for purposes of identification as State's Proposed Exhibit 48, and ask if you recognize that?

A Yes, I do.

Q What is 48?

A It's a package bearing my signature and my seal, including Cinergi magnetic business cards with apparent blood on them.

Q Any signatures or seals in addition to your own?

A Yes, sir; Dave Welch.

Q Other than Mr. Welch's signature, does that appear to be in the same condition as when you observed it back on November 18th of 1998?

A Yes.

MR. KANE: Offer 48, Your Honor.

MR. CHRISTIANSEN: No objection, Your Honor.

THE COURT: 48 is received. Thank you.

Q (By Mr. Kane) I want to switch scenes for a minute. On December the 29th of 1998, did you attend the autopsy of Peter Limanni in California?

A Yes, sir.

Q Did you obtain a DNA kit like the one we've talked about before?

A Mr. Limanni was more badly decomposed, and we had to target different areas for DNA than we normally do, but, yes.

Q Did you also recover a number of projectiles?

A Yes.

Q Showing you what's been marked for purposes of identification as State's Proposed Exhibit 49, and ask if you recognize that?

A Yes, I do.

Q And what's 49?

A It's a package bearing my signature and name indicating the location of the San Bernardino Coroner's Office, and containing projectiles and projectile fragments.

Q Any signatures and seals in addition to your own?

A Yes. And I think it's Torrey Johnson's again.

Q And he is a firearms examiner with Metro?

A Yes, sir.

Q Other than what appears to be Mr. Johnson's signature and seal, is that in the same condition as when you booked it into evidence back on December 29th, 1998?

A Yes, sir.

MR. KANE: Offer 49, Your Honor.

MR. CHRISTIANSEN: No objection.

THE COURT: That item is received. Thank you.

Q (By Mr. Kane) Finally, would you take a look at that crime scene report. And the one I'm referring to is the crime scene report that you referred to several times, 1933 South Western on November the 17th.

And if you flip over to the next to the last page, the section marked fingerprint processing at the bottom of the page, and just read that over to yourself.

A Okay.

Q Does that refresh your recollection as to whether or not the latent prints were recovered from inside of 1933 Western?

A Yes, it does.
Q And were they?
A Yes.
Q And from what location or locations?
A The only place we got fingerprints were on beer bottles that were located inside the trash can in the south central office. There's an additional trash can in the southeast office that had beer bottles inside of it, and there was beer bottles in the dumpster in the back.
I tried other areas, and that's why I couldn't remember the walls and stuff that I tried proved negative, but the beer bottles I took back to the lab we did get prints on those bottles.
Q Now, the jury has heard the way that fingerprint processing is done, is that any of those latents that you lifted that are later examined by a fingerprint technician, would be then retained by that technician. Is that the way you understand the procedure?
A If we get fingerprints and turn them in, the latent print section does retain and store those fingerprints for evaluation. Is that what you're asking?
Q Right. And on each of the latents that you recovered, did you note on the card that you affixed the latent to where it was recovered from?
A Right.

Q So if a fingerprint technician came in here and said I matched a particular fingerprint, he would be able to tell by looking at that card from where in the crime scene that had been recovered?

A That's correct.

Q These trash cans that you've talked about inside the business, not the dumpster now, but the trash cans inside the business where the cans were recovered, could you give us an idea of the size? Were they 33-gallon cans? Office-size waste baskets?

A I remember the one in the southeast office was not very large. It seems to me -- I'm sorry, the south central office wasn't very large. The one in the southeast office I think was quite a large one, like an outdoor one. But I have a hard time remembering, specifically.

MR. KANE: I have nothing further, Your Honor. Tender the witness.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. CHRISTIANSEN:

Q Good afternoon, Mr. McPhail. We've got four or so crime scenes to go through, so bear with me on the length of the questions.

Mr. Mcphail, did you process any of the areas in the false ceilings where items were located for fingerprints?

A I did process the wall that was around the false ceiling in the northeast office for fingerprints, and yielded negative results.

Q I think you said you processed the cards, et cetera, that were found out in the back, either on the ground or by the dumpster. I'm speaking of 1933 and the associated exhibit, State's 38. You processed those for fingerprints, correct?

A No, sir, I didn't.

Q Just so the jury understands, that would be all items that you just talked about with Mr. Kane that were found either in this dumpster or on the ground out here, you failed to process those for fingerprints, correct?

A That is correct, but there was a reason for that, too.

Q Now, you told the jury there was some burnt items and you even showed them burnt items, I think a couple of shirts, that were taken out of this dumpster, correct?

A Correct.

Q Now, when items are burnt and they produce

soot or carbon, whatever the chemical word is for soot, that is something that can help preserve or identify fingerprints, correct?

A No.

Q Somebody that touched something with a hand that had soot on it, wouldn't it leave a fingerprint?

A No. It's quite the opposite. They have a great chance of destroying fingerprints having any kind of deposit on top of it, including dust, after the print has been placed there.

Q Okay. How about the moisture left by a fingerprint or a finger coming into contact with soot or dust? Could that preserve a fingerprint?

A If it's been handled after the soot has been there, it's quite possible that it would make it more visible. As far as preservation goes, I don't know that it would make it better or not, but it would certainly make it more visible if somebody handled something after the soot was already on there.

Q What time of the day was it that you were called upon to process the rear of 1933, the dumpster and the cards that were on the ground; do you remember?

A I don't know exactly what time it was that I did the processing out there at all.

Q Do you remember if it was at night?

A No. I don't recall.

Q If there was a witness that said he saw you processing that scene somewhere between 9:30 and 10:00 at night, would that be inconsistent with your recollection?

A I was there quite late, and it's possible I was in the area around that time. Whether I was processing for prints or not, it's hard to say.

Q There was no print processing done of these items that Mr. Kane showed you pictures of that came from the dumpster?

A That's correct, with the exception of the beer bottles. I saw some photos of beer bottles, and they were processed.

Q Now, you found two different types of bill folds or card holders, as you referred to one, within 1933. One was found in the dumpster, and one was found in a false ceiling, correct?

A Correct.

MR. CHRISTIANSEN: Judge, may I approach the clerk?

THE COURT: You may.

Q (By Mr. Christiansen) You've named all of the items that were located in there, but isn't it true that there were two different pieces of identification for Peter Limanni; one from New Jersey, and one from

California?

A I know there was the New Jersey one. I'm not positive of the California. I didn't note that and I'm not sure.

MR. CHRISTIANSEN: May I approach, Your Honor?

THE COURT: You may.

Q (By Mr. Christiansen) Mr. Kane may have marked this same picture. I'm showing you what's been marked for identification as Defense Proposed P.

Do you recognize that?

A Yes, I do.

Q What is that a photograph of?

A It's showing a social security card, a birth certificate, I believe, and several other cards, including a California ID of some sort.

Q So does that refresh your recollection that there was California identification found?

A Yes, it certainly appears to be.

MR. CHRISTIANSEN: Judge, I move for the admission of Defense Exhibit P, please.

MR. KANE: No objection.

THE COURT: Counsel, that is received. And with that point made, I think we'll make it an evening. Mr. McPhail, could you be here tomorrow at 1:00

o'clock?

THE WITNESS: Yes, sir.

THE COURT: Ladies and gentlemen, let me read you the admonition.

"It is your duty not to discuss among yourselves, or with anyone else, any subject connected with the trial; or read, watch or listen to any report of, or commentary on the trial or any person connected with the trial by any medium of information, including without limitation, newspapers, television and radio; or form or express any opinion on any subject connected with the trial until the matter is finally submitted to you."

Thank you your patience. I'll see you promptly at 1:00 o'clock tomorrow. Court is adjourned.

ATTEST: Full, true and accurate transcript of proceedings.

MAUREEN SCHORN, CCR NO. 496, RPR

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
February 22, 2001
SHIRLEY B. PARRAGUIRRE, CLERK
BY Linda Skinner
LINDA SKINNER 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 I

February 21, 2001
1:07 p.m.
Department XIV

APPEARANCES:

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MR. TIMOTHY FATTIG
Deputy District Attorneys

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WITNESS INDEX

	Page
RANDALL McPHAIL:	
EXAMINATION by Mr. Christiansen	3
RE-EXAMINATION by Mr. Kane	40
RE-EXAMINATION by Mr. Christiansen	45
TORREY D. JOHNSON:	
EXAMINATION by Mr. Kane	49
EXAMINATION by Mr. Christiansen	59
RE-EXAMINATION by Mr. Kane	63
RE-EXAMINATION by Mr. Christiansen	65
FRED BOYD:	
EXAMINATION by Mr.Kane	67

/ / /

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

Ms. Clerk, will you call the roll of our jury, please?

(Whereupon the clerk of the court called the roll of the jury.)

MS. CLERK: Your Honor, the panel is present

THE COURT: Good afternoon, Ladies and Gentlemen. Are we ready to go?

We will resume, then, counsel, with the examination of Mr. Randy McPhail.

MR. CHRISTIANSEN: I believe so, judge.

THE COURT: Come forward and be sworn for the day.

RANDY McPHAIL,

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

EXAMINATION

BY MR. CHRISTIANSEN:

Q. Good afternooon, Mr. McPhail.

We're going to resume with my cross-examination or questioning of you about the crime scenes and I think there are four or five - - I almost lost count yesterday, of all the scenes you were at in relationship to your involvement in the investigation back in November of 1998, okay?

A. Right.

Q. At the time when you were doing these investigations or I guess you call it processing the scene, correct?

A. Correct.

Q. When you were processing the various scenes how long had you been a crime scene analyst?

A. That would have been two years.

I would have successfully completed my testing for the second level of crime scene analyst and been promoted to that level at that time.

Q. You would have been a crime scene analyst II; is that right?

A. I believe so, yes.

Q. The first - - in trying to separate these things so we're not all over the place I'm going to attempt to go from one crime scene to the other so we can have some type of fluid questioning, okay?

A. Okay.

Q. Let's talk about the John Lumber Doe which is the body of Eric Hamilton.

A. All right.

Q. You were called to that location on November 16, 1998, correct?

A. No, sir.

Q. I'm sorry. Tell me - -

A. I first became involved with the case on the 17th of November and it was a request to assist on an autopsy of Eric Hamilton.

Q. So the items then processed from the scene of the Hamilton - - where the Hamilton body was found, you're not familiar with those items and I couldn't ask you questions about them?

A. That's correct.

Q. You went to the autopsy of Mr. Hamilton and processed what was taken from his person, correct?

A. Yes.

Q. There was a ring on his right or one of his fingers?

A. Correct.

Q. That was some type of gold and jeweled ring?

A. It was a gold-colored ring with multiple

white stones on it. It was eventually retained by the Coroner's Office for distribution to the family, I would assume.

Q. Were there any - - was there any identification obtained from his body?

A. No.

Q. How about a wallet?

A. I don't believe there was. I'd have to check my notes for sure, but I don't think there was.

Q. I think you're right, so I'll leave it at that.

You showed the jury yesterday - - and I've forgotten which piece of evidence it was - - the note or the piece of paper that was found in a pant pocket that had the name Jack and the number - - I think it was 459-5957?

A. Yes. I did show a note that had that information on it.

Q. Okay. You then, in terms of doing it chronologically, crime scenes, are called to go to 1933 Western in relation to the body - - or not the body, the blood and the broken glass at 1927 or 1929?

A. Yeah.

Actually I was called to 1929 to see if I could connect the victim at the morgue with that scene.

Now, maybe something I saw would draw the two together.

Q. That makes sense, because if you're the person that's at the crime scene and at the autopsy, you're then familiar with the type of injuries, the body size, shape, items that are on the body and you might be best able to make a determination of the crime scene who they match?

A. That's correct.

Q. So you went originally to 1929 South Western to look into that office to see whether the injuries you just had seen on Mr. Hamilton, who was John Lumber Doe at the time, matched with what you found at 1929?

A. Yes.

MR. CHRISTIANSEN: May I approach?

THE COURT: Yes.

BY MR. CHRISTIANSEN:

Q. Then you should have on that crime scene report put the location of the crime scene as 1929 South Western, correct?

A. I had nothing to do with the scene, aside from making some initial observations on it. I didn't photograph it. I didn't do anything at that scene.

So no, I wasn't listed on that scene, aside from maybe mentioning I was there from someone's

notes, a homicide detective's notes or something.

My scene was 1933, the adjacent business, where I did everything on that.

Q. I'll show you right on top - - counsel, the date is 11.17.98, that's the date of the report.

That's why you put 1933 South Western?

A. Yes.

Q. There was nothing inside of 1933 South Western to indicate Mr. Hamilton or John Lumber Doe had been hurt or injured in that location, correct?

A. No. I would have to say that's not correct.

Q. Okay. What item showed that he had been hurt or injured there?

A. At the autopsy I had seen a curved piece of glass that was imbedded in Mr. Hamilton's chest area, just below his neck, at 1933 South Western, the Sinergi business.

There was a broken piece of glass that seemed to be somewhat similar to that - - and I'm not saying it was. I don't know if the analysis was done on it or not, but it was close enough that I picked it up as evidence in my evidence report.

Q. Then you would have noted it somewhere in your report?

A. It's in the evidence report, yes.

It would also be listed under the southwest office, the section in my scene report that it discusses that.

Q. You're not qualified to tell this jury whether a piece of glass matches an injury on a body; is that right?

A. No, sir.

Q. That would be a coroner's job or a doctor or somebody of that nature?

A. The glass was still imbedded.

There is probably somebody who could match the crystalline formations of the glass together and say "Yes, they are the same grouping."

It wouldn't be me.

Q. You're not trying to do that with this jury?

A. No, I'm not trying to do that.

Q. Other than this piece of glass that you're not qualified to testify about is there any of Mr. Hamilton's blood found in 1933?

A. I'm not sure.

We had a significant amount of blood samples taken. I haven't read the reports to see whose they were.

I don't know that Mr. Hamilton was - - his blood was in that scene or not.

Q. To be fair to you, what you do is process a scene, gather things that you think may or may not be of evidentiary value, put them in bags with your P number, like you told Mr. Kane yesterday, and then hand them over to various departments, whether that's Mr. Welch in the DNA department or Torrey Johnson in the firearms department or Fred Boyd in the fingerprint department?

A. Yeah, essentially that's true.

Basically it goes into the central evidence repository, aside from fingerprints which Mr. Boyd will talk about.

Most of the evidence goes into the evidence vault, then Torrey Johnson or Dave Welch or whoever needs that evidence for analysis will call upon the vault to bring it to them and they sign for it and maintain a chain of custody that way.

Latent prints are a little bit different and they go into the latent print section for storage and analysis.

Q. If I told you you arrived at 1933 Western at 14:02 hours, which in real people time is like I think 3:00 o'clock, about - -

A. 2:02, yes.

Q. 2:02. When you arrived, your supervisor, Mr. Kabralis was there?

A. Yes.

Q. Mr. Ruffino, another crime scene analyst, he was there?

A. Yes.

Q. Homicide Detectives Buczek, Thowsen, Hefner were also there?

A. Correct.

Q. So there are at least five members of the Las Vegas Metropolitan Police Department at this location when you arrived?

A. That and more, because there's some patrol officers actually watching the back end of the business, to make sure nothing got disturbed in the rear open side of the business.

Q. When you arrived your report indicates there were two vans in front of the business, both bearing a business logo of Sinergi?

A. Yeah, I noticed that in the report. Looking back at the photos, I see one van with Sinergi and one plain van.

I, somehow, became confused when I wrote that report. There is a plain white van with no logo on

the side and a Sinergi van and the keys to both vans were inside the business and accessed from the business, the business itself.

Q. Were you the individual that took the photographs of Mr. Seka there at 1933?

A. Yes, I was.

Q. And if I showed you some photographs would you be able to tell the Ladies and Gentlemen of the Jury if those were the pictures that you took?

A. Yes.

MR. CHRISTIANSEN: May I approach?

THE COURT: You may.

BY MR. CHRISTIANSEN:

Q. I'm going to show you what has been marked as Defense proposed exhibits Q and R and ask you if those are a fair and accurate depiction of Mr. Seka on the day or evening of November 17, 1998.

A. Yes.

Q. Is one of those pictures a frontal picture of Mr. Seka?

A. Yes.

Q. And the other a side picture?

A. Correct.

Q. They are taken there at 1933 Western by yourself?

A. Yes.

MR. CHRISTIANSEN: Move for the admission of Defense exhibits Q and R.

MR. KANE: No objection.

THE COURT: They are received.

BY MR. CHRISTIANSEN:

Q. In those pictures it appears to me Mr. Seka is smoking a cigarette; is that accurate?

A. Yes.

Q. And there is a brand of cigarettes, a box of which is tucked in his belt, correct?

A. Yes.

Q. Can you tell me what that brand is by looking there?

A. Yes, Marlboro.

Q. I think Marlboro has more than one - -

A. It's a red box.

Q. What color is the filter - - and in one of the pictures there's actually a picture of Mr. Seka with the filter.

What color is the filter on that cigarette?

A. Appears to be brown.

Q. Now, you weren't at the crime scene from - - with Mr. Hamilton where his body was found, so you

can't tell me what color the cigarette filters there were, could you?

A. That's correct.

Q. And are all Marlboro reds - - do all of them have brown filters?

A. I would assume so.

Q. Have you ever seen a Marlboro red with a white filter?

A. I don't know. I haven't seen that many. I'm not an expert on it.

Q. If I showed you a box of Marlboro reds and they all had brown filters would that convince you that Marlboro reds have brown filters?

A. I'm fairly convinced that they have brown filters.

MR. CHRISTIANSEN: Just so the record is clear, I've shown the witness a box of Marlboro reds, all of which have brown filters.

THE COURT: Very good.

BY MR. CHRISTIANSEN:

Q. Inside of 1933 you put in your report there was some renovation going on in various rooms.

A. Yes.

Q. Correct?

A. Yes.

Q. And the renovation appeared to be causing several disturbed ceiling tiles, correct?

A. Correct.

Q. And there was wiring going through this building in the ceiling area, correct?

A. Yes.

Q. There was cable wiring from a satellite from the outside of the building, correct?

A. I do remember something about a tv cable in one of the rear offices, yes.

MR. CHRISTIANSEN: May I approach?

THE COURT: You may.

BY MR. CHRISTIANSEN:

Q. I hand you what has been marked as Defense proposed exhibit J and ask you if you recognize that picture.

A. Yes.

Q. What is that a picture of, Mr. McPhail?

A. This is the northeast corner of the south central office, the file cabinet with a television on top of the file cabinet.

Q. Does that appear to be in the condition it was back in 1998 when you observed it?

A. Yes.

MR. CHRISTIANSEN: Move for the admission

of Defendant's proposed exhibit J.

MR. KANE: No objection.

THE COURT: Received.

BY MR. CHRISTIANSEN:

Q. You also took some pictures of the back of the building, correct?

A. Yes.

MR. CHRISTIANSEN: May I approach?

THE COURT: Yes.

BY MR. CHRISTIANSEN:

Q. Showing you what has been marked for identification purposes as Defense proposed exhibit S, as in Sam, does that appear to be a fair and accurate depiction of the back of 1933 Western in November of 1998?

A. Yes.

Q. Does there appear to be a DSS satellite on the back or in that picture?

A. There is a satellite dish attached to the east wall of the building, yes.

MR. CHRISTIANSEN: Move for the admission of Defense proposed exhibit S.

MR. KANE: No objection.

THE COURT: Received. Thank you.

BY MR. CHRISTIANSEN:

Q. Now, in defense Exhibit J, the one with the television and the pictures, there is a picture of a a cord going up into the false ceiling, correct?

A. Yes, there is.

Q. The false ceiling has been moved to allow that cord to go up there, correct?

A. Yes, it appears so, yes.

Q. And there are a variety of false ceiling tiles that are moved in this diagram that you discussed at length with Mr. Kane yesterday and that's State's exhibit 38; is that right?

A. Some of the rooms, you'd have moved ceiling tiles. I didn't show them on the diagram, but yes, they were there.

Q. Now, where would that satellite dish be in relationship to this chart, if you can tell the jury?

A. Would you like me to step down there?

Q. Yes, please. I'm sorry. I should have asked you.

MR. CHRISTIANSEN: Let me grab the easel and you don't have to understand and hold it.

BY MR. CHRISTIANSEN:

Q. Does that help you?

A. Yes, thank you.

Q. There is a pointer over here. That might

help you as well.

Now, the question was, I believe, where would that satellite that I've just shown you a picture of have come into this office?

A. The satellite dish would have been on this wall here. I'm not exactly sure where, but right on this wall on the exterior side of the northeast office the file cabinet they had the television on top of it right there in the south central office and the wire - - I'm not saying it went to here, I didn't check it - - but there is a wire coming down to the file cabinet in this office.

Q. I want to make sure everybody understands.

There is a disturbed ceiling tile one of these false or hanging ceiling tiles right here by the tv?

A. Correct.

Q. And then there's another one right here in the corner by where the satellite comes from the outside of the building?

A. I believe that's correct, yes.

Q. Now, when you arrived - - you can have a seat. I might ask you to get up again.

When you arrived at the scene these disturbed ceiling tiles all were that way when you got

there.

They were disturbed or not in a position like we are in Court today where you can't see up into the hanging ceiling?

A. I believe that's correct, yes.

Q. I think you told the jury that where the humidor was there were also some disturbed ceiling tiles?

A. Yes.

Q. And if I remember your testimony, the humidor is the right here and I think you called it the north central office?

A. That would be the northwest office.

Q. I'm sorry, the northwest office.

There was some disturbed ceiling tiles above where the humidor was to go?

A. Yes, and there are other disturbed tiles as well on the east side of the room and - - I'm sorry - - on the north side of the room and on the south side of the room.

Q. And all of those tiles could have been in spots where the humidor needed to be wired, correct?

MR. KANE: Object. Speculation, Your Honor.

THE COURT: Response?

MR. CHRISTIANSEN: Do you know?

If he doesn't know, then he can say he doesn't know, judge.

THE COURT: Did you know that, sir?

THE WITNESS: I would say that the light fixture right in front of the humidor, that might be true for that particular tile.

The other tile on the east side, I have no idea why that was disturbed - - I'm sorry, I did it again - - the north side. So it would be the top of the drawing there.

There is a tile disturbed up there as well and I don't know why that was disturbed.

BY MR. CHRISTIANSEN:

Q. In fact, you can't tell the people in the jury why, legitimately, why any of these tiles were disturbed, right?

A. There was some painting going on and it's possible it had something to do with the painting.

Q. Construction-type stuff?

A. Yeah, yeah. That's all I really know for sure.

Q. Construction or wiring or things of that nature?

A. Right.

Q. You're not here telling the people in the

jury these ceiling tiles were disturbed as an effort to either discard evidence or hide evidence or anything like that?

A. I wouldn't destroy that possibility by saying so now.

Q. It's just a possibility?

A. Yes.

Q. It's just speculation on your part?

A. Admittedly, yes.

Q. Thank you, sir.

You found three, I think you said, three, .357 Magnum cartridges in 1933 Western?

A. Yes.

Q. And all of those cartridges had different manufacturers, correct?

A. I have no recollection. I have to check my notes. I would be happy to do so, if you'd like.

Q. Would you check in your - - would checking your notes help refresh your recollection?

A. Yes, it would.

Q. Go head. I think it's on page two of your 11.17.98 inventory.

A. That's what I was looking for right now.

MR. CHRISTIANSEN: Judge, can I approach and I'll show him?

THE WITNESS: I've got it right now.

BY MR. CHRISTIANSEN:

Q. It's package 33267?

A. Correct.

Q. There is one RP .357 Magnum cartridge, correct?

A. Yes.

Q. One Winchester .357 mag?

A. Yes.

Q. And one Nevins. 357 mag?

A. That's correct.

Q. These are located at different places throughout 1933?

A. They are all located in the ceiling area of the northwest office in different spots of the ceiling.

Q. That's what I want to get at.

They are not, all three together, in the ceiling area of the northeast office; is that correct?

A. That's correct.

Q. One is on top of a light fixture?

A. Um-hum.

Q. And one is on the ceiling in one area of the room and one is in another ceiling in another area of the room?

A. That's correct.

Q. Same cartridge, three different manufacturers?

A. That's right. Same size, three different manufacturers.

Q. Fair enough.

You took a photograph or some photographs of some wood in the rear area of 1933, correct?

A. Yes.

MR. CHRISTIANSEN: May I approach, Your Honor?

THE COURT: You may.

BY MR. CHRISTIANSEN:

Q. Show you what has been marked for identification purposes Defense proposed exhibit T and ask you if you recognize this picture, Mr. McPhail?

A. Yes, I do.

Q. What is that a picture of?

A. This would be something - - looks like pinewood, 2x4 type sizes, against the east wall, against the east rear wall of the business.

Q. Would that be just to the north of the dumpster here?

A. That's correct. That's right where it was.

Q. Where you've got it marked E 14?

A. Yeah, that's where the players cards were found also, right in that area.

Q. You just told the jury that is pinewood.

Does there also appear to be, standing vertically, some cedarwood?

A. Yes.

Q. Out back in an area where anybody can get to there's pine and cedarwood behind 1933?

A. Yes.

Q. In processing 1933 you came across a pair of bluejeans that you took into evidence, correct?

A. That's correct.

MR. CHRISTIANSEN: May I approach?

THE COURT: You may.

BY MR. CHRISTIANSEN:

Q. Proposed Defense exhibit U, does that appear to be a picture of those bluejeans?

A. Yes.

Q. And there appears to be a blood stain right about the right pocket of proposed exhibit U; is that correct?

A. Yes.

Q. And that was something that you submitted to Mr. Welch for DNA testing, correct?

A. Yes.

Q. Does that fairly and accurately depict the jeans that you found November 17, 1998 in 1933 Western?

A. Yes.

MR. CHRISTIANSEN: Move for the admission of Defense U, Your Honor.

MR. KANE: No objection.

THE COURT: Received. Thank you.

BY MR. CHRISTIANSEN:

Q. The blood there, it's right above the pocket of those jeans, correct?

A. Yes.

Q. And if I tell you that blood has been DNA tested and come back to be Jack Seka would you have any reason to disagree or not believe me?

A. No. It would make a lot of sense to me that it was.

Q. You took pictures of Jack Seka that day; did you not?

A. Yes.

Q. He had cuts on both of his hands, correct?

A. I know he had cuts on his hands. I can't recall exactly which one, but there were some injuries to his hands, yes.

Q. Those cuts or bleeding associated with

those cuts would be consistent with the blood found in that area of the jeans located at 1933 Western, correct?

A. That's correct. That's why I wouldn't have been surprised to find it there.

Q. Can you tell the people in this jury when the three casings, the three empty casings,.357 casings from the three different manufacturers, were placed, two in the ceiling and one on the light fixture of the northwest office?

A. You're asking if I can say when?

Q. Yes. When did they get put there?

A. I couldn't answer that question.

Q. Did you process them for fingerprints?

A. They were processed for fingerprints, yes.

Q. Did you find any?

A. But I didn't process them.

With homicide, if it's ammunition involved or a weapon involved, by procedural orders we were supposed to turn those into the latent print section who has a whole list of things they do to that, the cartridges, before they process them and protect the evidence on there, so they are the specialists in that area.

We let them process firearms evidence and murder weapons and that's why they were turned into

firearms to process.

Q. Would you have turned those items you took into as evidence over to Mr. Boyd?

A. I would have turned them over into evidence and Mr. Boyd would have, no doubt, requested the evidence being brought back from the evidence vault to him so that he could process it, yes.

Q. Would he be the person to ask whether there were any identifiable latent prints on those cartridges?

A. Yes.

Q. You found some beer bottles in the southeast office in, I think you said, two different garbage cans; is that right?

A. There was a garbage can in the south central office that I believe we found some beer bottles in and there was a larger garbage can in the south part of the office that contained beer bottles as well.

Q. Can you tell the jury how long the bottles had been inside that office?

A. No, sir.

Q. If you can't tell the jury how long bottles had been there, a print processor can't tell them how long prints have been on those bottles, right?

A. Yeah, that would be a fair statement.

Q. Okay. Did you process any black High Tech hiking boots at this crime scene in 1933 Western?

A. No.

Q. Now, I'd like to turn - - I've got one more thing, I'm sorry. If I showed you a picture of when of the empty cartridges would you have been the person that took that picture from 1933?

A. Yes.

MR. CHRISTIANSEN: Can I approach?

THE COURT: Yes.

BY MR. CHRISTIANSEN:

Q. I show you what has been marked as defense proposed exhibit V as in Victor and ask you if that appears to be a photograph of one of those empty cartridges.

That was just so the jury understands one of the empty cartridges found in the northwest office in the ceiling or on the - -

A. Specifically, you can tell where it's at. It's right on the light fixture that's in front of the humidor doors.

Q. Does that fairly and accurately depict the area you photographed back in 1998?

A. Yes.

MR. CHRISTIANSEN: Move for the admission

of Defense exhibit V.

MR. KANE: No objection.

THE COURT: Received.

BY MR. CHRISTIANSEN:

Q. It appears that there are some type of bowl (sic) on the lower left half of that picture that's covered in dust; is that correct?

A. It's not a bowl.

It's actually the fixture for the light. It's a sizeable fixture that has a light switch inside of it, then it has a little edge.

This cartridge case is right on top of the ledge near the center of the light.

Q. Did you try to process that - - what did you call it again?

A. A light fixture.

Q. Did you process that for fingerprints?

A. No, sir.

Q. If you look at it it appears that there are smudge marks or hand marks going down there; does there not?

A. It sure does.

Q. You did not process that for any type of fingerprints?

A. No, sir.

Q. I think I'm done with 1933.

Now I'll turn your attention to the van that you processed. I think you did it at the homicide office, correct?

A. Did it at the criminalistics bureau, yes.

Q. The van was driven - - I think you even followed the van up to the the criminalistics bureau?

A. That's correct.

Q. And you processed items inside of that van, correct?

A. Yes,myself and Dave Ruffino.

Dave Ruffino processed for fingerprints. I was tied up doing other things, but he did the fingerprint processing on the van.

Q. Inside of that van you found a Caesars Tahoe claims stub, correct?

A. Yes.

Q. Were you ever asked or called upon by homicide to follow up on that claim stub to see when it would have been issued by Caesars in Lake Tahoe?

A. There's absolutely no circumstances that homicide would ask me to research anything like that.

Q. Fair enough.

You found numerous items of blood or apparent samples of blood is what you called them in your

report, correct?

A. Yes.

Q. In the back of that van?

A. Yes.

Q. Can you count for me how many you identified as apparent blood in the van?

A. Can I refer to my notes once again?

Q. Take your time, sir. I think the date is 11. 18 and it's pages one and two.

A. Right.

There are 13 samples altogether and one group of Sinergi magnetic business cards that also had apparent blood on them so, 14, if you count that.

Q. I keep jumping the gun and interrupting you. If there were 14 samples were all 14 handed over to Mr. Welch to do analysis on?

A. No, sir.

They were turned over to the evidence vault and Mr. Welch could have requested their transport back for analysis.

Q. Again that's not up to you.

You process them, put your P number on the bag or the box or the container that you place them in and then what testing is done on them is determined by either homicide or somebody else?

A. That's correct.

Q. There were also cigarette butts taken from the van that we're talking about; is that accurate?

A. Yes.

Q. The cigarette butts were white, correct?

A. I don't recall. I impounded them as a group. They all came from the same place which was the ash tray.

I don't recall if there's any brown ones, white ones, or anything like that. I just collected them and turned them over to evidence.

Q. We would be in the same position if I asked you did you send them to David Welch to do testing, you'd tell me that's not your job.

You don't know if they got sent there?

A. Exactly.

Q. I skipped something as to Mr. Hamilton. I apologize. Let's go back to his autopsy scene. There was a scouring brush and a piece of a metal hangar in one of his pockets; is that right?

A. No.

It's a small section of scouring pad, copper colored pad, like Chore Boys, that was torn off, broke off somehow and he had a small section of that in his pocket with a cut piece of wire, possibly a hangar or

something.

Q. As you sit here today do you know what that was for?

A. Yes, I would assume so.

Q. What for?

A. For drug usage.

Q. It's drug paraphernalia?

A. Right.

Q. If I told you that a toxicologist found cocaine in Mr. Hamilton's system, that wouldn't surprise you, would it?

A. No.

Q. I knew I'd do this because there's so much stuff at 1933, but I want to talk to you about the dumpster area at 1933 and I'll put your diagram, State's Exhibit 38, back up.

You showed the jury yesterday items that were partially burned at the dumpster in the dumpster when you processed it, correct?

A. Yes.

Q. And there appeared to be a green shirt and then some type of either it was a tank top or bluish shirt with Limanni Heating wrieetn on it, correct?

A. Correct.

Q. While I don't remember the evidence

numbers did either one of those two clothing items appear to have bullet holes in them?

A. No, they didn't.

Q. Did you attend the autopsy of Peter Limanni?

A. Yes.

Q. Peter Limanni was shot twice through the back and it went right through his heart and came out the other side, correct?

A. He had, I remember, chest wounds. I just documented chest wounds or something. I don't know exactly where they are.

The doctors take care of that part of it. He had two chest wounds, lower abdomen wound and five bullets in or around his head.

Q. While you don't write where the bullets actually are in terms of inches from the spine or midline or anything of that nature, did you see anything in the clothing that you recovered from the dumpster behind 1933 that would coincide with the chest injuries you observed Mr. Hamilton to have when you attended his autopsy December 29?

A. No, nor did we find any blood on it.

Q. Did you find any of Mr. Hamilton's blood inside of 1933 - - strike that - - I mean Mr. Limanni's

blood inside of 1933?

A. We collected numerous samples, possibly 13 samples. I don't know how DNA checked out or who they came back to so I'm not sure how to answer that question.

Q. I shouldn't have posed it to you. I apologize.

Yesterday you told me or you remembered after I showed you a picture, the California identification that was found in the false ceiling inside of a business cardholder, leather business card holder, correct?

A. Yes.

Q. In the dumpster you also found a New Jersey boat operators license; is that correct?

A. That's correct.

Q. And two different states with two different ID's both went back to Mr. Limanni?

A. Yes.

Q. You also found a checkbook from Limanni Technical Services; did you not?

A. Yes.

Q. And you found an appointment book, and again I'm talking about in the dumpster, you found an appointment book?

A. That's correct.

Q. That appointment book was from 1995 and 1996, right?

A. Yes.

Q. So it was three years' old at the time you found it?

A. Correct.

Q. Just north of the dumpster at E14 on your chart, you found some slot cards and you actually found a phone card; did you not?

A. I think the phone card was actually in the dumpster in the name of Tiffany Limanni on MCI Friends & Family phone call. The cards on the ground were all gaming cards.

Q. So Mr. Limanni still had a phone card from his ex-wife Tiffany Limanni and though was found in the items in the dumpster?

A. Yes.

Well, I didn't know she was his wife. I had no idea of the relations. Just the name is Limanni.

Q. Now, there were - - again I'll stay here at 19393. There were various samples of blood taken in 1933 that you found either on doors or on hinges, things of that nature, right?

A. That's correct.

Q. You told the jury about a bullet that had

gone through one of these couches, and I'll - -

A. Yes, the south central office, on the west wall.

Q. Is that correct where I'm pointing, the one on the west wall?

A. Yes.

Q. You told the jury that part of the stuffing from the couch had actually been carried with the bullet into the drywall?

A. That's correct.

Q. Was there any blood on that bullet?

A. I didn't observe any, no.

Q. You also told Mr. Kane yesterday that all of the other samples that you took appeared to be either a rubbing against the wall or like a hand or something of that nature or a dripping like under the sink where you found it?

A. That's correct.

Q. Could all of those have been consistent with the injuries on Mr. Seka's hands?

A. I don't know. I don't know how much blood was on Mr. Seka's hands from the injury. At the time I saw it and photographed it.

To determine whether it actually dripped that much would be impossible for me to say right now.

Q. How long had that blood in the 14 or 15 samples you took inside 1933, how long had those samples been on the various areas from which you removed them?

A. I don't know.

Q. Now I am done with 1933. I'll thank you. I'm almost finished with you.

To the van that you processed at the crime laboratory, I forgot where - -

A. Criminalistics bureau.

Q. That van had footprints in the back of it; is that correct?

A. Yes, that's true.

Q. Were those footprints ever compared to Mr. Seka's?

A. I really don't know. We gathered the evidence and turned it in. What happens beyond that is really out of our control.

Q. In the inside of the van did you already tell me how many samples, apparent samples you took?

A. I think there was 13, no, 14, if you count the Sinergi magnetic business cards, yes.

Q. Explain to me. As I read your reports I see it says control and apparent sample.

A. Um-hum.

Q. What is control and apparent sample?

A. Control kind of dates itself.

Back when they were using A/B/O blood typing it was important to have a control, because certain things would interfere with the A/B/O test.

DNA has completely wiped out the A/B/O test. For all practicable purposes, companies don't even make it any more. DNA has taken over.

With the DNA it's not so important to have that control sample to show what may have interfered with it, but we still do it so the integrity of the events is less questioned.

Q. Finally, Mr. McPhail, you told the jury that after items of blood and evidence were taken from the Hamilton autopsy, John Lumber Doe autopsy were given that you, that you froze them to make sure that they were properly preserved?

A. Correct.

Q. You don't want to use up all of the samples so that nobody can go back and look at them in the future, right?

A. Yes.

Q. That would be against the procedure that you've been taught as a crime scene analyst in your years of practice with the many Metropolitan Police Department?

A. We want to be fair all the time, yes.

MR. CHRISTIANSEN: Thank you, no further questions.

THE COURT: Re-direct.

RE-EXAMINATION

BY MR. KANE:

Q. Just a couple.

Do you remember some questions about whether there was one wallet or two wallets recovered at 1933 Western?

A. Yes would you clear that up?

Is there one wallet or two?

A. There was only one wallet, if you'd even call that a wallet. It was more of a charge cardholder, business cardholder, leather, black in color and full of different business cards.

It had the birth certificate for Peter Limanni in it, it had the California driver's license in it, some other items, personal items as well.

That was the only wallet-like thing that was found at the scene that we're going to refer to today.

Q. Do you recall I had asked you if you recovered any latent prints at the scene and you said no,

then I showed you your report and it turned out you had taken some prints off some beer bottles?

Do you remember that exchange?

A. Yes.

Q. Was that my mistake or yours?

A. A combination of both, actually.

Q. How did you understand my initial question?

A. I thought you were talking about in the scene itself, processing the walls that we processed, items that we targeted that we thought were significant to that scene. I thought you were referring to that and we came up negative on that.

Q. So where were you when you took the latent prints off the beer bottle?

A. I took those back to the lab under a more controlled environment and processed them there.

Q. When you said you didn't recover any latents at the scene, that was an accurate answer, correct?

A. Correct.

Q. You later recovered latent prints from items that you took from the scene back to a more controlled environment?

A. Yes.

Q. There was mention made of these, we'll call them soot fingerprints from the dumpster and I understood you to indicate that soot wouldn't leave a good fingerprint as you might find, but that it would be just the opposite?

A. Right.

It has to have an explanation with it. In arson cases often times - - I shouldn't say often - - rarely, but it does happen, fire investigators, crime scene analysts will find fingerprints that have actually been developed from soot.

If we touch something and it's capable of retaining that fingerprint moisture for some type of fires, fire starts, soot forms, smoke forms. It actually develops the fingerprint sometimes. It's rare, but it does happen have.

If it hasn't developed the print and the soot would literally ruin a print if it hasn't developed the print there's not much reason to go through and try to process that after it's been covered with the soot and burned.

It ruins the print moisture and you're not going to get anything from it. It's a rare occasion that it does happen that soot can process a print.

Q. You talked a lot about developing latent

prints and while you may have explained it would you explain what you mean again by developing a latent print?

A. Sure.

I guess I have to get back a little bit. A latent fingerprint - - if we look at our fingers we'll find ridges on our fingers that form definite patterns.

Throughout the course of our day those ridges become coated with moisture, oils and other secretions from our body, also pollutants we happen to touch in the course of our day.

If we handle an object that's capable of retaining that moisture or image we will find the exact duplicate of our fingerprint on that object. The only thing is it's invisible.

It's like a signature stamp, a signature stamp that somebody puts it in ink and places it on paper. Fingerprints are much the same way. We'll apply powder to the area or chemicals, depending on what the situation is, and we make that print visible so we can see it and identify it hopefully through the computer system.

That's basically what a latent print is.

Q. So you do that to make visible fingerprints that aren't already visible, correct?

A. Correct.

Q. If I put soot on my hand and I put my hand on this piece of paper and lift it up, if the soot leaves a fingerprint are you going to have to do any development to see that?

A. No, sir.

We would probably photograph that fingerprint and we do look for that. I prefer those over something we have to work with.

Q. So you didn't have to go looking for soot fingerprints. You just didn't see any?

A. That's correct.

Q. And finally you were asked about whether you processed the dumpster itself and its contents for latent fingerprints.

A. Correct.

Q. I believe you said no?

A. Yes.

Q. Why not?

A. The dumpster, as we've all seen dumpsters, they get hoisted by garbage trucks with a hydraulic lift. They get banged around. People put wet, dry garbage in.

By the time I get to the dumpster it's pretty well beat up, chips in the paint. There's typically wet stuff that's accumulated on it and it's not a suitable surface for processing prints.

MR. KANE: Nothing further.

THE COURT: Re-cross.

RE-EXAMINATION

BY MR. CHRISTIANSEN:

Q. Mr. McPhail, you just told the people in the jury why you don't process a dumpster typically, right?

A. Correct.

Q. If the allegations in this case were that the dumpster is empty when the police get there and that Mr. Seka somehow threw some stuff in there with all the police officers running around and you were called upon to process it wouldn't you want to process the things in the dumpster?

A. The things in the dumpster had burn marks on them. They had been highly damaged, to some extent.

There were some papers there that to this day could still be processed. If you desired, you could request the process on it.

They are not typically things we would go out and process under the circumstances.

Q. If homicide or one of the deputies or somebody on the prosecution team desired they could ask

you to do what you didn't do back then, right?

A. They would ask Fred Boyd to do it and he would probably do it.

Q. Finally I think you told the people in the jury when Mr. Limanni's autopsy was done out in California, San Bernardino, December 29 - -

A. Yes?

Q. - - that the normal method of obtaining DNA evidence for DNA testing was not available to you because of some animal activity on the body?

A. He was actually in the advanced stages of decomposition. Decomposition ruins DNA. We had to target different bones, different muscles to obtain that DNA information.

Q. You're not a DNA specialist, right?

A. No, sir.

Q. Did anybody, to your knowledge and in your presence, call David Welch, Tom Wall or Birch Henry at the DNA lab in Las Vegas and say "Hey, what should we process from this body to get good DNA out this?"

A. I talked to Dave Welch before I went out there. Dave Welch and Tom Wall, the two of the three, I asked him what would be the best thing.

He told me the the name of the muscle to look for and a long bone to get a section from, so yes,

it was covered.

Q. You relayed that to - - I forgot his name - - you called Dr. Trinkel from - -

A. I think it was the muscle and long bone, solars muscle and/or something like that and a long bone, maybe a femur or something like that.

I can't remember, but it was according to what Dave Welch asked to us do.

Q. Was there like an ice cream machine and things of that nature in 1933?

A. There was a Xerox machine. There were a lot of pieces of equipment in the storage area. I'm not saying there was an ice cream in the storage area. There were some parts and tools back there, et cetera.

Q. There was lumber in there?

A. There was lumber in two of the front offices mainly.

Q. And some behind the offices?

A. There may have been some in the southeast, but most of it was in the front.

Q. If somebody was or people were using the van that you processed to transport these items they would have needed to take the back seats out in order to do something like that, correct?

A. Most cargo vans don't have back seats in

them. They are used for transporting equipment and tools, et cetera, and most of them don't have seats.

I don't think these had seats, because there weren't any holddowns for the seats in the back of the van.

Q. To the best of your recollection, this van wasn't even equipped to have back seats?

A. I would say that's true.

MR. CHRISTIANSEN: Nothing further, thank you.

THE COURT: Anything further from the State.

MR. KANE: No, Your Honor.

THE COURT: Thank you. Next witness.

MR. KANE: Torrey Johnson.

As this witness is taking the stand in connection with his testimony there is a stipulation. He will be testifying about several items of evidence.

One of them is an item that is not yet in evidence. It is a Nevins .357 mag cartridge case that was recovered by - - from 1933 Western Avenue by David Ruffino on December 14, 1998. He was called to the property by Mike Cerda.

An additional bullet or cartridge case that had not been recovered was pointed out to him and he

booked that and that's one of the things this witness will be testifying about.

I had intended to call Mr. Ruffino solely for the purpose of identifying that particular cartridge case and counsel indicated to me they would stipulate that's the providence of that item.

MR. KENNEDY: That's correct.

MR. CHRISTIANSEN: That's correct.

THE COURT: Very good. Proceed.

TORREY DONALD JOHNSON,

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 spell your first and last name for the record?

A. Torrey Donald Johnson. First name T-o-r-r-e-y.

Q. By whom are you employed?

A. I'm employed by the Las Vegas Metropolitan Police Department in the forensic laboratory.

Q. How long have you worked for that police department?

A. It's going on six years now.

Q. How long in the forensic laboratory?

A. I've been working in forensic laboratories for about 25 years.

Q. Has the forensic laboratory in Metro been your assignment for the whole time you've been with this department?

A. Yes.

Q. Would you briefly recap for the Ladies and Gentlemen of the Jury, your professional and employment background?

A. Yes.

I have a Bachelor of Science Degree in Chemistry from San Diego State University, as well as a Master's Degree in Chemistry from the same university.

I started my career back in '73 in California, worked in the forensic laboratory there, received - - took various specialized training in forensic subjects, particularly what we call firearm and tool mark examination, microscopy and some of the related subjects.

After my initial training I undertook studies on my own, eventually transferred into the

Training Institute of the California Department of Justice forensic lab where I taught classes to other new forensic scientists in various areas, particularly firearms and tool mark examination.

Q. How about your employment history?

A. I worked in California from '73 to '94 when I transferred or took a job here in Metro.

I've been assigned in the forensic laboratory here since then, worked about a year in chemistry and then the rest of the time doing firearm and tool mark examination.

Q. In addition to doing firearm and tool mark examinations have you testified and qualified to testify as an expert in those areas on more than one occasion?

A. I have, yes.

Q. Approximately how many times?

A. Over my career, hundreds of times.

MR. KANE: At this time I would tender the witness for Voir Dire on his qualifications as an expert in the area of firearms examination.

MR. CHRISTIANSEN: I'll accept Mr. Johnson as an expert in the area.

THE COURT: Mr. Johnson is so recognized.

Continue.

BY MR. KANE:

Q. Mr. Johnson, I think most of us are familiar from television with the purported process of matching a bullet to a particular firearm. In this case we don't have any firearms that were recovered. We have bullets and cartridge cases.

What, in general, can you derive derive or find from these items without having the gun from which they were fired?

A. The typical things we look for in the absence of a firearm is that first we examine the items in question, bullets and cartridge cases, to determine what caliber they are.

We then compare the items to each other to see if they match each other to see if maybe they were fired from the same firearm or if there's more than one firearm involved.

Then we look at markings that are on the cartridge cases on the bullets and from those we attempt to determine what make or model or type of firearm was used as an investigative assistance, by the way of investigative assistance with the detectives.

MR. KANE: May I approach?

THE COURT: You may.

BY MR. KANE:

Q. I've placed several items in front of you

that are already in evidence and what I wanted to talk to you about initially are government exhibits 19 and 42.

I'm asking if you recognize those?

A. I do.

Q. What is there that causes you to recognize them?

A. They have my evidence seals, my signatures, my marks that I place on the seals, a number of marks that I've placed on the packages.

Q. And I'll indicate to you that 19 has been admitted into evidence as items recovered from 1929 Western and that 4 has been admitted into evidence as items recovered from 1933 South Western avenue. And finally, I'll advise you that it has been stipulated that a cartridge case was recovered from 1933 Western Avenue and was submitted on December 14, 1998 and was submitted to you for analysis.

Are those two items before you, 19 and 42, and the stipulated item that I had just mentioned, are they all items that you examined in this case?

A. They are.

Q. Would you tell the jury what conclusions, if any, were related to these actual items?

A. In summary, there were four cartridges cases in the three items that you have mentioned that are

caliber .357 Magnum, which sort of defines the size of it.

Those were identified to each other, that is to say they were fired from the same firearm. If decision, there were fragments of at least three bullets that would be what I would call nominal .38 or .357 caliber bullets.

That is to say they could have from from those cartridge cases. Those were of a particular type of bullet that is commonly used in re-loads. There was also a .32 caliber bullet which had the appearance of having been fired from a revolver and there was another small fragment that was of a different type of bullet.

I wasn't able to determine the caliber of that. In addition, there were a couple of .32 caliber cartridges, that is to say they hadn't been fired yet.

Q. Let me go over a couple of basics with you and then ask you without some of these items.

You mentioned items having been fired from a revolver?

A. That's correct.

Q. Are there characteristics of a bullet that has been fired from a revolver that are different from a bullet that has been fired from a semi-automatic weapon?

A. Sometimes there are, yes.

Q. Explain that to the jury.

A. The particular characteristic I'm thinking of is one in a semi-automatic pistol where the cartridge, the live cartridge is loaded actually into the back of the barrel and fired from that position.

The bullet always hits the rifling straightaway and it usually has very crisp markings.

With a revolver, which is a firearm which has a cylinder that revolves to bring the new cartridge into line with the barrel, if that cylinder doesn't rotate to exactly the right place the bullet leaves the front of the cylinder and then has to sort of make a little turn to get into the barrel. They don't line up.

When that happens you get sort of the side of the bullet is scraped off and that's very characteristic of revolvers, and that was what I observed on some of the bullets here.

Q. Now, the four, .357 cartridges that you said appeared to have been fired from a single firearm, first of all, what indicated to you that they had been fired from the same firearm?

A. They all bore markings on the primer that are picked up during firing and those markings were identified too each other. That is to say they matched. So those markings came from the same gun.

Q. And of those four did any of those come from State's exhibit 19, the package that was recovered from 1929 Western?

A. No, they did not.

Q. Did any of them come from the package that has been marked or has been admitted as State's exhibit 42 recovered from 1933 South Western?

A. Yes. Three of them do.

Q. Where did the fourth one come from?

A. It was in the third package that is not present, but was referred to a few moments ago.

Q. The one that I said Mr. Ruffino recovered in December of 1998?

A. That's correct.

Q. So those three from 1933, in November, and the one recovered from 1933, in December, all appear to have been fired from the same firearm?

A. Yes.

Q. Were you able to tell in any kind of a useful way what type or brand of firearm may have fired any of these bullets?

A. Well, type would be whether it was a pistol or a revolver and the answer is sort of a qualified yes on that.

And in terms of the other part of the