

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

v.

JOHN JOSEPH SEKA,

Respondent.

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Case No. 80925

**APPELLANT'S APPENDIX
Volume 5**

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

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

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

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

Counsel for Appellant

Counsel for Respondent

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CERTIFICATE OF SERVICE

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

AARON D. FORD
Nevada Attorney General

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

ALEXANDER CHEN
Chief Deputy District Attorney

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

AC/Skyler Sullivan/ed

1 question, whether, what brand of that, I did prepare a
2 list of weapons that mark bullets as the bullets, in
3 exhibit 19, are marked.

4 Q. Would it be fair to say that that list is
5 rather wide ranging? There's no way to pin these bullets
6 down to a particular brand of firearm?

7 A. That's correct.

8 There is a number of brands and each of
9 those brands make many, many firearms so I couldn't
10 narrow it down.

11 Q. How about narrowing design down the types
12 of firearm?

13 A. You can narrow it down, at least in
14 general, in that the .357 Magnum cartridge is generally
15 fired in a revolver and that's the most likely type of
16 firearm to use for that, though that's not to say that
17 it's the only type.

18 It's just the most common.

19 Q. With respect to the four, .357 Magnum
20 cartridge cases that you've said were fired from a single
21 firearm was there anything else that you observed about
22 those?

23 A. Just the fact that there was a variety of
24 head stamps which is the identifying marks that the
25 manufacturer places on there to identify their brand,

1 taken with the types of bullets that were associated,
2 they appeared to be re-loads, which is - -

3 Q. What do you mean by that and what's the
4 significance of that observation?

5 A. A re-load is a cartridge that is made by
6 taking a cartridge case that's been fired already,
7 removing the primer and replacing the primer, adding new
8 powder and a new bullet. Just a way of recycling the
9 cartridge case.

10 The significance is just that it's a
11 cheaper type of - - cheap way to go, cheaper type of
12 ammunition.

13 Q. So that would be cheaper than buying
14 original brand new ammunition?

15 A. Normally, yes.

16 Q. Would it differ in any way in its
17 performance?

18 A. In terms of ballistic performance, not
19 necessarily, but perhaps in terms of the marks that I see
20 it sometimes is somewhat variable.

21 Q. There's no way you'd really know that
22 without knowing if it was a commercial re-load or
23 somebody that did it by themselves?

24 A. That's correct.

25 Q. Was there significance to the different

1 head stamps?

2 In other words, would you expect to find
3 all of those head stamps coming out of a single box of
4 ammunition?

5 A. Out of a single box of re-loads, yes, but
6 normally factory ammo would all be the same.

7 Q. Since they were re-loads that wasn't
8 unusual?

9 A. That's not unusual at all.

10 MR. KANE: Nothing further. Tender the
11 witness.

12 THE COURT: Cross-examination.
13
14

15 EXAMINATION

16 BY MR. CHRISTIANSEN:

17 Q. Good afternoon.

18 You are making a number of assumptions in
19 your testimony for Mr. Kane about how people re-load
20 their weapons and whether they use different head stamped
21 cartridges or the same, correct?

22 A. That's not really an assumption. I'm
23 saying it's not uncommon to find varying head stamps in
24 re-loads.

25 Q. If somebody wants to go to the store and

1 buy themselves a new box of .357's, they are going to buy
2 Winchesters or Nevins or one of those variety of brands,
3 correct?

4 A. That's correct.

5 Q. If they are going to shoot those brands
6 and attempt to re-load them they are still all going to
7 be Nevins or RP or Winchester, right?

8 A. Potentially, sure.

9 Q. So somebody has got to have - - if there
10 are three different head stamps found and your testimony
11 is they are re-loads, then at some point somebody bought
12 three different types of ammunition, fired all or part of
13 each box, and then decided to re-load it and then put one
14 from each box back into the same gun in order to get the
15 testimony that you just came up with?

16 A. That could be one way.

17 The more common way is that cartridge
18 cases are collected from a range, where many people are
19 shooting, so there is a wide variety of ammunition, then
20 those are reloaded so you have a variety in the box.

21 Q. Do you know how the re-loads were procured
22 in this case?

23 A. I have no idea.

24 I said they appear to be re-loads. I
25 don't know for sure that they are.

1 Q. Can you tell these people in the jury
2 there's been more than one primer strike on each of these
3 cartridges?

4 A. I don't recall seeing wore more than one.
5 I couldn't say that there weren't.

6 Q. Just so I'm clear, the primer is the very
7 bottom part of the bullet where - - I misspoke.

8 A. The cartridge.

9 Q. The very bottom part, the cartridge, the
10 primer is in there which is the explosive that sends the
11 bullet out of the top of the cartridge?

12 A. The primer is in the center of the flat
13 part of the cartridge which we call the head, and that's
14 kind of the sparkplug that lights the powder that sends
15 the bullet out. It's

16 the part that is actually hit by the
17 firing pin.

18 Q. The firing pin for us non-experts is the
19 hammer that falls on the back of the bullet?

20 A. It can be a hammer or it can actually be a
21 firing pin, but it's what hits the back of the cartridge
22 case, yes.

23 Q. If those bullets were re-loads and had
24 been fired from more than one gun there would have been
25 different primer - - different marks from the other

1 firing pin?

2 A. No.

3 The reason I say that is when you fire the
4 cartridge case, the cart the cartridge, the first time,
5 the primer is used up.

6 When you re-load you knock out that primer
7 and with it goes the original firing pin impression. You
8 put a new fresh primer pin which is unmarked and as new
9 explosives are put in it you would tee (sic) the firing
10 pin.

11 When you said double firing pin, I'm
12 thinking in terms of the possibility that you can drop a
13 hammer on a fired cartridge case and put an additional
14 mark on it.

15 It doesn't fire the second time, of
16 course.

17 Q. In truth and in fact, you can't tell those
18 folks those are re-loads?

19 A. I would say that there's strong
20 indications they are re-loads, yes. I can't say a
21 hundred percent.

22 Q. Can you say beyond a reasonable doubt
23 those are re-loads?

24 A. I don't know if I'd say beyond a
25 reasonable doubt.

1 MR. CHRISTIANSEN: No further questions.
2 Thank you.

3 THE COURT: Anything further?

4 MR. KANE: I apologize, Mr. Johnson, to
5 you and to the Court. I put three exhibits up there in
6 front of you and only asked you about two of them.

7

8

9

RE-EXAMINATION

10 BY MR. KANE:

11 Q. Let me ask you about exhibit 49.

12 Did you subject the contents of 49 to
13 examination?

14 A. I did.

15 Q. Does it bear your signature?

16 A. It does and marks.

17 Q. What is 49?

18 A. They are projectiles, bullets, if you
19 please, that were indicated to me anyway as having been
20 recovered by San Bernardino County Coroner's Office.

21 Q. That was at the - - I'll tell you for the
22 record that was at the autopsy of Peter Limanni.

23 What observations were you able to make
24 concerning the contents of State's exhibit 49?

25 A. Again, I attempted the same types of

1 examinations. I determined that these are .32 caliber,
2 they are - - a number of them are characteristic of or
3 bear marks of being characteristic of being fired from a
4 revolver.

5 They are consistent with each other, in
6 general, though I couldn't get a conclusive
7 identification or conclusive matching of these to each
8 other because of their condition.

9 Q. Did any of them indicate anything to you
10 about the condition of the firearm from which they had
11 been fired?

12 A. In a general sense, the misalignment of
13 that cylinder not being lined up with the barrel
14 indicates a problem which could be a cheaper firearm or a
15 firearm that's been damaged.

16 Q. And was - - were the indications of these
17 bullets perhaps being fired from a firearm with a
18 misaligned cylinder significant to you in terms of your
19 earlier examination?

20 A. In the sense that one of the bullets in
21 the exhibits we've already talked about in 19 and 42 had
22 the same - - was the same caliber and had the same type
23 of misalignment.

24 Q. And which exhibit was that from?

25 A. I have to refresh my memory here.

1 Q. Would looking at your report refresh your
2 recollection?

3 A. It will.

4 Q. Would you do that?

5 A. That is bullet item 22 in Exhibit 42.

6 MR. KANE: Nothing further.

7 THE COURT: Re-cross.
8
9

10 RE-EXAMINATION

11 BY MR. CHRISTIANSEN:

12 Q. Mr. Johnson, as I read your report I see
13 you to use two different terms. You either say they are
14 class consistent or consistently barrel class
15 characteristics are consistent or you say they are
16 conclusive identification?

17 A. That's right. Those are the two levels of
18 comparisons.

19 Q. In this case all you've been able to tell
20 this jury is the lower level of comparison, the least
21 reliable, which is class characteristics?

22 A. Right.

23 I'm limited because the class
24 characteristics are characteristics that are common to a
25 class of objects.

1 That is to say there could be a number of
2 firearms out there that would have very similar or the
3 same types of characteristics.

4 Q. Right.

5 You've been so honest as to even in these
6 three reports, as I count it, list more than 10 different
7 types of ammunition and numerous different types of guns
8 that could have been associated with the things you
9 examined?

10 A. That's correct.

11 Q. And what bullets go into can affect their
12 appearance, correct?

13 A. Oh, definitely.

14 Q. If a bullet goes through a couch in a wall
15 and hits some type of hard metal object and causes a
16 scrape on the right side that could be mistaken or as a
17 class characteristic from a misaligned cylinder?

18 A. It probably wouldn't be mistaken for that
19 but it certainly could obliterate marks, I would want to
20 say.

21 Q. You tested those items in a vacuum.
22 You get them and look at them to try to
23 make comparisons, correct?

24 A. That's correct.

25 MR. CHRISTIANSEN: Nothing further. Thank

1 you.

2 THE COURT: Re-direct?

3 MR. KANE: No, Your Honor.

4 THE COURT: Next witness, please.

5 MR. KANE: Fred Boyd, Your Honor.

6
7
8 FRED BOYD,

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

11
12 EXAMINATION

13 BY MR. KANE:

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

16 A. My name is Fred Boyd, B-o-y-d.

17 Q. By whom are you employed?

18 A. I'm employed with the Metropolitan Police
19 Department, Las Vegas, assigned duties to the crime
20 laboratory, the latent print detail.

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

23 A. Five years, in July.

24 Q. How long assigned to the division you're
25 currently in?

1 A. I've been associated with the discipline
2 for full-time duties over 20 years and then 10 years
3 prior to that associated with the discipline, so 30
4 year's total.

5 Q. Would you describe for the Ladies and
6 Gentlemen of the Jury your educational background?

7 A. Yes.

8 My title is latent print examiner. I
9 received the bulk of my training through the United
10 States Army, the Army CID which is the Criminal
11 Investigation Division.

12 I was a CID agent for 20 years prior to my
13 requirement. Tens years of that was as a special agent
14 working cases, felony-type cases, processing crime
15 scenes, sending items to the laboratory and working,
16 interviews and things like that, becoming associated with
17 evidence and just general law enforcement duties as a CID
18 agent in that capacity.

19 After 10 years I became interested in the
20 latent print discipline and as a career field within the
21 United States Army I chose that and I was accepted into
22 the crime laboratory, the latent print division. Through
23 the latent print division I spent two years full-time
24 duties studying to be a latent print examiner.

25 The latent print division involved not

1 only fingerprints, it involved tire wear, also lip,
2 fabric and ear identification. The bulk of the training
3 was reference to footwear or to latent print examination.
4 However, there were 200 hours full-time instruction on
5 footwear and tire examinations.

6 Upon my retirement from the United States
7 Army, I worked for the Broward County Sheriff's Office,
8 Fort Lauderdale, Florida, assigned to the crime
9 laboratory where I conducted examinations on
10 fingerprints, footwear, and also tire examinations.

11 Then I've been - - I was eight and a half
12 years there until my employment with Metro.

13 Q. With respect to the area of fingerprint
14 examination and comparison have you qualified in any
15 courts as an expert to testify in such areas?

16 A. Yes, I have.

17 Q. In the Courts of how many states?

18 A. Florida, North Carolina, New York and here
19 in the State of Nevada.

20 Q. On approximately how many occasions?

21 A. Probably be over a hundred times
22 throughout my career.

23 Q. You mentioned footwear and/or tire
24 impression activities as well?

25 A. Yes.

1 Q. Are these related disciplines?

2 A. Yes, they are, based on the examination
3 procedures and the type of evidence that you're dealing
4 with, the type of impressions in the makeup of the
5 footwear and tires, wear characteristics, they both fall
6 into the same general realm and for that reason they are
7 grouped together in many areas of the discipline.

8 Q. So whether you're looking at the print of
9 a shoe in and trying to compare it to something left in
10 the dirt or attire in trying to compare that, it's
11 basically the same task?

12 A. Yes.

13 Q. Have you qualified in any courts as an
14 expert in the area of footwear or tire impressions?

15 A. Yes.

16 Q. On how many occasions?

17 A. Approximately 15 times.

18 Q. And where?

19 A. One time here in Nevada and the rest would
20 be in the State Court of Florida and military court
21 martials.

22 MR. KANE: Your Honor, we propose to offer
23 opinions both in the area of fingerprint examination and
24 footwear/tire mark examination and I would tender him for
25 Voir Dire on his qualifications.

1 MR. CHRISTIANSEN: I have no objection to
2 those two areas, Your Honor.

3 THE COURT: This gentleman will be so
4 considered, then. Thank you.

5 BY MR. KANE:

6 Q. Let's start with fingerprints.

7 Were you asked to look at fingerprints in
8 this case, the case we're here in trial on?

9 A. Yes, I was.

10 Q. And to start with, what's a known
11 exemplar?

12 A. A known exemplar is your record
13 fingerprint. This is the inkprint that you would go down
14 and have taken, let's say if you were going to get a job
15 that required a security clearance and you needed a set
16 of fingerprints taken, this is the known print.

17 We know who this print came from and it's
18 usually taken under controlled conditions.

19 Q. And what known exemplars were you provided
20 with or did you obtain in order to do your comparisons in
21 this case?

22 A. In this case there were three known prints
23 that we had available to us that we looked at and they
24 belonged to an Eric Hamilton whose prints came in
25 initially with post-mortem prints, John Lumber Doe and a

1 Carl Low.

2 The second one was a John Seka and there
3 were prints on a Peter Limanni.

4 Q. Now, were you provided with latent
5 fingerprints that were recovered by crime scene analysts
6 so that you could compare those to those known exemplars?

7 A. Yes, I was.

8 Q. In addition to that, were you provided
9 with items of physical evidence from which you yourself
10 tried to recover latent fingerprints?

11 A. Yes, I was.

12 Q. And let's start with those.

13 What items did you receive that you
14 yourself as opposed to some crime scene analyst attempted
15 to recover latent fingerprints from?

16 A. I received seven pieces of wood, I
17 received a beer bottle. I received some cartridge cases
18 and the latent print lifts.

19 Q. Were you successful in your attempts to
20 secure latent fingerprints from any of these items?

21 A. I need to add one more. I did receive a
22 plaster cast also.

23 Q. Okay. Were you successful in your
24 attempts to recover latents from any of these items?

25 A. Yes, I was.

1 Q. From what?

2 A. The - - a beer bottle, I received, I
3 obtained a latent print. I obtained latent prints off of
4 pieces of wood that I had processed.

5 Q. I'd ask you to look next to you at what
6 has been admitted into evidence as State's exhibit 71.

7 Do you recognize that?

8 A. May I get up?

9 Q. If you would, please.

10 A. Yes, I do.

11 Q. Does that bear your signature or other
12 markings?

13 A. Yes, it has my markings, FNB1 on the
14 outside label, plus it bears my signature.

15 Q. Is this the lumber that you've been
16 talking about?

17 A. Yes, it was.

18 Q. At my request did you bring to my office
19 earlier today all of the lift cards containing the latent
20 fingerprints that you'd examined in this case?

21 A. Yes.

22 Q. And did you and I divide those up into
23 groups in anticipation of your testimony?

24 A. Yes, you did, or we did.

25 Q. Show you what have been marked for

1 purposes of identification as State's proposed 81, 82 and
2 83, and ask if you recognize those.

3 A. Yes, I do.

4 Q. Do each of those envelopes contain latent
5 fingerprint cards that you examined in this case and that
6 you provided to me earlier today?

7 A. Yes.

8 MR. KANE: We'd offer 82, 83 and 84, Your
9 Honor.

10 MR. CHRISTIANSEN: No objection.

11 THE COURT: Those are received. Thank
12 you.

13 BY MR. KANE:

14 Q. Let's start with 82 in evidence.

15 A. Sir, that is 81, 82 and 83, not 84. I
16 believe you mentioned 84.

17 BY MR. KANE:

18 Q. Let's start with 81.

19 THE COURT: Is that a correction?

20 MR. KANE: Yes. It was 81, 82 and 83.

21 THE COURT: the correction is noted.
22 Proceed.

23 BY MR. KANE:

24 Q. Let's start with 81.

25 What was the area from which those latents

1 were recovered?

2 A. State's exhibit 81 bears latent prints
3 that I recovered off of seven pieces of wood.

4 Q. And what were the results of your
5 examinations of those items?

6 Let me ask you, before you start, you made
7 a number of comparisons in this case; is that correct?

8 A. Yes, I did.

9 Q. Do you remember from your own memory every
10 comparison you made and the source from which it was
11 derived?

12 A. Not every, not maybe without referring to
13 my notes, but if I have the list in front of me, such as
14 I do have, the lists are documented with my markings and
15 I should be able to tell from here without going to my
16 notes, but I could go to my notes if I need to.

17 Q. Would referring to your notes and/or the
18 lift cards themselves enable you to say "I compared this
19 print from this location and reached this result."?

20 A. Yes, I should be able to do that.

21 Q. Would you proceed with items in 81 and
22 indicate what comparisons you were able to do of them?

23 A. Exhibit 81, these fingerprint lifts
24 pertain to the development I did off the wood. Of the
25 seven pieces of wood, I marked them appropriately, A

1 through G, and I obtained a fingerprint off of a piece of
2 wood labeled A and - - do you want me to reflect the
3 identification?

4 Q. Yes. What were your findings?

5 A. Off of a piece of wood, A, I identified
6 the right palm print of John Seka.

7 Q. Let's stop there for a minute and let me
8 take advantage of this one and we'll take a little time
9 with this.

10 Is it true that no two people have the
11 same fingerprints?

12 A. That is correct.

13 Q. How do we know this?

14 A. Well, first of all, the fingerprints are
15 developed from your third or fourth prenatal month,
16 before you're born.

17 They remain constant throughout life until
18 decomposition, after death. The patterns remain the
19 same, the characteristics in between the ridges remain
20 the same, they only change is if there is a major scar or
21 if they are destroyed in some manner, with a second layer
22 of skin, the dermis is injured, but fingerprints remain
23 constant throughout life.

24 To date, no two people have ever been
25 found to have the same fingerprints.

1 This is based on many years of study, many
2 comparisons that have been done, both manually, which
3 there have been millions and millions done, and then
4 during the last 20 years with the implementation of the
5 various fingerprint automated systems where you have a
6 computer comparing the latent prints, trying to find
7 matches, which with the number of systems that are out
8 there and the number of prints that are on file, the
9 searches that are conducted, it goes into the billions.

10 To date, nobody has been found to have two
11 sets of fingerprints.

12 Q. With that understood would you continue
13 now with State's exhibit 81 and indicate what other
14 comparisons you were able to effect?

15 A. Yes.

16 Q. On a piece of wood labeled E, I was able
17 to develop an identifiable fingerprint that identified
18 the left middle finger of John Seka and the third board
19 that I was able to obtain latent fingerprints on was
20 bored labeled G and all the fingerprints, and there were
21 six areas on board G that had identifiable fingerprints,
22 that I identified to Peter Limanni.

23 I identified the right palm, right palm,
24 left palm, right thumb, one area twice, then one area,
25 the area is like a double touch, and a right palm again

1 and a right middle finger.

2 Q. And who did they belong to?

3 A. Peter Limanni.

4 Q. If you'd replace those in the envelope,
5 please.

6 You've indicated you were able to develop
7 latent fingerprints on three of those boards and not on
8 the others, correct?

9 A. I developed - - out of the seven boards
10 there were latent prints developed - - latent prints
11 developed on five of the boards.

12 On two of the boards I was unable to
13 develop latent prints.

14 Q. Anything unusual about that?

15 If the boards got from place A to place B
16 somebody handled them.

17 Is there anything unusual about the fact
18 that some bear latent prints and some don't?

19 A. You're dealing with a porous type surface.

20 There are two types of evidence you deal
21 with when you're obtaining fingerprints. One is porous
22 and one is non-porous. Your non-porous surface which
23 would be your items that have a smooth type surface, your
24 fingerprints remain on the surface of the item.

25 Usually you can develop that with

1 fingerprint powder, but on your porous surfaces, which is
2 your paper products, cardboard, wood, your fingerprint
3 residue, it absorbs down inside the surface and granted,
4 you can obtain fingerprints with powder, if you get a
5 print real quick on a porous type surface.

6 This is a porous surface. If I should
7 touch this and right away take some fingerprint powder I
8 would probably come up with a print because the print had
9 not absorbed down inside yet. But routinely we use
10 chemicals.

11 There's various chemicals calls that we
12 use to develop fingerprints. We find here in Nevada or
13 commonly a technique called phenhydren. It reacts to the
14 amino acids that you have in your perspiration and it
15 works real well on porous type items. However, there's
16 other chemicals, too, that we use.

17 One is called silver nitrate. Silver
18 nitrate reacts to the salt content that you have in your
19 perspiration and we find that here, in Nevada, that we
20 have very good results using silver nitrate on a lot of
21 porous type items, especially cardboard and especially
22 wood items, and it is the first thing I did when I
23 processed the wood.

24 I took magna powder to see if there might
25 be any visible prints on the south side. There was one

1 print I found on one piece of board, but I was unable to
2 identify that.

3 It was very - - a very faint print, but I
4 classified that as a value for identification. I think
5 if I did have the person's prints that made that then I
6 could identify that.

7 I processed the boards with phenhydren. I
8 processed that first before the silver nitrate. I have
9 certain steps.

10 I use silver nitrate first. I used the
11 phenhydren and came up with nothing. I used the silver
12 nitrate with an alcohol base and I was able to come up
13 with some real good latent prints chemically using this
14 technique.

15 Q. With all of that technology at your
16 disposal there were still two of the boards from which
17 you were unable to recover latent prints of any value,
18 correct?

19 A. That is correct. The makeup of the board,
20 whether it's real rough would have a lot of bearing as to
21 why maybe a print might not be found, maybe that
22 particular board - - maybe it wasn't smooth, might have
23 been maybe too much

24 grain. I do recall the one board and that
25 is the one right here in front. The kind of long board

1 here, I believe this is the one that we obtained Mr.
2 Limanni's prints on. This was a very fine, smooth finish
3 on the board and was able to retrieve those or make those
4 prints really visible when I used the chemical silver
5 nitrate and it worked out really good.

6 It just depends on the makeup of the
7 board, the finish and, of course, the amount of touch
8 that was actually given to the Board.

9 Q. I want to talk to you next about State's
10 exhibit 82, which is in front of you.

11 Where would those latent fingerprints
12 recovered from?

13 A. It says exhibit 82, latent prints
14 recovered from a 1998 Toyota pickup truck.

15 Q. Were those recovered by more than one
16 crime scene analyst?

17 A. Yes, they were. These were recovered by
18 crime scene analyst Gary Reed and crime scene analyst
19 Vince Roberts.

20 Q. Would you go through those one at a time
21 and tell the jury what comparisons you were able to
22 effect and who was the particular technician who
23 recovered each of them?

24 A. Yes.

25 There were three - - there were three

1 latent prints in this packet that were submitted by crime
2 scene analyst Roberts and they were from - - there was a
3 glass located behind the left front driver's seat and,
4 um, he submitted three fingerprint lifts from this glass
5 that was submitted or that was left behind the driver's
6 seat.

7 He does not have these indicated as to, if
8 he's talking about one glass or three glasses. As a
9 result of that I would maybe assume that he's talking
10 about maybe just one item, with three lifts taken from
11 that item, but I don't know that, but I would just
12 mention that in case that's the situation here.

13 Anyway, on this glass that was found
14 behind the driver's seat, all three of these lifts we
15 identified John Seka as the maker of the fingerprints on
16 these lifts.

17 On these lifts there were more than one
18 fingerprint that were found. On one lift we have two
19 fingerprints made by a right index and right middle, on
20 another fingerprint lift we have four fingerprints made
21 by the right index, right middle and also the left ring
22 and the left middle.

23 And then on the next lift we do have two
24 fingerprints which are on this list and they were both
25 made by the right thumb.

1 Q. Does that conclude your observations on
2 the latents submitted by crime scene analyst Roberts?

3 A. From this package, yes.

4 Q. How about crime scene analyst Reed from
5 that same page?

6 A. In the same package there were eight
7 fingerprint lift cards that were submitted by crime scene
8 analyst Gary Reed and they are as follows: he has listed
9 the interior edge of the driver's door on the 1998 Toyota
10 pickup truck and this was made by the right middle finger
11 of John Seka.

12 He has top of the exterior driver's side
13 view case mirror in the 1998 Toyota pickup. This was
14 made by the right index finger. From the exterior
15 driver's side view mirror one was lifted, a left palm
16 print of John Seka. Again, top of the exterior driver's
17 side view mirror on the 1998 Toyota pickup, a left thumb
18 was identified to John Seka.

19 Interior driver's window in the 1998
20 Toyota pickup was identified to the left thumb of John
21 Seka.

22 Exterior driver's window on the 1998
23 Toyota pickup identified to the left ring of John Seka,
24 exterior driver's side view mirror case, again, there
25 were two fingers, the left middle and the left ring

1 identified to John Seka and the last one behind the
2 driver's door exterior from the 1998 Toyota pickup there
3 was a right thumb that was identified to John Seka.

4 These were all - - these were submitted by
5 Gary Reed.

6 Q. If you'd replace those, I want to talk to
7 you about State's exhibit 83 and where were the latents
8 in 83 recovered?

9 A. State's exhibit 83 contains five
10 fingerprint lifts. These are by crime scene analyst
11 Randy McPhail and these were obtained from Miller Lite
12 bottles found some in a trash can and one in a dumpster.

13 Q. So the jury is not confused, I think that
14 you mentioned that you developed a latent fingerprint
15 from a beer bottle, correct?

16 A. There was a Beck beer bottle that was
17 booked in as evidence and that is different and separate
18 from these.

19 Q. Okay. Would you go ahead with these and
20 then indicate what comparisons you were able to effect?

21 A. Yes.

22 Like I mentioned, they would be the five
23 print lifts; they were all submitted to me by crime scene
24 analyst McPhail. One fingerprint lift from Miller Lite,
25 the bottle located in the dumpster on the east rear side

1 of 1933 South Western Avenue.

2 That's the label on the card. I was able
3 to identify this as belonging to the left index finger of
4 John Seka.

5 The next lift was a - - from a Miller Lite
6 bottle located in the trash can inside the southeast
7 office. This was identified to the left index finger of
8 John Seka.

9 Another lift also labeled Miller Lite from
10 the trash can in the south east office was identified to
11 the left index of John Seka.

12 Q. And a third fingerprint lift also labeled
13 Miller Lite located in the trash can in the southeast
14 office were identified as belonging to John Seka.

15 Again, these are not labeled one, two,
16 three as far as bottles. I don't know if these are from
17 the same bottle or if we're talking about three bottles.

18 The last latent fingerprint lift also
19 labeled Miller Lite bottle located in the trash can in
20 the southeast office.

21 This was identified as belonging to the
22 left middle finger of Eric Hamilton.

23 Q. If you'd replace those in the envelope,
24 please.

25 In addition to the examination that you

1 did of latent fingerprints in this case were you also
2 asked to examine certain tire impressions?

3 A. Yes, I was.

4 Q. What items were you given to examine?

5 A. I was given a plaster cast that was
6 prepared by crime scene analyst Roberts and was given
7 some tire, known impressions, by crime scene analyst Reed
8 that were from 1998 Toyota pickup truck.

9 Q. Were you also given some tire lifts from a
10 1998 Dodge van that Mr. McPhail had got?

11 A. Yes.

12 Q. To get those out of the way you weren't
13 able to identify those with any of the plaster casts or
14 photographs; is that correct?

15 A. That is correct.

16 Q. Show you what what's in evidence as
17 State's exhibit 70 and ask you if you recognize that.

18 A. I recognize the outside box. It bears my
19 signature on the property receipt and label and it
20 appears to be the plastic cast the way I packaged it in
21 there.

22 Q. If you'd examine State's exhibit 27,
23 please, and tell me what that is.

24 A. Twenty-seven bears my marking on the
25 outside and this contains the test impressions from the

1 1998 Toyota pickup truck that were submitted by crime
2 scene analyst Reed.

3 Q. Would you explain for the jury what the
4 process is of comparing tire impressions with a plaster
5 cast or photograph?

6 A. The comparison of the process of comparing
7 the tires to the known tire impressions is basically the
8 same as it is with the fingerprint comparisons. You have
9 a known and you have an unknown impression.

10 You are trying to find maybe individual
11 features in the known impression and you try to find
12 these in the questioned impression.

13 In this case, the tire impressions from
14 the vehicle to that of the cast of the tire cast. The
15 first thing you look for - - are you in the ballpark?

16 I had another set of prints from a Dodge
17 vehicle and I was able to eliminate those. The outside
18 tread design was completely different and just by looking
19 at that you can tell that this did not make this.

20 It's as simple as if you have circles and
21 squares. If this was made by circles and if what you
22 have over here is squares, then you know that you can
23 eliminate these squares.

24 That's what we did initially. That's
25 basically the first step that we look for.

1 In this case, we had a tire cast that I
2 received and I cleaned the cast myself. Usually when we
3 receive casts the crime scene analyst that prepares the
4 cast.

5 Many times they will pour the cast and
6 then after it dries they will wrap it up. They won't
7 wash it.

8 The reason why they won't wash it is that
9 they may remove some detail and some feature from that
10 cast that may be important to the examination. So
11 routinely - - and it's good practice to let us at the
12 crime lab or the person that is actually going to be
13 doing the examination to do the washing of the cast.

14 I cleaned the cast, washed it. In
15 addition to this, I went down to the photo section and I
16 obtained photographs of the initial impression from the
17 crime scene.

18 When there is a tire impression or a
19 footwear impression at a scene usually that is
20 photographed before any casting is done. This is routine
21 procedure. And again, good practice to do this.

22 So what I would have now, I have plaster
23 cast, I have the actual crime scene provisions from the
24 crime scene and I have the known prints.

25 Upon visual examination of the known

1 prints to the - - both the photograph, which the
2 photographs are usually a lot better, a lot of times,
3 than the actual cast itself.

4 When you make that cast, due to the flow
5 of the casting material going inside the impression, you
6 may tend to lose a little bit of that impression, because
7 maybe the sides of the impression they may cast in or
8 something like that. So the photographs are always good
9 to have there.

10 Upon the initial examination of all three,
11 I was able to determine that the tread pattern from the -
12 - that was on the known test prints from the tires of the
13 1998 Toyota pickup submitted by crime scene analyst Reed,
14 that they were similar in nature to the impression that I
15 saw in the photographs and also to the impressions in the
16 cast.

17 So at this point I go a little bit further
18 in respect to measuring the different elements that you
19 see on the tire.

20 Q. Let me stop you for a minute.

21 Did these tire impressions that you got, I
22 mean did they have a gouge somewhere in the tire or a
23 nail so that every time it rotated it made some kind of
24 distinctive mark?

25 A. I wasn't able to find any individual

1 features where I could maybe go a little bit further and
2 say that this impression that could have been made by,
3 you know, I would be comfortable to say that.

4 Q. In terms of measuring the tread wouldn't
5 you just have to measure one?

6 Isn't each tread the same distance from
7 the one next to it?

8 A. Well, the elements that we look at on a
9 tire, of course we have the basic pattern that I did see.
10 The next thing I look for are the individual features in
11 the actual tire, which are class characteristics.

12 I found the same class characteristics in
13 the known impression and into the photographs and to the
14 plaster cast.

15 The elements on a tire are different sizes
16 and it's these different size elements that we look for
17 to help determine if, whether or not maybe this tire or
18 these impressions were made from these or from the
19 certain tire.

20 There are many cars, there are many tires.
21 You find very many similar tire treads out there. How
22 can I be certain maybe this tread design maybe was made
23 from this particular tire?

24 What I did in this case, the elements that
25 you have on a tire are there basically to reduce the

1 noise that you may have when the tire is spinning. You
2 may go by a place where you hear a wheel spinning and you
3 hear a whining sound.

4 What makes that?

5 Well, it's very smooth. If you put some
6 things on that outer surface it will reduce that noise.
7 And it's very common on tires to find your noise
8 resistant elements, which are spaced at different
9 intervals, which will reduce the noise in a tire.

10 That's what I look for in the photographs
11 or in the casts and in my comparison to the known prints,
12 and as a result I found similar distances in the tire and
13 the photograph and to the known, which further gave me a
14 better feeling, that, yes, we were in the ballpark as far
15 as for this type of a tire. I wasn't able to find any
16 individual characteristics where I could say that this
17 cast was definitely made by this tire.

18

19

20

21

22 ATTEST that this is a true and complete transcript of the
23 proceedings held, DATED this 22nd day of February 2001.

24

25


J. A. D'AMATO CCR #017

1 **ORIGINAL**

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
Feb 22 2001 19

WILEY J. PARRAGUIRRE, CLERK

Linda Skinner
LINDA SKINNER DEPUTY

3 * * * *

5 STATE OF NEVADA,)

6 Plaintiff,)

7 vs.)

8 JOHN JOSEPH SEKA,)

9 Defendant.)

Case No. C159915
Dept. XIV

11 VOLUME II

12 REPORTER'S TRANSCRIPT
13 OF
14 JURY TRIAL

15 BEFORE THE HONORABLE DONALD M. MOSLEY

16 DISTRICT JUDGE

17 Taken on Wednesday, February 21, 2001

18 At 3:00 p.m.

19 **APPEARANCES:**

20 For the State:

EDWARD KANE, ESQ.
TIM FATTIG, ESQ.
Deputy District Attorneys

22 For the Defendant:

KIRK T. KENNEDY, ESQ.
PETER S. CHRISTIANSEN, ESQ.

25 Reported by: Maureen Schorn, CCR No. 496, RPR

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1 LAS VEGAS, NEVADA. WEDS., FEBRUARY 21, 2001, 3:00 P.M.

2 * * * *

3

4 CONTINUED DIRECT EXAMINATION

5 BY MR. KANE:

6 Q Now, did you prepare an exhibit that would
7 enable this to be a kittle more clear to the jury?

8 A Yes, sir.

9 MR. KANE: May I approach, Your Honor?

10 THE COURT: You may.

11 Q (By Mr. Kane) Showing you what's been
12 marked for purposes of identification as State's Proposed
13 84, and ask if you recognize that?

14 A Yes, sir, I do.

15 Q Did you construct that yourself?

16 A Yes, I did.

17 Q Could you explain what the parts of the
18 construction are?

19 A The photograph is --

20 Q Before displaying it to the jury, if you
21 could just explain what the parts are, I'll offer it, and
22 then you can explain.

23 A Okay. This is made of two parts, one
24 photograph and one acetate or xerox copy of the tested
25 impression.

1 Q So the photograph was the crime scene
2 analyst photograph at the scene of the actual dirt; not
3 the plaster cast, but the actual dirt that the tire rolled
4 over?

5 A That's correct.

6 Q And the acetate overlay was made by you from
7 what source?

8 A This was made from the test impressions that
9 were submitted by Crime Scene Analyst Reed.

10 Q And those are the ones sitting right next to
11 you, I think it's State's 27?

12 A Yes, sir.

13 Q And do the two parts of that exhibit
14 accurately reflect in conjunction those acetate lifts and
15 the photographs that were taken at the crime scene?

16 A Yes, sir.

17 MR. KANE: I would offer 86, Your
18 Honor.

19 MR. CHRISTIANSEN: No objection.

20 THE COURT: It is received. Thank you.

21 MR. KANE: Did I have that number
22 right?

23 THE WITNESS: This is 84.

24 MR. KANE: I'm sorry, 84.

25 Q (By Mr. Kane) Would you display that to the

1 jury and indicate to them how that ties in with the
2 findings you were talking about. And if you need to leave
3 your seat, allow all of them to see it.

4 MR. CHRISTIANSEN: Your Honor, may I be
5 permitted to move so I can see as well?

6 THE COURT: You may. And, of course,
7 ladies and gentlemen, you'll have this to take with you to
8 the jury room, ultimately. Go ahead.

9 THE WITNESS: In the examination of
10 footwear and tire impressions, I find it's very easy and
11 it's a good practice to make an overlay of the known
12 impression, or maybe you may want to make one of the
13 questioned impression and put it over the known. You
14 usually get the same results.

15 What we have here, we have a copy of the
16 photograph of the impression in the dirt. And then
17 upon -- as you see these little features which we call
18 elements, looks like maybe an upside-down U or an H, and
19 depending where you're looking and what your imagination
20 is of what that might be, these little features right in
21 here.

22 And we find that these little features, I
23 mentioned a minute ago about the noise pitch and the
24 different sizes that you find, if you look at this little
25 element right here, and if you would measure from the

1 width of it compared to maybe measuring this one right
2 here, this one here is a lot smaller than this one.

3 Again, this element right here, and also
4 this one, these are a lot smaller than the width from here
5 to here. Again, this element right here, the width here,
6 that's lot smaller than from here to here.

7 And also here's a real big one right here.
8 Here's another one right here. Anyway, these variations
9 and the difference in the measurements here, they repeat
10 itself every maybe 8, 10, 13 elements, depending on the
11 type of tire and the structure of it, and the
12 manufacture's trademark, and the blueprint of that
13 particular tire.

14 But the reason why all these are different
15 sizes is that it reduces the noise. If you didn't have
16 these, again, if your tire was smooth, you'd hear that
17 whining sound all the time.

18 So based on the variation and the different
19 measurements right here, I was able to look at the
20 individual tread that we had on the test impressions to
21 see if there was any variations in the measurements. And
22 as you can see right here, if you look here compared to
23 the width here, that's a lot skinnier than this one here.

24 Again, this one here is a lot skinnier than
25 this one here. Again, this one here is a lot skinnier

1 than this one here.

2 And so based on this, it was rather a simple
3 examination, because the only thing I had to find was this
4 particular difference. And if you look at the distance
5 from here to here, this is a little over a foot, and then
6 it will repeat itself.

7 And so all I had to do was to try to find
8 these different variations on the test impressions and
9 then on the known, and that's what I did. So based on the
10 configuration of the noise pitch elements that I found, I
11 was able to conclude that, again, that this type of a tire
12 made this particular impression.

13 I was unable to find any individual features
14 which are your nicks, scrapes, cuts, your wear
15 characteristics in here in the soil. And I looked but I
16 did not find any to actually say that definitely I could
17 give a positive identification to that particular tire.

18 All the tires on the vehicle was of the same
19 type. So I was only able to conclude that this was made
20 by the same type of tire that was submitted to me.

21 Q If you would resume your seat. And was the
22 acetate overlay part of that exhibit made from any
23 particular one of the tires?

24 A Yes, sir. I looked at the right rear tire
25 of the Toyota, and the reason for the right rear tire of

1 the Toyota was based on the information that I had from
2 the crime scene as to possibly what might have happened.

3 MR. CHRISTIANSEN: Judge, this calls
4 for hearsay, Your Honor.

5 MR. KANE: It's not offered for the
6 truth, but to show why he reached the conclusion he did,
7 and why he looked at this particular tire.

8 THE COURT: He's testified as an
9 expert. I'm going to allow that. Go ahead.

10 Q (By Mr. Kane) And why were you looking at
11 that one particular tire?

12 A As I was looking at the impression, the
13 actual crime scene impression, the information was that
14 the vehicle may have backed up and then left. If this was
15 the case, then that impression would have been made from
16 either the tire on the right side of the vehicle, and
17 presumably that would be the rear tire, because if it
18 would have been the front tire, the impression would have
19 been back further.

20 So for this reason I chose the right rear
21 tire. And all of the test impressions were the same, so
22 is it really wouldn't have mattered which one I looked at,
23 because they were the same to find these elements. But
24 because of the fact that the impression was in a common
25 sense location as to maybe being made by the vehicle's

1 right rear portion.

2 Q Now, leaving this for just a second and
3 going back to the fingerprints, I asked you about all the
4 comparisons that you were able to effect and you testified
5 about them. Were those all the comparisons that you were
6 able to make and say this fingerprint matches this person?

7 A Yes, sir.

8 Q Were there fingerprints left over that you
9 weren't able to identify?

10 A Yes, sir, there were.

11 MR. KANE: Nothing further, Your Honor.

12 Tender the witness.

13 THE COURT: Is it going to be lengthy,
14 counsel?

15 MR. CHRISTIANSEN: Fifteen minutes,
16 Judge.

17 THE COURT: Go ahead.

18

19 CROSS-EXAMINATION

20 BY MR. CHRISTIANSEN:

21 Q Good morning, Mr. Boyd, good afternoon.

22 Mr. Boyd, let's start, I'll go backwards
23 from how you just started so everything is fresh. You can
24 tell these people in the jury that that impression is
25 consistent with the type of tire that was on a 1998 Toyota

1 pickup, correct?

2 A Yes, sir.

3 Q How many 1998 Toyota pickups of this make
4 and model did Toyota make in 1998?

5 A A bunch.

6 Q Thousands, right?

7 A A bunch.

8 Q What kind of tires? Good year?

9 A Many different types and brands, and it
10 varies.

11 Q What type of tires did you look at?

12 A The marking -- I went and compared
13 the -- according to the crime scene notes that I went and
14 looked at, they had the sized tire 195 75/14 on this one.
15 They have Dunlap in the crime scene analyst's notes, so I
16 assume it was a Dunlap.

17 I did not see the actual tire, but I did
18 look in a tire guide book that is available, and this
19 particular brand or class characteristic is consistent
20 with some of the Dunlap type.

21 Q If I understood you right --

22 MR. CHRISTIANSEN: May I approach, Your
23 Honor?

24 THE COURT: Yes.

25 Q (By Mr. Christiansen) What you're telling

1 the jury is, that you could have taken the acetate
2 impression from what the crime scene analyst did, which is
3 one of those boxes, from any of the four tires and it
4 would have matched this dirt impression that you looked
5 at, because that's the tire that was on the type of truck
6 or the vehicle that left the markings in the desert?

7 A That's correct.

8 Q You can't say it was a 1998 Toyota that the
9 Police Department or Metro saw Mr. Seka in on the 17th of
10 November, can you?

11 A No, I cannot.

12 Q And if Metro saw John Seka in that 1998
13 Toyota where you found all these latent prints, that would
14 be consistent when somebody is in the Toyota, they leave
15 fingerprints on the glass and the mirrors and the glasses
16 behind the seat, right?

17 A That is true.

18 Q And somebody told you that from the crime
19 scene analyst that went to the body of Eric Hamilton that
20 the vehicle had backed up; is that correct?

21 A Yes, sir. Well, from the photographs that I
22 looked at of the crime scene, we have a location of a
23 body. And then you have tire marks going back to that
24 area and stopping. It's only conceivable that that would
25 be --

1 MR. CHRISTIANSEN: May I approach,
2 Judge?

3 THE COURT: You may.

4 Q (By Mr. Christiansen) I want to show you
5 what's been marked for identification purposes as Defense
6 Proposed Exhibit W. Does that appear to be one of the
7 pictures you looked at reflecting the location of
8 Mr. Hamilton's body on November the 16th, 1998?

9 A Yes.

10 Q And are there tire marks on both sides of
11 that body?

12 A Yes.

13 Q Are there tire marks both prior to the body
14 and the wood that covers the body and afterwards?

15 A Yes.

16 Q And that would be consistent with some
17 individual driving, stopping the vehicle, discarding the
18 items that are reflected in that picture and driving off,
19 correct?

20 A That is true.

21 Q Thank you. Now, I notice -- let's go to
22 your fingerprint impressions now, Mr. Boyd. I notice on
23 your CV, which is like a fancy way of saying resume,
24 right? Your Curriculum Vitae.

25 A Yes.

1 Q You're only an expert in one of the 14 areas
2 that are listed here as areas of expertise for crime scene
3 analysts; is that right?

4 A Yes. Well, this document is checked latent
5 prints. And I checked latent prints, and as I mentioned
6 before, the latent print discipline takes in other areas
7 of the forensic field where we're looking at
8 impression-type evidence, whether we're looking at
9 fingerprint, footwear, tire.

10 Q So latent prints includes fingerprints,
11 footprints and tire prints?

12 A In some areas, yes.

13 Q And you've been doing this for 20-some-odd
14 years?

15 A Full-time duties; yes, sir. And prior to
16 that also for ten.

17 Q You haven't jumped from field to field and
18 don't portray yourself as a DNA expert today, do you?

19 A No, sir, I do not.

20 Q And that's to avoid being a
21 jack-of-all-trades and master of none, correct?

22 A Well, I hope not to be one of those.

23 Q You stuck with one expertise and you're here
24 testifying about it today, correct?

25 A Yes, sir.

1 Q You've been doing that for 20-some-odd
2 years, right?

3 A Full time; yes, sir.

4 Q You can't tell the people in this jury how
5 long any of the items had been in a particular area before
6 they were taken by the crime scene analyst and then
7 subsequently given to you to examine?

8 A No, sir, I cannot.

9 Q Similarly, you can't tell the jury how long
10 it was before the items, be it this wood or the beer
11 bottles, had been touched by some person and a print left
12 on them prior to them being left in a certain place?

13 A No, sir, I cannot.

14 Q You never went to the 1933 Western, correct?

15 A That is correct. I was never to the crime
16 scene.

17 Q Nobody from homicide ever asked you to go
18 out and process areas of the inside of 1933 or 1929
19 Western?

20 A No, sir. That's normally the job of the
21 crime scene analyst, although we are subject to be called
22 if they find some problem out there and they need our
23 assistance. But normally they do a pretty good job and
24 they don't need us.

25 Q You looked, I think you told the folks in

1 the jury, at a Skoal can and a Becks beer bottle from the
2 area around where Mr. Hamilton's body was found November
3 the 16th, 1998?

4 A That's correct.

5 Q Did you have the opportunity to review
6 pictures of those items taken by the crime scene analyst?

7 A Not right from the scene. I did -- there
8 was a beer bottle that was booked in as evidence, and I
9 had processed that myself for latent print comparison. If
10 it's the same one we're speaking of, then I did process
11 that, did come up with a latent print, a value for
12 identification, and I was unable to identify it.

13 MR. CHRISTIANSEN: May I approach the
14 witness, Your Honor?

15 THE COURT: You may.

16 Q (By Mr. Christiansen) Does Defense Proposed
17 Exhibits X and Y appear to be the Skoal can and the Becks
18 bottle that you examined?

19 A It appears to be. I can't say definitely it
20 is, but I assume that if this is the evidence that was at
21 the scene and that it was booked in that, this was
22 what -- maybe I looked at it at the lab.

23 MR. CHRISTIANSEN: Judge, the Defense
24 would offer Proposed Exhibits X and Y. I believe the
25 crime scene analyst sufficiently --

1 MR. KANE: No objection.

2 THE COURT: Those items are received.

3 Thank you.

4 Q (By Mr. Christiansen) Now, if I understand
5 you correctly, this Becks beer bottle you found a print?

6 A Yes, sir, there was.

7 Q And that was a latent identifiable print,
8 which means that had somebody handed you a known print,
9 you could have compared the two?

10 A That is correct.

11 Q Did you compare that print to the known
12 print of Jack Seka?

13 A Yes, sir; in addition to the two other
14 people, and there was no match.

15 Q And it wasn't Jack Seka, right?

16 A No. I did not ID it.

17 Q You can't tell the people in this jury how
18 the beer bottle, the Skoal can, or the wood that was
19 across Mr. Hamilton's body got to be in that location
20 south of town?

21 A No, sir.

22 Q And I thought I heard you say that on the
23 seven boards that you examined that's right there to the
24 right of you, sir, that on five of the boards you found
25 latent identifiable prints; is that accurate?

1 A Yes, sir.

2 Q And on three of those boards you found
3 prints -- two boards you found prints of Mr. Seka,
4 correct?

5 A Yes.

6 Q And on one board you found prints of
7 Mr. Limanni, correct?

8 A Yes, sir.

9 Q And on two other boards you found latent
10 identifiable prints that did not belong to Mr. Seka or
11 Mr. Limanni?

12 A That's correct.

13 Q Did you ever compare on those two boards
14 that had prints that didn't belong to Mr. Seka or
15 Mr. Limanni, did you ever compare those prints to the
16 prints on the Becks bottle?

17 A No, sir. I never did that.

18 Q Nobody ever asked you to do that, right?

19 A No. That would be a latent-to-latent
20 comparison. Normally, latent-to-latent comparisons
21 routinely are not done, unless it's specifically
22 requested, and that's due to the nature of the prints
23 themselves.

24 Q I just want to be clear, nobody asked you to
25 do that, right?

1 A No.

2 Q And you presume the homicide and the
3 detectives and the Prosecutors all had your reports that
4 said where you found prints, right?

5 A That's correct.

6 Q And at one point I may have just misheard
7 you. I thought you said that nobody has been found to
8 have two pairs of fingerprints. I think you meant that no
9 two people have been found to have identical prints?

10 A Identical prints.

11 Q Is there a system called AFIS?

12 A Yes, sir, there is.

13 Q Is that a system where law enforcement keeps
14 known fingerprints?

15 A AFIS is the Automated Fingerprint
16 Identification System which is a computerized system of
17 keeping a database on fingerprints, and searching unknown
18 fingerprints to known prints.

19 Q And those know prints that are in AFIS would
20 be, for example, people that have been processed by
21 various law enforcement agencies?

22 A That's correct.

23 Q Fingerprinted, booked, et cetera?

24 A That's correct.

25 Q Did you process either the two boards that

1 you couldn't identify or couldn't match prints, or the
2 Becks bottle through AFIS?

3 A I don't believe that the fingerprints, that
4 the unidentified prints that we obtained that they were
5 AFIS quality to do so. If you give me a moment I can
6 double-check my notes just to see if I did.

7 Q Sure. And just for the record, you're
8 looking at some notes to help refresh your recollection?

9 A Yes, sir.

10 Q Are those notes are part of the reports that
11 were produced to Defense counsel prior to trial, or do you
12 know?

13 A I don't believe that they were requested.

14 MR. CHRISTIANSEN: May I look at the
15 reports, Judge? Pursuant to statute, if he needs to rely
16 on it, I'm allowed to look at it.

17 THE COURT: Go ahead.

18 MR. CHRISTIANSEN: On the wood or the
19 Becks bottle.

20 THE WITNESS: I don't have it indicated
21 that the one on the bottle was placed on AFIS. It was
22 non-AFIS quality.

23 Q (By Mr. Christiansen) Just so I'm clear,
24 you don't have it indicated one way or the another whether
25 you checked through AFIS?

1 A Well, we went through pretty thorough in
2 this case, and any identified prints that were of AFIS
3 quality we did enter.

4 Q Show me on this chart that you're looking at
5 here to refresh your recognition where you wrote down that
6 this was not AFIS quality prints.

7 A Well, we don't normally put down if they're
8 not AFIS quality. We normally make a recording if we do
9 enter that print into AFIS.

10 Q And there's no markings on your chart here
11 that says you entered it in AFIS, right?

12 A Not on that particular latent print, no.

13 Q Would you check now for me the wood, the two
14 pieces were there identifiable latent prints.

15 What does that say?

16 A Not AFIS quality, NA AFIS, not applicable to
17 AFIS. They were not -- the prints were not AFIS quality,
18 they were not put in and searched through AFIS.

19 Q And that's as to the wood, correct?

20 A Yes.

21 Q Were you ever given the known fingerprints
22 of Tak Kato or Taz Toe?

23 A No, sir. Those are new names to me.

24 Q If somebody would have come to you and said
25 we have got two additional suspects, their names Mr. Kato

1 and Mr. Toe, here are their known fingerprints, could you
2 have then compared those fingerprints to both the Becks
3 bottle and the wood?

4 A Definitely.

5 Q Nobody ever asked you to do that, right?

6 A Those two names were not submitted.

7 Q Whose job is it to submit names or make a
8 decision as to whether to submit names to you to conduct
9 your testing?

10 A We get names from various sources. We get
11 names, basically, from the requesting detectives, the one
12 assigned to the case. We get names from the Prosecution,
13 whom we develop additional names through there. And,
14 also, we get names from the Defense who may develop names
15 that they may want us to look at.

16 Q In this case, did the Prosecutors or the
17 police officers, homicide officers make either of those
18 two names I mentioned, those people's prints available to
19 you to compare?

20 A Those names were not submitted, nor were
21 prints given to us to compare.

22 MR. CHRISTIANSEN: Pass the witness.
23 Thank you, sir.

24 THE COURT: Anything further?

25 MR. KANE: Just one question.

REDIRECT EXAMINATION

BY MR. KANE:

Q Why don't you do latent-to-latent comparisons?

A Latent-to-latent comparisons are very time consuming. Many times you may have a partial print that you look at where you may have two or three of the same ridge characteristics in one area. You may have the same ridge characteristics in a whole lot of known prints over here.

Usually, a latent-to-latent comparison would normally be done if you had maybe a full finger where you have a delta and a core, which the core is basically the center of your fingerprint, and it goes down to the side.

We have a real good area. Most of the prints that we look at and that we find are partial prints. It's not a full recording of a print, and it's just a time consuming effort. We do do it, but routinely we don't do it.

MR. KANE: Nothing further, Your Honor.

THE COURT: Anything further?

RECROSS EXAMINATION

BY MR. CHRISTIANSEN:

Q In this case, did anybody ever ask you, or

1 did you ever think on your own to attempt a
2 latent-to-latent print with between the bottle of Becks
3 found under the body of Mr. Hamilton, and the wood that
4 contained the identifiable latent prints that was laying
5 across the top of his body?

6 A No, sir.

7 MR. CHRISTIANSEN: Thank you. Nothing
8 further.

9 THE COURT: Mr. Boyd, your excused.

10 "Ladies and gentlemen, it is your duty not
11 to discuss among yourselves, or with anyone else, any
12 subject connected with the trial; or read, watch or listen
13 to any report of, or commentary on the trial or any person
14 connected with the trial by any medium of information,
15 including without limitation, newspapers, television and
16 radio; or form or express any opinion on any subject
17 connected with the trial until the cause is finally
18 submitted to you."

19 We'll take approximately 15, 20 minutes.
20 Court's in recess.

21 (Whereupon, a 20-minute recess was taken.)

22 THE COURT: The continuation of
23 C159915, State versus John Joseph Seka. The record will
24 reflect the presence of the defendant; his counsel,
25 Mr. Christiansen and Mr. Kennedy; Mr. Kane and Mr. Fattig

1 present for the State.

2 Mr. Counsel stipulate that all members of
3 the jury are present and properly seated?

4 MR. KENNEDY: Yes, Your Honor.

5 MR. KANE: Yes, Your Honor.

6 THE COURT: Next witness, please.

7 MR. KANE: Ken Hefner.

8

9 Whereupon,

10 KEN HEFNER,

11 was called as a witness by the State, and having been
12 first duly sworn, was examined and testified as follows:

13

14 DIRECT EXAMINATION

15 BY MR. KANE:

16 Q Sir, would you please state your full name
17 and spell your last name for the record:

18 A Ken Hefner, H-e-f-n-e-r.

19 Q And by whom are you employed?

20 A I'm a sergeant in the homicide section of
21 the Las Vegas Metropolitan Police Department.

22 Q How long have you been with that Police
23 Department?

24 A Twenty years.

25 Q And how long in homicide?

1 A Seven.

2 Q I want to direct your attention to November
3 the 17th of 1998. Did you participate in an investigation
4 that started at 1933 Western Avenue here in Las Vegas,
5 Count, Nevada?

6 A Yes.

7 Q And did your participation include being the
8 affiant on a search warrant for 1933 Western Avenue, and
9 for a 1998 Toyota truck?

10 A That's correct.

11 Q And later that day, did you obtain a
12 telephonic search warrant for an additional vehicle?

13 A Yes.

14 Q I show you what's been marked for purposes
15 of identification as State's Proposed Exhibit 24, and ask
16 you to look through that. Does that appear to be a copy
17 of the original search warrant that you obtained, along
18 with its return and the telephonic search warrant and its
19 return?

20 A Yes.

21 MR. KANE: Nothing further, Your Honor.

22 Tender the witness.

23 THE COURT: Cross-examination?

24 MR. KENNEDY: Thank you, Your Honor.

25 / / /

CROSS-EXAMINATION

BY MR. KENNEDY:

Q Sergeant, you were at site on November 16th of '98 where the body of Eric Hamilton was found; is that correct?

A Correct.

Q You actually went there with Detective Buczek; is that correct?

A Yes.

Q And you had an opportunity to review the site of the body and some of the locations where items of evidence were found; is that correct?

A Correct.

Q I show you what's been marked as Defendant's Proposed Z.

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

THE COURT: You may.

Q (By Mr. Kennedy) Could I ask you to take a look at that and see if you recognize that photograph? Is that a photograph of one of the white cigarettes butts found at the body site?

A I don't have an independent recollection of this exact photograph. It appears to me to be consistent with a photograph taken by our crime scene analysts. They

1 use these types of markers.

2 MR. KENNEDY: Your Honor, at this time
3 I would move for the admission of Defendant's Z.

4 MR. KANE: Your Honor, it's from our
5 file and I have no objection.

6 THE COURT: It is received. Thank you.

7 Q (By Mr. Kennedy) In fact, there were two
8 white cigarette butts found near the body; is that
9 correct?

10 A I don't recall, but I'll agree.

11 Q If I represent to you it was in your police
12 report, would you agree to that?

13 A Sure.

14 Q And when I say white cigarette butt, it's
15 apparent from that picture that what we see is the butt
16 end of the cigarette it's not brown; is that correct? It
17 appears white?

18 A Correct.

19 Q Now, you're familiar with what's called an
20 Incident Recall Sheet; is that correct? That's what comes
21 out of dispatch when the officers arrive on a scene and
22 they call in?

23 A A cab printout?

24 Q You call it a cab printout. Well, we have
25 Defendant's C, it's called an Incident Recall Sheet.

1 MR. KENNEDY: Could I approach the
2 witness, Your Honor?

3 THE COURT: You may.

4 Q (By Mr. Kennedy) Have you seen something
5 like this before?

6 A Yes.

7 Q You are there identifying numbers that
8 identify which officer is calling in to dispatch to advise
9 them where they're at?

10 A Yes.

11 Q Do you have a number yourself?

12 A Yes.

13 Q What is that number?

14 A Well, they change from time to time.

15 Q This is back in November of '98.

16 A And they changed for me as a supervisor. As
17 senior sergeants retire, my number decreases. And I'm
18 trying to recall what it would have been at this time.
19 Probably something in the 530 range.

20 Q If I told and on that exhibit there's an
21 indication of LV530H, does that ring a bell?

22 A Yes. That's probably me.

23 Q That would be your identification number?

24 A Yes.

25 Q Did you work as a unit with a Detective

1 Buczek, or were you independent? In other words, would
2 Detective Buczek have his own identifying number as well?

3 A Yes.

4 Q And then is there a policy regarding when
5 you arrive at a scene, do you immediately call in
6 dispatch, or are you supposed to call within a certain
7 time frame when you get to a location?

8 A Generally speaking, when we arrive at a
9 radio we arrive on the radio. There could be a number of
10 factors that would cause that to actually be admitted or
11 not properly recorded.

12 Q Is it possible that you arrive on a scene
13 and you don't immediately call dispatch and say: Hey, I
14 am here and we'll start our work?

15 A It's possible. Unlike the patrol officers,
16 the time limits of our arrival is not really affecting
17 other patrol units or other incidents on the calls. It
18 could happen.

19 Q So it's possible you could be on the site
20 and maybe 20, 30 minutes you think: Maybe I should call
21 dispatch no and let them know I'm here?

22 A It's possible. Also, we can announce on the
23 radio the time when we actually arrive. And we could be
24 covered by another unit and the dispatcher doesn't hear
25 us, or the dispatcher does hear us and doesn't immediately

1 input the information.

2 That report actually comes from the dispatch
3 center, and we primarily use it for just a rough frame of
4 reference; the event, the event number, the date, time and
5 location of the call.

6 Q Now, on November 17th of 1998, you arrived
7 at 1929 Western to conduct an investigation; is that
8 correct?

9 A 1929 Western?

10 Q There's two offices, 1929 and 1933 side by
11 side on Western. Do you recall arriving there?

12 A I recall arriving on Western. I think you
13 might have the hundred block wrong but, yes, we arrived in
14 the afternoon on the 16th.

15 Q Do you have an independent recollection as
16 you sit here today, almost two years later, whether you
17 immediately called dispatch, or whether you waited some
18 time before you called in?

19 A No, I don't.

20 Q And that wouldn't be reflected in your
21 reports, would it?

22 A No.

23 Q You've been a sergeant with homicide how
24 many years again?

25 A Seven.

1 Q And you're aware of all the policies and
2 procedures regarding murder scene investigations and
3 things of that type; is that fair to say?

4 A Sure.

5 Q Is there a policy regarding, say, if you
6 have a hypothetical murder scene, you have some crime
7 scene analysts there, some criminologists. Is there a
8 policy regarding whether they should be left at a site
9 alone, or they should be protected by patrol officers or
10 other individuals?

11 A Our crime scene analysts are armed
12 civilians. Depending on the circumstances and the timing,
13 they may arrive at a scene before we do. They may be
14 called to a scene which they recognize as perhaps related
15 to a homicide scene before any representative of the
16 department is called.

17 They can be left alone to finish their work.
18 Sometimes they are required to do what takes a long time
19 to do. If possible, generally speaking, a patrol officer
20 might be left with them, depending on the manpower
21 situation, staffing considerations, whether a patrol
22 officer might or may not be left with them.

23 Q At the beginning of an investigation when
24 things are just starting at a murder scene, do you think
25 it's a better practice to keep at least one or two patrol

1 officers there? No one else is there from homicide,
2 you're not there, Buczek is not there, would it be a
3 better practice to keep some patrol officer there

4 A The incident you're referring to on Western
5 was initially called in as an unusual circumstance. It
6 wasn't until the crime scene supervisor arrived at the
7 scene. He called me and reported what he had found and
8 what they were observing, and I recognized the address as
9 being potentially connected to the discovery of
10 Mr. Hamilton's body the day prior.

11 With that information, then Detective Buczek
12 and I responded from the office and met probably Crime
13 Scene Supervisor Cabrales and another crime scene analyst
14 who was already there.

15 Q Do you know a crime scene analyst, Dave
16 Ruffino?

17 A Yes.

18 Q Do you recall if he was one of the crime
19 scene analysts?

20 A I believe he was, yes.

21 Q Do you recall if you had a conversation with
22 Analyst Ruffino where he told you that within 10 or 15
23 minutes of arrival he felt this was a murder scene at 1929
24 Western?

25 A Not specifically, but when I got there and

1 looked at what he had also observed, it appeared unique.

2 Q How long would you say you were at that
3 location on that day November 17th of '98?

4 A Quite some time, eight or nine hours.

5 Q Was Detective Buczek with you that entire
6 duration?

7 A I believe so. I think Detective Thowsen
8 left to do an interview. I'm pretty sure Buczek was there
9 the whole time.

10 Q And just so I'm clear, when you arrived the
11 first time you arrived at that site, did Buczek come with
12 you, or in a separate car?

13 A That I don't recall. He may have ridden
14 with me that day, I just don't know.

15 Q And you were shown a copy of the search
16 warrant. The address of 1933 Western, did you have
17 permission to search that address? Absent the search
18 warrant that you obtained, was there permission to enter
19 that premises from Jack Seka?

20 A When we initially arrived and contacted
21 Mr. Seka, he provided a consent to search, yes.

22 MR. KENNEDY: Pass the witness, Your
23 Honor.

24 THE COURT: Anything further?

25 MR. KANE: No, Your Honor.

1 THE COURT: Sir, thank you very much.
2 You're excused. Next witness, please.

3 MR. FATTIG: Tom Thowsen.

4
5 Whereupon,

6 THOMAS THOWSEN,
7 was called as a witness by the State, and having been
8 first duly sworn, was examined and testified as follows:

9

10 DIRECT EXAMINATION

11 BY MR. FATTIG:

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

14 A Thomas D. Thowsen, T-h-o-w-s-e-n.

15 Q How are you employed?

16 A I'm a homicide detective with the Las Vegas
17 Metropolitan Police Department.

18 Q How long have you been with the Las Vegas
19 Metropolitan Police Department?

20 A For a little more than 24 years.

21 Q How long have you been in homicide?

22 A For almost nine years.

23 Q Back on November 17th of 1998, did you have
24 occasion to respond 1933 Western?

25 A Yes, I did.

1 Q About what time did you arrive on the scene?

2 A I believe I arrived somewhere between 2:10,
3 2:30 in the afternoon.

4 Q When you arrived on scene, what was going
5 on?

6 A Sergeant Hefner, my supervisor, and
7 Detective Buczek, my partner at that time, were already on
8 the scene and had been speaking with other officers that
9 were at the scene, as well as looking at evidence that was
10 discovered.

11 Q Was certain items of evidence pointed out to
12 you?

13 A Yes.

14 Q Did you have occasion to contact someone
15 that was associated with that address?

16 A Yes, I did.

17 Q And who was that?

18 A There was only one person there that was
19 associated with that particular address, and that was a
20 person named Jack Seka.

21 Q And did you have occasion to contact that
22 person and later interview him?

23 A Yes, I did.

24 Q Do you see that person here in court today?

25 A Yes, I do.

1 Q Could you please point to him and identify a
2 piece of clothing that he's wearing today?

3 A He's the gentleman seated directly before me
4 wearing the multicolored brown and greyish sweater.

5 MR. FATTIG: May the record reflect the
6 identification of the defendant?

7 THE COURT: It may.

8 MR. FATTIG: Thank you.

9 Q (By Mr. Fattig) Could you describe your
10 initial contact with the defendant that day?

11 A Yes. After speaking with Sergeant Hefner
12 and Detective Buczek, I spoke with Mr. Seka and asked if
13 he would be willing to speak with me, and to accompany me
14 to the Detective Bureau where we could sit and talk and
15 try and see if he could assist us in our investigation.

16 Q And did the defendant agree to do that?

17 A Yes, he did.

18 Q And so did both of you go to the Detective
19 Bureau?

20 A Yes.

21 Q And where is that located at?

22 A At 400 East Stewart Avenue.

23 Q When you got to the Detective Bureau, what
24 happened?

25 A We went to an interview room which is

1 located on the third floor of the City Hall building, and
2 I presented Mr. Seka with a Miranda card. I told him that
3 he was not under arrest, but I would like him to read the
4 card aloud and be apprised of the rights before I spoke
5 with him.

6 Q And did the defendant do that?

7 A Yes, he did.

8 Q And did the defendant indicate he understood
9 his rights?

10 A Yes, he did.

11 Q And the Miranda card that you gave him, what
12 information was on that card?

13 A That would have the event number of the
14 case, it would have a date and time that the card was
15 read, and it would have a signature by the person that is
16 signing it, in this case Mr. Seka. It would be witnessed
17 by myself.

18 Q And does it also have all the rights
19 pursuant to the Miranda decision?

20 A Yes, that's correct.

21 Q And did the defendant actually sign the
22 card?

23 A Yes, he did.

24 Q Did you eventually have an interview with
25 the defendant that day?

1 A I spoke to him for about 30, 35 minutes.
2 And after speaking with him, I asked if he would be
3 willing to give me a taped statement on what he had told
4 me thus far.

5 Q Could you describe what the conversation was
6 like during those 30 to 35 minutes before the tape started
7 to record?

8 A It was merely conversation which I would ask
9 questions of Mr. Seka, and he would provide answers to the
10 questions that I asked.

11 Q Do you remember some of the content of that
12 conversation?

13 A Basically, asking what his connection was to
14 the business itself, his relationship to the person that
15 owned the business, and who, if anybody, besides him had
16 been at that business in recent history.

17 Q And could you describe what the defendant's
18 responses were to those questions?

19 A He had basically explained that a friend of
20 his named Peter Limanni owned the business, and he had
21 come down to help run the business. However, he had not
22 seen Mr. Limanni for several weeks, that he had just
23 vanished and not come back. And he was remaining there
24 himself to try and keep things going on his own.

25 Q Did the defendant have a cellular phone on

1 him?

2 A Yes, he did.

3 Q And did you look at the cellular phone?

4 A Yes, I did.

5 Q Did that come up in the course of the
6 conversation?

7 A Yes. He mentioned that he had a cellular
8 phone, and mentioned the phone number to it.

9 Q Do you remember the phone number to that?

10 A It was a 249 number, and the last four
11 digits I would refer to my report rather than try to just
12 recall from memory.

13 Q Could you do that?

14 A Yes.

15 Q Would looking at one of your reports refresh
16 your recollection as to the phone number?

17 A Yes, it would.

18 Q Could you do that.

19 A The phone number would have been 429-5957.

20 Q And that was the phone number for the phone
21 that the defendant actually had in his possession that
22 day?

23 A That's correct.

24 Q Eventually, did the defendant agree to have
25 portions of the interview tape-recorded?

1 A He agreed to have his statement
2 tape-recorded that he was to give.

3 Q Okay.

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

6 THE COURT: You may.

7 Q (By Mr. Kane) Showing you what has been
8 marked for purposes of identification as Proposed No. 80,
9 a tape cassette, do you recognize that?

10 A Yes. This is a copy of a tape that I made
11 using an original.

12 MR. FATTIG: And at this time, I would
13 move to admit the tape, Your Honor, No. 80.

14 MR. CHRISTIANSEN: No objection, Your
15 Honor.

16 THE COURT: It is received. Thank you.

17 Q (By Mr. Fattig) Also, we have marked as 80A
18 for identification only, transcribed copies of the tape
19 recording. We would ask to pass those to the jurors to
20 allow them to follow along with the tape.

21 THE COURT: How long is the tape?

22 MR. FATTIG: The tape is approximately
23 15 minutes.

24 MR. CHRISTIANSEN: I don't have an
25 objection, Your Honor.

1 THE COURT: Proceed, please.

2 (Whereupon, taped interview was played
3 and copies of transcription were handed to
4 the jury members.)

5 Q (By Mr. Fattig) Detective Thowsen, after
6 the interview concluded on the tape recording, did you
7 have occasion to contact Ken Hefner?

8 A Yes.

9 Q And why did you do that?

10 A I wanted to learn what additional
11 information they may have found at the scene as far as
12 evidence. And I wanted to apprise Sergeant Hefner of the
13 results of the information I had gathered from Mr. Seka.

14 Q And did you ascertain whether or not an
15 arrest could be made at that point?

16 A Yes, I did.

17 Q And what was that result?

18 A Sergeant Hefner was in the process of
19 speaking to Deputy DA David --

20 MR. CHRISTIANSEN: Objection.
21 Speculation.

22 MR. FATTIG: Not offered for the truth,
23 Your Honor. Offered to explain what he did following this
24 in terms of his next contact with the defendant.

25 THE COURT: For that reason it will be

1 received. Go ahead.

2 MR. KANE: Go ahead.

3 THE WITNESS: I expressed that Mr. Seka
4 appeared to be completely inconsistent in what he was
5 saying with evidence that we knew was at the scene. And I
6 inquired as to whether or not we would go ahead and make a
7 probable cause arrest, rather than submitting the case to
8 the DA's office and waiting for a warrant.

9 Q (By Mr. Fattig) And was that decision made
10 by someone?

11 A Yes, it was.

12 Q And was the decision made to not arrest him
13 at that point?

14 A Yes.

15 Q After you obtained that information, did you
16 have additional contact with the defendant?

17 A Yes, I did.

18 Q And what happened in that contact?

19 A I went back into the room and sat down with
20 Mr. Seka, and I explained to him that the statement that
21 he had given me did not fit the information that we knew
22 for facts from the evidence at the scene, and at his place
23 where he lived.

24 And I explained to him that I felt he was
25 being untruthful, and that he had actually killed this

1 individual. At that point, he kind of smiled and sat back
2 in his chair, and said something to the effect of: You're
3 really starting to scare me now. I think you'd better
4 arrest me or take me back home. Do you have enough to
5 arrest me right now?

6 And at that point I explained to him that we
7 would not arrest him at this point, that we would wait
8 until all the forensic evidence was back before any such
9 arrest would be made.

10 Q When you said this individual, who were you
11 referring to in terms of who you thought he was a suspect
12 in killing?

13 A The person that was found on Las Vegas
14 Boulevard south of State Route 146, who was later
15 identified as Eric Hamilton. At the time of the statement
16 with Mr. Seka, we didn't know the person's true name.

17 Q And at that point, did you take the
18 defendant back to 1933 Western?

19 A Yes, I did.

20 Q Did you obtain samples of evidence from the
21 defendant?

22 A Yes, I did.

23 Q What did you obtain?

24 A We had the crime scene analyst take
25 photographs showing his overall face, injuries to his

1 hand. He was fingerprinted, and we obtained a DNA sample
2 via a buckle swab, which is for like a little tooth brush
3 that rubs inside the cheek of your mouth.

4 Q And did you, in fact, take that buckle swab
5 and impound that into evidence?

6 A Yes.

7 Q Did the defendant eventually leave the
8 business there on Western?

9 A Yes, he did.

10 Q And, again, he wasn't under arrest at that
11 point?

12 A No, he was not.

13 Q How did that come about?

14 A While we were back at the scene on Western,
15 I explained to Mr. Seka that he could not go back inside
16 because the scene was being processed by the crime scene
17 analyst.

18 At one point he said that he had a dinner
19 appointment and he needed to take a vehicle and leave.
20 And I explained to him that we were impounding the brown
21 truck that was there as evidence, and that would be
22 processed and he wouldn't be able to take it.

23 At that point, he took out the key to the
24 brown truck and handed it to me, and asked if he could go
25 inside the business to retrieve keys to one of the two

1 vans that were parked in the front. There was a white van
2 and a van with large decals advertising the Cinergi
3 business.

4 I explained that he could not go inside the
5 scene because it was being protected and processed, but if
6 he will tell me where the keys were I would get the keys
7 and bring them out for them.

8 Q Did the defendant do that?

9 A Yes, he did.

10 Q The brown truck you're talking about, is
11 that the Toyota pickup truck?

12 A Yes, it is.

13 Q And did the defendant have the key to that
14 in his pocket?

15 A Yes, he did.

16 Q Did you, in fact, go inside and retrieve the
17 Dodge van keys?

18 A Yes. I retrieved two different sets of keys
19 to Dodge vans.

20 Q And where you retrieved them, were they in
21 the place the defendant described?

22 A Yes. He directed me to an area near a water
23 heater, and that's where I found them.

24 Q When you obtained the keys, did you have
25 additional contact with the defendant out in the back?

1 A Yes, I did.

2 Q Could you explain that?

3 A I went to hand him the keys, and he
4 commented that the key I gave him was to the white van,
5 like he was expecting that he wanted to take the van with
6 the decals on it.

7 And after thinking about it, my feeling was
8 that if he was to try and leave town, he would be easier
9 to find if he was in a vehicle with large decals on it
10 than a solid white vehicle. I asked him if he minded if I
11 look inside the vehicles prior to him taking one of them,
12 and he agreed that that would be okay.

13 Q And did you look inside the van with the
14 Cinergi decals on it?

15 A Yes, I did.

16 Q And what did you see?

17 A I found it to be a van that had a front
18 driver's seat and a front passenger's seat, and the entire
19 back of it was open. You could clearly see some areas
20 that looked like possible blood droplets, or where blood
21 may have been diluted as if it was cleaned out.

22 Q And were you present when any tests may have
23 been conducted on that?

24 A Yes, I was.

25 Q And what was the result of those?

1 A The crime scene analyst did a test, a
2 presumptive test for blood, and the test was positive.

3 Q What happened next?

4 A Next I looked into the solid white van and
5 was unable to find anything that appeared to be of
6 evidentiary connection to any of the cases.

7 Q So did the defendant obtain the keys and
8 then leave in that solid white van?

9 A Yes, he did.

10 Q Did he indicate whether or not he was coming
11 back to the business?

12 A Yes, he did.

13 Q What did he say?

14 A He said that he would be going out to have
15 dinner, and that he would return. Because we had the keys
16 to the business, and we were going to have him come back
17 and we would turn the keys over to him if he was going to
18 be back at a later time when the processing was finished.
19 He agreed that he would come back and take charge of the
20 business.

21 Q And did he, in fact, come back to the
22 business that night?

23 A No, he did not.

24 Q Approximately when was the next time you saw
25 him?

1 A I believe it was March of 1999.

2 Q Could it have been May of 1999?

3 A It could have been. I remember it was
4 several months later in 1999.

5 Q And that was after he was arrested in
6 Pennsylvania?

7 A That's correct, yes.

8 Q After November 17th of 1998, did you have
9 occasion to speak with a person named Taz Kato?

10 A Yes, I did.

11 Q And did you learn of an item of evidence
12 that Mr. Kato had found inside the business there?

13 A Yes, I did.

14 Q And what was that?

15 A He had a note pad that had some information,
16 a list written on it.

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

19 THE COURT: You may.

20 Q (By Mr. Fattig) Showing you what has been
21 marked as Proposed No. 20, would you please look at it and
22 tell me if you recognize it?

23 A This is the envelope that was mailed to me
24 by Mr. Kato.

25 Q And is there anything inside the envelope

1 there?

2 A Yes, there is.

3 Q And what is that?

4 A It is a sheet of paper that is dated
5 Thursday, 11/12/98, that has a list numbered from 1 to 18.

6 MR. KANE: Move for the admission of
7 Proposed No. 20.

8 MR. CHRISTIANSEN: No objection, Your
9 Honor.

10 THE COURT: It is received. Thank you.

11 MR. KANE: Your Honor, there is a
12 stipulation in connection with this exhibit. All parties
13 have signed on it. It is a stipulation of fact:

14 "It is here stipulated by and between the
15 parties hereto as evidence by their signatures affixed
16 below, that John Joseph Seka wrote or printed in its
17 entirety the original document admitted in evidence at
18 this trial as State's Exhibit 20."

19 MR. CHRISTIANSEN: That's correct, Your
20 Honor.

21 THE COURT: Very good. Thank you.

22 Q (By Mr. Kane) Your partner back then was
23 Jim Buczek?

24 A That's correct.

25 Q What is Jim's P number?

1 A 3702.

2 MR. FATTIG: Pass the witness, Your
3 Honor.

4 THE COURT: Cross-examination?

5 MR. CHRISTIANSEN: Thank you, Your
6 Honor.

7

8 CROSS-EXAMINATION

9 BY MR. CHRISTIANSEN:

10 Q Good afternoon, Detective Thowsen.

11 A Good afternoon.

12 Q Detective, I have quite a few questions to
13 follow up on what Mr. Fattig just did, and I imagine we're
14 not going to finish today, but we'll get started.

15 Detective Thowsen, you've been a homicide
16 detective for many years now, correct?

17 A Almost nine.

18 Q And when homicide detectives get assigned to
19 a particular homicide, you guys divide up the duties. One
20 person takes the scene or scenes, as it may be, and one
21 person takes the witnesses?

22 A That is correct.

23 Q And in this particular case, it's true that
24 you were assigned, or took on the duty of taking the
25 witnesses?

1 A Yes. It's a rotating basis, actually.

2 Q So you alternate?

3 A Yes.

4 Q So half the time back in 1998, Detective
5 Buczek would get the witnesses, and half the time you
6 would get the witnesses?

7 A Yes.

8 Q Do the witnesses typically take more work
9 than the crime scene?

10 A It's hard to say. Some scenes are very
11 complex. Sometimes there's only one witness, sometimes
12 it's the opposite.

13 Q You had a variety of witnesses in this case;
14 is that correct?

15 A That's correct.

16 Q And you had to go and you did half a dozen
17 or better taped statements. Does that sound close enough?

18 A That sounds close, yes.

19 Q Let's start off on the day you were called
20 to the scene of John Lumber Doe, who we later learn is
21 Eric Hamilton. That's November 16th of 1998; is that
22 correct?

23 A That's correct.

24 Q And your call to the desert somewhere south
25 of Las Vegas on Las Vegas Boulevard where a black male

1 adult is laying prone, face-down some probably 30 to 50
2 feet off the side of the road, and covered with sort of a
3 lattice shape of different pieces of wood, correct?

4 A Yes.

5 Q And that individual is wearing what appears
6 to be a gold and jeweled rings on one of his fingers,
7 correct?

8 A I don't specifically recall the jewelery.

9 Q If I told you that we've had ID techs in
10 here who have identified the gold ring Mr. Hamilton had on
11 his finger as being on his finger that morning, would you
12 have any reason to disagree?

13 A No, I would not.

14 Q As well on that individual was a piece of
15 paper on one of the pant pockets, I believe, that had the
16 name Jack on it, and the phone number that you've given
17 the jury today the one that went back to Jack Seka,
18 correct?

19 A That's correct.

20 Q Now, one of the charges in this case is
21 robbery as it pertains to Mr. Hamilton.

22 Is that a correct statement?

23 A That's a correct statement.

24 Q And being a homicide detective for the
25 number of years you have, you understand that robbery is

1 the forceful taking of property from another person,
2 correct?

3 A That's correct.

4 Q Did you know that Mr. Hamilton was arrested
5 and placed in the City Jail on November the 6th, 1998?

6 A I knew of some of his arrests in the past.
7 I don't recall, specifically, that date or circumstances.

8 MR. CHRISTIANSEN: Judge, may I
9 approach?

10 THE COURT: You may.

11 MR. CHRISTIANSEN: For the record, I
12 provided the State a copy of these documents that I just
13 received late yesterday afternoon.

14 MR. KANE: Acknowledged.

15 THE COURT: Thank you.

16 Q (By Mr. Christiansen) You're familiar with
17 booking sheets and sheets kept in detention centers about
18 how long somebody is kept, and what their name is, and
19 things of that like, correct?

20 A Yes.

21 Q If I handed you a group of such sheets
22 related to the November 6th arrest of Mr. Hamilton, could
23 you perhaps answer some questions?

24 A Certainly.

25 MR. CHRISTIANSEN: May I approach,

1 Judge?

2 THE COURT: Yes.

3 Q By Mr. Christiansen) Handing you what's
4 been marked for identification purposes Defense Proposed
5 Exhibit AA. See if you can take a look at that and tell
6 me what it appears to be?

7 A This appears to be an arrest of an
8 individual on November 6th, 1998 at 10:25 in the evening,
9 where he was booked as a John Doe.

10 Q What does it mean when somebody is booked as
11 a John Doe?

12 A It means that they have no identification
13 and are not providing an actual name of who they are.

14 Q Why is it twofold: A, no identification, and
15 they are unwilling, or unable, I guess at times if
16 somebody was hurt, to give their name?

17 A That's my understanding, yes.

18 Q Would you flip the page there, if you would,
19 and I'm not interested in the underlying facts. It
20 appears that he was arrested on a trespass charge; is that
21 correct?

22 A Yes.

23 Q And another charge was false information to
24 a police officer?

25 A Yes.

1 Q And those are both by their event number,
2 November the 6th, 1998?

3 A That's correct.

4 Q I'm showing you what's about ten pages down
5 of that, for counsel's purposes, a piece of paper that
6 came from the Las Vegas City Jail. Does that reflect when
7 it was Mr. Hamilton was released from the City Jail?

8 A It says Thursday, November 12th at 1915,
9 which will be 7:15 in the evening.

10 Q So he was released four days before he was
11 found, correct?

12 A Correct.

13 Q And I'm showing you now the following page.
14 It appears to be a booking photo. Does that seem to
15 indicate that might be Mr. Hamilton?

16 A Yes, it does.

17 Q It looks like Mr. Hamilton?

18 A Yes.

19 Q And is he still listed here as John Doe in
20 the booking photograph?

21 A Yes; without the top portion.

22 Q At some point it appears that he's able to
23 be identified as Eric Hamilton by the City Jail?

24 A It appears that way.

25 Q Whether he gave it, or fingerprints

1 identified it, I can't seem to tell on here. When
2 somebody is taken into custody, is an inventory taken of
3 what they have on their person?

4 A Yes.

5 Q And is that to make sure that when somebody
6 is released, they get back what they had?

7 A Yes.

8 Q Look on that piece of paper and see if you
9 can tell for me if that is the inventory of John Doe,
10 which is later identified to be Eric Hamilton?

11 A That's what it says, yes.

12 Q Does he have a wallet when he is booked?

13 A Looking at the line they use, I understand
14 that would be a no.

15 Q Does he have any money, any currency?

16 A It does not appear to be, no.

17 Q And it appears that he does not have any
18 jewelry either when he was booked on November the 6th,
19 1998?

20 A No.

21 Q So you don't get money and/or jewelry in
22 any of the jails here in Las Vegas, do you?

23 A Not that I'm aware of.

24 Q So when he was released November the 12th,
25 he didn't have a wallet, currency, or any jewelry on

1 November the 12th at 7:00-something p.m.?

2 A Based on that document, no.

3 Q Does it also show here that Mr. Hamilton
4 used multiple names and social security numbers?

5 A According to the City Hall information, the
6 City Jail information, yes.

7 Q Now, in fairness to you, Detective, this is
8 the first time you've seen this material, correct?

9 A Correct.

10 Q In fact, during your investigation, you
11 never went and obtained this on your own?

12 A Not the City Jail information, no.

13 Q In connection with Mr. Hamilton, I'm going
14 to try and go one to the other so we stay focused. You
15 had occasion to interview by telephone his sister; is that
16 accurate?

17 A Yes.

18 Q And a cousin, a gentleman by the name of
19 Carl Bell?

20 A That's correct.

21 Q And the information you received from the
22 sister was that Mr. Hamilton had been a paranoid
23 schizophrenic in California?

24 A Yes.

25 Q And that he had been institutionalized at

1 some point in time?

2 A Yes.

3 Q And that he had at some point left
4 California to come to Las Vegas to try to get a clean
5 start, so to speak?

6 A That is correct.

7 Q And you spoke to Carl Bell, his cousin, and
8 Mr. Bell told you, and the sister I think told you this as
9 well, that Mr. Hamilton had a drug problem?

10 A Yes.

11 Q And that he had some problems in LA that he
12 was trying to get away from coming here? Mr. Bell told
13 you that information?

14 A That's correct.

15 Q And Mr. Bell told you that he, in fact,
16 brought Mr. Hamilton here, and they were staying together
17 at the Downtowner Hotel sometime around October 25th,
18 1998?

19 A I don't believe they were staying together.
20 He just had got the room for Mr. Hamilton.

21 Q There came a time when in trying to identify
22 Mr. Hamilton you sort of back-tracked yourself to the
23 Downtowner Hotel, correct?

24 A Correct.

25 Q There was no entry for Eric Hamilton at that

1 hotel, was there?

2 A No, there was not.

3 Q Was that an entry for Carl Bell at that
4 hotel?

5 A No, there was not.

6 Q Where is the Downtowner Hotel?

7 A It's just off of Fremont Street into the
8 north, and a few blocks east of Las Vegas Boulevard.

9 Q A high drug traffic area?

10 A Yes.

11 Q And, in fact, in one of his pockets,
12 Mr. Hamilton had drug paraphernalia, some type of scouring
13 pad and part of a hanger, correct?

14 A I believe that's correct.

15 Q Now, you understand, do you not, that
16 robbery is one of the aggravators that the State is
17 alleging makes this a capital case?

18 A Yes.

19 Q And you have no evidence that Mr. Hamilton
20 on the 16th of November, or the 15th of November, 1998,
21 had any money or other valuable items on his person, do
22 you?

23 A I have no evidence of that, no.

24 Q And, in fact, I've just shown you evidence
25 completely to the contrary, have I not?

1 A That's correct.

2 Q And the only item it would appear of value,
3 that being the ring, was left on Mr. Hamilton where his
4 body was found November the 16th, 1998?

5 A That's correct.

6 Q You had additional witnesses, and I'm going
7 to try and go through them with you, one of which was a
8 gentleman by the name of Kevin Banks, is that correct?

9 A Yes.

10 Q Kevin Banks was an individual who walked
11 into a police substation and provided a written voluntary
12 statement telling one of the desk sergeants at the
13 substation what he had seen November 16th, 1998, correct?

14 A That's correct.

15 Q And did you go out and take a taped
16 statement from Kevin Banks?

17 A No, I did not.

18 Q And you had a valid, or a photocopy of a
19 valid driver's license of Mr. Banks, correct?

20 A Yes, I did.

21 Q You had a local address?

22 A Yes.

23 Q You had a local place of business?

24 A Yes, I did.

25 Q And Mr. Banks was never interviewed by you

1 our anybody that you directed to go and interview him in
2 concert with this investigation?

3 A Not after our contact with Mr. Seka, no.

4 Q Mr. Banks told you that sometime the night
5 before the 16th --

6 MR. FATTIG: Calls for hearsay, Your
7 Honor.

8 MR. CHRISTIANSEN: It's not for the
9 truth of the matter, Your Honor. It's similar to the
10 State. I'm going to ask what the officer did as a result
11 of the information he received, if anything.

12 MR. FATTIG: He already testified he
13 did nothing regarding this particular witness.

14 THE COURT: Is that a fact?

15 THE WITNESS: That's correct, Your
16 Honor.

17 THE COURT: What would be the purpose?

18 MR. CHRISTIANSEN: Judge, the purpose
19 is, it's completely opposite of what the other evidence is
20 and it wasn't followed up on. And I just think the jury
21 is entitled to know what it was.

22 THE COURT: Do you want to question
23 this officer as to why he didn't follow up on something?

24 MR. CHRISTIANSEN: Yes, sir.

25 THE COURT: Approach the bench, please.

1 (Whereupon, counsel conferred with the Court.)

2 THE COURT: I'm going to allow you to
3 answer the question, not for the truth of the matter
4 asserted. Proceed, please.

5 Q (By Mr. Christiansen) Detective Thowsen,
6 you, in the course of your investigation, had an
7 opportunity to review the voluntary statement given by
8 Kevin Banks, correct?

9 A Yes, I did.

10 Q And, in fact, in one or more of the
11 officer's reports you did, you summarized that statement?

12 A Yes, I did.

13 Q And that statement -- and I don't intend to
14 quote the whole entire thing, said that Mr. Banks was
15 driving at this location where Mr. Hamilton's body is
16 found, and sees a brown van stopped on the side of the
17 road about the evening before the body is found, correct?

18 A That's not correct.

19 MR. CHRISTIANSEN: Can I approach,
20 Judge? And maybe he can better summarize it than me.

21 THE COURT: Go ahead.

22 MR. CHRISTIANSEN: Summarize for the
23 jury, if you would, what Mr. Banks put in his statement?

24 THE WITNESS: What Mr. Banks basically
25 said is, that when he was leaving work, I believe it was

1 approximately five miles from the Lake Mead intersection,
2 which is three miles away, that he sees this vehicle and
3 it was about 1:20 in the morning.

4 Q (By Mr. Christiansen) Okay. And that's on
5 the same street that we're talking about, correct?

6 A That's correct.

7 Q And you thought that since he said it was
8 five miles and that was inconsistent, you shouldn't follow
9 up and talk to the gentleman and see if maybe he was wrong
10 about distance?

11 A Based on all the other information I had in
12 the meantime, and my personal knowledge that six miles
13 from the Henderson cutoff there's a turnoff that goes east
14 into the desert that people, including myself, go to all
15 the time to go shooting, and there are always vans, trucks
16 and other vehicles that are right in that area there, six
17 miles.

18 Q So in your experience, personal as well as
19 professional, there's vans around this area at 1:20 a.m.
20 in the pitch dark shooting?

21 A No.

22 Q But he said there was a van at 1:20 a.m.,
23 right?

24 A That's correct.

25 Q And you did nothing to follow up on this

1 information, correct?

2 A Based on the information that I had and the
3 evidence at hand; no, I did not.

4 Q Now, the one item of value that Mr. Hamilton
5 had on him, or of seeming value, I'm not a jeweler, was
6 the ring, correct?

7 A He had a ring, yes.

8 Q And it's your contention, or the allegations
9 you made in your Declaration for Arrest that he was robbed
10 by Mr. Seka; is that correct?

11 A Correct.

12 Q So after Mr. Seka robbed the gentleman that
13 had no evidence of money on him two days earlier, three
14 days earlier, no wallet, and no other jewelery, he left
15 the one piece of valuable jewelery he had, and put his
16 name with his phone number in his front pocket, and left
17 him in the middle of the desert. That's your contention?

18 A We don't know what money he may have had or
19 other jewelery that was taken, or that was left behind.
20 So, clearly, he had something more than he left the jail
21 with.

22 Q I guess he must have obtained that ring, I
23 agree with you there, because he still had it on him when
24 he was located by Metro, correct?

25 A He must have obtained it, or he may have had

1 it in a bus stop locker. I don't know.

2 Q You've spoken to the jury at length about
3 your impressions, I guess is the correct word for it, of
4 Mr. Seka on November the 17th, and that's a Tuesday, I
5 believe, of November 1998, correct?

6 A Yes.

7 Q Now, is it your understanding that Mr. Seka
8 voluntarily allowed Officers Kroll and Nogues to enter
9 1933 Western, his place of business?

10 A Yes.

11 Q And at the time he allowed them to go into
12 1933, there had been no call from 1933, and 1933 was the
13 subject of no criminal investigation, correct?

14 A Other than it being directly next door to
15 this other scene with all the blood.

16 Q Is that a yes?

17 A That's a yes.

18 Q So after he cooperates and lets those two
19 officers in, he explains to those officers, or answers
20 their questions willingly and voluntarily, correct?

21 A Yes.

22 Q Now, if he had at some point said: I want
23 my lawyer, what happens? You know what happens, right?

24 A Yes.

25 Q What happens?

1 A We don't talk to him.

2 Q And then if we come in here and we have a
3 trial like this, does anybody get to ask you whether or
4 not he asked for a lawyer?

5 A No, they do not.

6 Q He never asked for a lawyer, did he, in your
7 presence? He never asked during your interview for an
8 attorney to stop the interview?

9 A At the time I took the statement, no.

10 Q And, to your knowledge, he didn't do that
11 with Officers Kroll or Noguez as well?

12 A That's correct.

13 Q Now, what time was it, if you recall, that
14 the search warrant for 1933 was secured, I think you said
15 by Detective Hefner?

16 A Sergeant Hefner.

17 Q Sergeant Hefner. Do you recall what time it
18 was in the evening?

19 A It was while I was having my conversation
20 with Mr. Seka, so it would have been sometime after
21 3:00 p.m., I believe.

22 Q Is it your understanding that the search
23 warrant had been secured by the time you got back to 1933
24 with Mr. Seka from the Detective Bureau?

25 A I don't recall, specifically, because it

1 started with the consent to search and went to a search
2 warrant.

3 Q Fair enough. You told Mr. Seka when you
4 brought him back that he couldn't go into 1933 and get the
5 keys himself, correct?

6 A Correct.

7 Q Now, if a search warrant hadn't been
8 secured, that was an incorrect statement, wasn't it?
9 Because absent a search warrant, he had every right to go
10 back in his place of business, right?

11 A When we securing something as a crime scene,
12 then it would be secured until the crime scene has been
13 processed.

14 Q Are you telling me that short of a search
15 warrant -- I'm assuming a search warrant wasn't issued for
16 purposes of this question. When Mr. Seka asked you: Can
17 I go in and get the keys, that you had a legal right to
18 refuse him to go in there?

19 A Short of a search warrant, if Mr. Seka tells
20 me that he's given his consent, I would ask for his
21 cooperation in not going in there.

22 Q Understanding the policies and procedures
23 that officers follow, but I want to know, do you have an
24 understanding as to whether he has a right to go back into
25 that premises absent a search warrant?

1 A My understanding would be, if a person has
2 given their consent to search, then we would search it.
3 If at some point they want to enter that and alter
4 anything, and we believe at that point that there is a
5 probability or it is a scene, then at that point we would
6 freeze it and obtain a search warrant.

7 Q In fact, Jack didn't push the issue. He let
8 you go back in and get the keys you talked about, correct?

9 A That's correct.

10 Q And I think you told the jury today it
11 struck you as odd that he seemed to want to take the van
12 with the big Cinergi decals and the license plate, right?

13 A Yes.

14 Q And you couldn't think of any reason for him
15 wanting to do that, because that's what you put in your
16 reports and that's what you said today, correct?

17 A Well, ideally, if you were an innocent
18 individual, it wouldn't make sense to take that one over
19 the plain one. If you were going to remove evidence, it
20 would make sense.

21 Q I guess I'm confused. That plain van didn't
22 have a license plate, right?

23 A The plane van?

24 Q Correct.

25 A I don't recall off the top of my head.

1 Q I will offer to you, and I will allow you to
2 look in your reports, and in your reports it reflects
3 there's no license plate on the plain van with no decals.

4 A Okay.

5 Q So if following your logic, somebody that is
6 innocent would take a plain van with no decals and no
7 license plate, over one that's easily identifiable and has
8 a license plate. That's what you're telling these folks
9 in the jury?

10 A If they were going out for a dinner, and
11 probably not realizing that there was no plate on it at
12 that time as we walked outside to that area.

13 Q What if they like to advertise?

14 A Then I guess they would take one that had a
15 sticker on it.

16 Q Now, we just got to hear the statement of
17 Mr. Seka, and I'll point you to the page if you want to
18 look, what does he tell you?

19 A That he likes to advertise.

20 Q And so he drives the one with the decals on
21 the side, doesn't he?

22 A Yes.

23 Q So what you have spun for the jury as
24 something a little hinkey, is very much consistent with
25 what he told you in his statement that he drives the van

1 with the decals because he likes to advertise, right?

2 A The only problem with that, is that the air
3 conditioning business was defunct at that point and he was
4 trying to open the cigar store, so there would be no point
5 in advertizing it.

6 Q I just want to know, is that the van he told
7 you he liked to drive?

8 A That's the van he told me that he was
9 wanting to drive that night, yes.

10 Q Now, you've talked about the business being
11 defunct, correct?

12 A Correct.

13 Q And did you ever go check the bank accounts
14 that the various witnesses gave you for Peter Limanni?

15 A I believe we had information from the bank
16 accounts.

17 Q Did your information show that on a regular
18 basis from September through the closure of the accounts
19 in November 2nd of 1998, Mr. Limanni removed money in
20 large sums and on a regular basis?

21 A I don't recall off the top of my head.

22 MR. CHRISTIANSEN: May I approach,
23 Judge?

24 THE COURT: You may.

25 MR. CHRISTIANSEN: Your Honor, these

1 are records I received yesterday in return to a subpoena
2 to the bank accounts of Mr. Peter Limanni.

3 Q (By Mr. Christiansen) Now, Jennifer
4 Harrison told you what bank Mr. Limanni banked at,
5 correct?

6 A Yes. She told us several.

7 Q And one of them was Nevada State Bank, was
8 it not?

9 A I believe so, yes.

10 MR. CHRISTIANSEN: May I approach?

11 THE COURT: You may.

12 Q (By Mr. Christiansen) Detective Thowsen,
13 showing you what's been marked for identification purposes
14 as Defense Proposed Exhibit BB, and ask to you take a look
15 at that and see if I was correct that the bank account was
16 closed November the 2nd, and that prior to that sums of
17 monies were removed for a period of three months until
18 there was no money and there were overdrafts?

19 A Yes.

20 Q That appears to be correct?

21 A Yes.

22 Q Did you run a background check on
23 Mr. Limanni?

24 A Depends what kind of background check that
25 you're referring to.

1 Q Did you find out that Mr. Limanni was a con
2 man?

3 A Basically, yes.

4 Q And that he routinely defrauded people?

5 A Yes.

6 Q Did you find out he declared bankruptcy back
7 east because he had done similar frauds to the one he
8 perpetuated on Mr. Kato?

9 A I don't specifically recall the bankruptcy.

10 Q If I proffer to you that he had filed, would
11 that surprise you in any way?

12 A No, it would not.

13 THE COURT: Counsel, I think with that
14 we might conclude for the day.

15 "Ladies and gentlemen, it is your duty not
16 to discuss among yourselves, or with anyone else, any
17 subject connected with the trial; or read, watch or listen
18 to any report of, or commentary on the trial or any person
19 connected with the trial by any medium of information,
20 including without limitation, newspapers, television and
21 radio; or form or express any opinion on any subject
22 connected with the trial until the cause is finally
23 submitted to you."

24 Again, ladies and gentlemen, I appreciate
25 your punctuality, and I would ask you to be back here at

1 1:00 o'clock tomorrow afternoon. Court's adjourned.

2

3

4 ATTEST: Full, true and accurate transcript of
5 proceedings.

6

7

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MAUREEN SCHORN, CCR NO. 496, RPR

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DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT

February 23, 2001
SHIRLEY B. PARRAGUIRRE, CLERK
BY *Linda Skinner*

THE STATE OF NEVADA,

Plaintiff,

vs.

JOHN JOSEPH SEKA,

Defendant.

LINDA SKINNER DEPUTY

No. C159915
Dept No: XIV

ORIGINAL

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

VOLUME I

February 22, 2001
1:10 p.m.
Department XIV

APPEARANCES:

For the State:

MR. EDWARD KANE
MR. TIMOTHY FATTIG
Deputy District Attorneys

For the Defendant:

MR. KIRK KENNEDY
MR. PETER CHRISTIANSEN
Attorneys-at-Law

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

W I T N E S S I N D E X

2 Page

THOMAS THOWSEN:

EXAMINATION (cont'd.) by Mr. Christiansen

3

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

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

8 (Whereupon the clerk of the court called
9 the roll of the jury.)

10 MS. CLERK: The panel is present, Your
11 Honor.

12 THE COURT: Very good.

13 Good afternoon, Ladies and Gentlemen.

14 Would you swear Detective Thowsen for the
15 day, please?

16
17 THOMAS THOWSEN,
18 having been re-called as a witness, was re-sworn by the
19 clerk of the court and testified further as follows:

20 THE COURT: You may cross-examine him.

21
22
23 EXAMINATION

24 BY MR. CHRISTIANSEN:

25 Q. Good afternoon, Detective Thowsen.

1 A. Good afternoon.

2 Q. I'm going to try and pick up where I left
3 off yesterday and I think one of the last things we
4 talked about was the process by which Jack Seka left in
5 the white van.

6 That's some time in the evening of the
7 17th of November 1998, correct?

8 A. Yes.

9 Q. Yesterday you remember the exchange that
10 you and I had about Mr. Seka telling you, in the
11 voluntary, that he liked to advertise and that's why he
12 drove the Sinergi van with the decals, correct?

13 A. Yes.

14 That's what he said in his statement, yes.

15 Q. You told me that that was troublesome to
16 you because the heating, air conditioning - - and I
17 forgotten the acronym - - HVACR business was defunct,
18 correct?

19 A. Yes.

20 Q. Can you point to me at anyplace in Mr.
21 Seka's statement where he tells you that business is
22 defunct?

23 A. Not in his statement, no.

24 Q. In fact, in his statement he tells you the
25 number, in a number of points, that they are simply

1 expanding into the cigar business?

2 A. He says they are going into the cigar
3 business, yes.

4 Q. As between the two vans, the Sinergi van
5 and I'll call it Sinergi one with the decals, just so we
6 can keep them apart, and the light one with no license
7 plates, did you check and see which one had gas or more
8 gas?

9 A. No, I did not.

10 Q. That could very well be a reason a person
11 might want to take one vehicle over another is fuel,
12 right?

13 A. If they expressed that, yes, I'd say.

14 Q. You never asked him about that, did you?

15 A. He never mentioned it, no.

16 Q. I want to take you now to the day before
17 the Hamilton scene where the John Lumber Doe is found. I
18 think you told the folks that there was specific types of
19 lumber across Mr. Hamilton - - you didn't know his name
20 at the time, but Mr. Hamilton's back; is that right?

21 A. I'm not sure if the information came from
22 me or from other witnesses, but yes, I have knowledge of
23 that.

24 Q. You went to that scene?

25 A. Yes, I did.

1 Q. And that was the day before, early in the
2 morning of the 16th, correct?

3 A. Yes, correct.

4 Q. And there was pine and cedar, I believe,
5 on the back of Mr. Hamilton, correct?

6 A. Yes, that's correct.

7 MR. CHRISTIANSEN: May I approach the
8 witness, judge?

9 THE COURT: You may.

10 BY MR. CHRISTIANSEN:

11 Q. I hand you what's been entered as Defense
12 exhibit T and ask you to take a look at that and I'll
13 tell you that has already been entered into evidence and
14 testified to by Mr. McPhail to be the rear of 1933
15 Western.

16 Does that appear to be consistent with
17 your recollection of what 1933 Western looked like, the
18 rear?

19 A. I don't specifically remember seeing this
20 portion, because that wasn't my responsibility at the
21 time.

22 It may have been there and I didn't look
23 at that particular portion, but I wouldn't dispute Mr.
24 McPhail.

25 Q. You had witnesses, Detectives Buczek and

1 Hefner at the scene?

2 A. Yes.

3 Q. Can you look in that picture and tell if
4 there's both cedar and pine outside?

5 A. I can tell you that the horizontal boards,
6 from looking at a photograph, look like pine. The
7 vertical boards, I couldn't tell you if it was cedar or
8 if it would be like a redwood.

9 Q. If Mr. McPhail testified it appeared to
10 him to be cedar, would you have any reason to disagree
11 with that?

12 A. No, I would not.

13 Q. The crime scene where Mr. Hamilton's body
14 was found, there was a Beck's beer bottle and a cigarette
15 found at that scene; is that correct, a cigarette filter?

16 A. Yes, I believe so.

17 MR. CHRISTIANSEN: May I approach?

18 THE COURT: You may.

19 BY MR. CHRISTIANSEN:

20 Q. Show you what's been entered as Defense
21 exhibits Y and Z.

22 Do those appear to be the cigarette stub
23 or filter as well as the Beck's beer bottle, to the best
24 of your recollection?

25 A. Yes.

1 Q. Okay. Throughout your report you refer to
2 that stub as a Marlboro stub, the filter there in that
3 picture as a Marlboro filter, correct?

4 A. I'd have to see specifically. I've got
5 many reports here.

6 Q. You do.

7 In this case you have, I think by my
8 count, three or four and I can point it out to you or do
9 you recall whether you put Marlboro stubs or Marlboro
10 Lite?

11 A. I actually don't recall.

12 Q. Would it surprise you to know that
13 Marlboro stubs aren't white, that they are brown?

14 A. I am not a smoker so I have no idea what
15 color Marlboro.

16 Q. After you brought him back from the
17 statement and before he was allowed to leave, correct?

18 A. Yes.

19 Q. Jack was a smoker back in November of '98;
20 was he not?

21 A. Yes, I believe he was.

22 Q. And do you recall what kind of cigarettes
23 he was smoking?

24 A. Off the top of my head, I do not.

25 MR. CHRISTIANSEN: May I approach?

1 THE COURT: You may.

2 BY MR. CHRISTIANSEN:

3 Q. Show you what's been entered as Defense
4 exhibit Q. Does that appear to be a picture of Jack Seka
5 on November 17, 1998?

6 A. Yes, it does.

7 Q. And in his belt area there is a pack of
8 cigarettes, correct?

9 A. That's correct.

10 Q. What kind of cigarettes are they?

11 A. It appears to be Marlboro, with the red
12 packaging.

13 Q. In one of his hands there's even a lit
14 cigarette that appears; is that correct?

15 A. That's correct.

16 Q. What color is the filter on that
17 cigarette?

18 A. I think it's tan, but it's hard to say if
19 it's the filter or his finger.

20 Q. If I showed you a pack of Marlboro
21 cigarettes and all the filters were tan, would that clear
22 it up for you?

23 A. That would clear it up, yes. I wouldn't
24 dispute that.

25 Q. So the type of cigarettes Mr. Seka was

1 smoking, 36 hours after the Hamilton body was found, was
2 different than the type of cigarette filters surrounding
3 or around the body of Eric Hamilton, correct?

4 A. Than the one filter, yes.

5 Q. Yes.

6 Now, are you familiar or do you have have
7 knowledge that there were fingerprints identifiable,
8 latent fingerprints found on the boards on top of Mr.
9 Hamilton?

10 A. Yes.

11 Q. And I'll proffer to you that Mr. Boyd, we
12 were just discussing, Mr. Boyd testified that on three of
13 those boards there were prints from Peter Limanni and
14 Jack Seka, not on all three, but in between the three.

15 Does that comport to your knowledge?

16 A. Yes.

17 Q. He also testified that there were two
18 boards with identifiable latent fingerprints on the top
19 of them that were not matches to any of the known
20 fingerprints he had, Mr. Seka's, Mr. Hamilton's or Mr.
21 Limanni's.

22 Does that sound familiar to you?

23 A. It's not familiar to me, but that's not
24 something I would remember, if it was not specific to a
25 person.

1 Q. Did you ever ask Mr. Boyd to run any of
2 the fingerprints he obtained off of the boards through
3 AFIS?

4 A. They normally do that on their own. If
5 they have an AFIS quality fingerprint they will do that.
6 That's what they do.

7 Q. Same question for the bottle.

8 There's some fingerprints found on that
9 bottle that's depicted in one of those pictures before
10 you and, I'm sorry, maybe you can help me out on the
11 exhibit.

12 A. Exhibit Y.

13 Q. Thank you.

14 A. You're welcome.

15 Q. In exhibit Y there is a Beck's bottle.
16 Some fingerprints are found on that bottle.

17 Do you know whether Mr. McPhail ever ran
18 that bottle or the prints removed from it through AFIS?

19 A. I do not know if he did or not.

20 Q. It's your understanding in terms of jobs
21 in processing a scene that if he would have obtained an
22 AFIS quality print he should have, on his own, run it
23 through that computer system?

24 A. That's my understanding, yes.

25 Q. It's not your understanding that you are

1 supposed to direct the fingerprint examiner to run
2 certain fingerprints through AFIS.

3 You think they should do it on their own,
4 if the quality of print is there?

5 A. If the quality of print is there and the
6 case is a homicide case, yes.

7 Q. Did you ever obtain a set of fingerprints
8 for comparison purposes from either Mr. Kato or Mr. Toe,
9 the Japanese investors in Las Vegas?

10 A. No.

11 Q. Did you ever obtain or cause to be
12 obtained a reference sample of DNA, like a buckle swab or
13 something of that nature, from either of those two
14 individuals?

15 A. No, I did not.

16 Q. And the - - not doctor - - Mr. Welch
17 testified that he was unable to obtain DNA off that
18 cigarette butt filter found near Mr. Hamilton's body.

19 You asked him to run that test; did you
20 not?

21 A. Correct.

22 Q. You knew that he was unable to obtain DNA
23 on that particular filter?

24 A. Yes.

25 Q. You've been involved in cases where DNA

1 has been pulled off of filters and you've in fact
2 obtained convictions based upon that DNA, correct?

3 A. Yes.

4 Q. One of them being the Donte Johnson case,
5 correct?

6 A. Yes.

7 Q. That was a vital piece of evidence where
8 Mr. Welch or somebody in his office was able to take a
9 cigarette butt, pull DNA off and prosecutors were then
10 able to use it?

11 A. Yes, if DNA is present.

12 Q. Now, prior to your arrival and even prior
13 to Mr. Hefner - - Sergeant Hefner and Detective Buczek's
14 arrival there were two patrol officers that arrived,
15 Patrol Officer Nogues and Patrol Officer Kroll, and 1929
16 Western, the area where the glass is broken up, correct?

17 A. Correct.

18 Q. Both of those individuals walked around
19 the scene, talked to Mr. Seka, went into 1929 and even
20 talked to people in the back area; is that correct?

21 A. That is correct.

22 Q. And - - keep calling him Mr. - - Officer
23 Nogues found an individual in the back area who told them
24 that there were constantly parties going on at 1933; is
25 that correct?

1 A. That's correct.

2 Q. That's contained in his report that was
3 dictated December 5 and transcribed December 10th; that
4 is accurate?

5 A. I don't know when it's transcribed, but I
6 have a copy of his report and that is correct.

7 Q. And both Officer Nagues and Kroll prepared
8 those reports after you called them up and told them "You
9 guys need to do reports about what happened November
10 17th", correct?

11 A. Correct.

12 Q. Do you typically call officers, patrol
13 officers up and say "You guys forgot to do a report. Do
14 one."?

15 A. We don't normally tell people that they
16 forgot to do a report.

17 What we will sometimes do is learn that an
18 officer has particular information that we didn't have on
19 our own that is needed to be stored for court at a later
20 time, such as this.

21 Q. Fair enough.

22 Did you ever cause to be subpoenaed the
23 records for that entire strip mall as to who was leasing
24 the various places in the mall?

25 A. I do not believe so, no.

1 Q. Are you familiar with two doors down was a
2 telemarketing room with 30 or so employees?

3 A. No.

4 Q. Would it surprise you to know that there
5 was a federal indictment that came down as to that
6 telemarketing room?

7 MR. FATTIG: Objection. Relevance.

8 THE COURT: What is the relevance?

9 MR. CHRISTIANSEN: All suspects that
10 weren't investigated by the officer.

11 THE COURT: What makes them a suspect?

12 MR. CHRISTIANSEN: May we approach, judge?

13 THE COURT: Yes.

14 (Discussion off the record.)

15 THE COURT: Thank you.

16 Pursue another area, please.

17 BY MR. CHRISTIANSEN:

18 Q. As we sit here today you can't tell
19 anybody in the jury who occupied every space in that one
20 office building, correct?

21 A. That's correct.

22 Q. Okay. Now, Mr. Seka also told Officer
23 Nogues that he hadn't been staying at 1933, but with a
24 friend in Spanish Trails, correct?

25 That's in Officer Nogues's report; is it

1 not?

2 MR. FATTIG: Objection.

3 Mischaracterization of the report.

4 THE COURT: In what regard?

5 MR. CHRISTIANSEN: I don't know if he can
6 answer for the detective.

7 THE COURT: Is it in the report or isn't
8 it?

9 MR. CHRISTIANSEN: I believe it is, judge.
10 Detective Thowsen can tell me, if he
11 knows.

12 THE WITNESS: I don't recall that portion,
13 Your Honor. If somebody has it, I'd like to look at it.

14 BY MR. CHRISTIANSEN:

15 Q. If he had testified here in Court that was
16 his recollection of a conversation he had with Mr. Seka
17 would you have any reason to disagree with him?

18 A. If the officer testified in Court I
19 wouldn't have any reason to disagree with what he said,
20 no.

21 Q. You also found during the course of your
22 investigation information about a white van being in
23 Spanish Trails from a woman known as Marilyn Mignone; is
24 that right?

25 A. That's correct. I think that's correct.

1 Q. She's listed as one of the witnesses in
2 your officer's report; is that accurate?

3 A. No.

4 She was listed as a person contacted. She
5 was not a witness.

6 Q. She told you that there was an individual
7 or she was looking for Peter Limanni, correct?

8 A. She was trying to find someone else and
9 trying to find Peter Limanni and where to locate the
10 other person she was looking for.

11 Q. She told you that a white van had been at
12 Spanish Trails about two weeks before you interviewed her
13 at that individual's house and you interviewed her on the
14 2nd of December; is that correct?

15 A. Correct.

16 It would have been the 18th of the month
17 before that she was referring to.

18 Q. Approximately two weeks before would be
19 the 18th?

20 A. Approximately two weeks before.

21 Q. Okay. You had some discussion yesterday
22 with Mr. Fattig about Mr. Seka fleeing or not coming back
23 to 1933 Western.

24 Do you remember that discussion?

25 A. I remember that was discussed, yes.

1 Q. Did Jack Seka have a legal obligation to
2 go back to 1933 Western after you released him?

3 A. He had responsibility for a small dog
4 there that he was taking charge of that would have been
5 locked in the building without food or water, if he
6 didn't return.

7 Q. Now, while that's an emotional tie,
8 possibly, is that a legal responsibility?

9 A. I think it is a legal responsibility, yes.

10 Q. Was it his dog?

11 A. He was caring for it. He said it was
12 Peter Limanni's dog and he was caring for it.

13 Q. Let's be more specific so I don't have to
14 deal with an animal control officer.

15 Pursuant to your authority as a homicide
16 detective could you have arrested Mr. Seka for not coming
17 back to 1933?

18 A. No.

19 Q. In fact, you were instructed that you
20 didn't have enough evidence to arrest Mr. Seka and you
21 had to await forensic results, correct?

22 A. That's correct.

23 Q. And that came from deputy, chief deputy DA
24 David Wall, correct?

25 A. That came at point when he knew about half

1 of the evidence, yes.

2 Q. And the forensic evidence - - I want to be
3 complete here - - so the forensic evidence in this case
4 is DNA evidence, fingerprint evidence, bullet evidence,
5 firearms evidence, I think is the correct way to talk
6 about that, and the tire evidence, correct?

7 A. Correct.

8 Q. Am I leaving anything out?

9 A. The two vehicles themselves, the truck and
10 the van.

11 Q. And those deal with the DNA and
12 fingerprints, correct?

13 A. Yes.

14 Q. In fact, you didn't procure any type of
15 warrant for the arrest of Mr. Seka until nearly March,
16 the very end of February the following year, correct?

17 A. That sounds accurate, yes.

18 Q. So that would have been some three months
19 that Mr. Seka had no obligation to either be in Las Vegas
20 nor anywhere else in this country because he had no
21 warrant for his arrest and had no problems, legal
22 problems here in Las Vegas with you, correct?

23 A. I wouldn't exactly say he had no legal
24 problems. We were just awaiting the forensic work to be
25 completed.

1 Q. I'll be specific.

2 Was there a warrant for his arrest arising
3 out of the investigation that you were involved in at
4 1933 or 1925 Western prior to February 26 or 27th, 1999?

5 A. I'm not exactly sure on the date, but
6 prior to that area, no, there was not.

7 Q. If your declaration for an arrest warrant
8 is dated February 26, 1999 and signed by yourself, there
9 would have been no warrant prior to that, correct?

10 A. That's correct.

11 Q. All right. So he was - - as far as you
12 were concerned in your investigation, he was free to go
13 anywhere he wanted in this country?

14 A. Yes, he was.

15 Q. And, in fact, in his statement Jack told
16 you that he had been back east to see his daughter for
17 her birthday between October 29 and November 3rd, right?

18 A. Yes.

19 Q. And he told you his parents' address back
20 in Philadelphia, correct?

21 A. He told me a couple addresses.

22 I don't recall specifically if it was
23 parents or who, but he did give me some addresses back
24 there.

25 Q. He told you he was from Philadelphia; is

1 that correct?

2 A. That's correct.

3 Q. That's where he was arrested, in
4 Philadelphia, correct?

5 A. Correct.

6 Q. Did you have any contact with him,
7 telephonically, after you obtained this arrest warrant
8 that said "Hey, Mr. Seka, we have an arrest warrant for
9 you now. Would you come back?"

10 A. I don't believe so, no.

11 Q. Now, prior to - - when he's released,
12 you're instructed by the chief deputy to wait for more
13 evidence, correct?

14 A. Correct.

15 Q. And then he's released, Jack is released?

16 A. That's correct.

17 Q. And some two and a half months later you
18 sign a declaration for an arrest and an arrest warrant is
19 procured, correct?

20 A. Correct.

21 Q. In order to get an arrest warrant you need
22 probable cause; is that correct?

23 A. That is correct.

24 Q. And that is a certain amount of evidence
25 far less than what you need to obtain a conviction in

1 front of a jury, correct?

2 A. I wouldn't say it's far less, but it is
3 less than what you would need for a conviction.

4 Q. It's less than the amount of evidence
5 needed to even send somebody to a jury trial after a
6 preliminary hearing, right?

7 It's less than a slighter margin at
8 preliminary hearing?

9 MR. FATTIG: Objection. This calls for a
10 conclusion.

11 MR. CHRISTIANSEN: If he knows.

12 I don't think it calls for a legal
13 conclusion. He's a homicide detective.

14 THE COURT: Either it does or doesn't. He
15 either knows or he doesn't.

16 Do you know the answer to the question?

17 THE WITNESS: Not specifically, Your
18 Honor.

19 THE COURT: Next question.

20 MR. CHRISTIANSEN: I'll move on.

21 BY MR. CHRISTIANSEN:

22 Q. This area on Western where 1933 and 1929,
23 that strip mall is located, that is a high crime area?

24 A. I'm not exactly sure what I would base
25 that on. I can base it on how many homicides I've had

1 down there.

2 I'm not sure that I would know that to be
3 any particularly higher than other business districts,
4 just from personal knowledge.

5 Q. Fair enough.

6 Did you investigate any other person as a
7 possible suspect in the homicide of Eric Hamilton besides
8 Mr. Seka?

9 A. I tried to look at any evidence that would
10 come forward or that we could unturn that would point to
11 anybody and nothing pointed to anybody other than Mr.
12 Seka.

13 Initially, there was a possibility perhaps
14 Mr. Limanni may have been involved, if he was actually
15 hiding and not deceased, but when additional evidence was
16 discovered at that scene we no longer felt that, in the
17 absence of Mr. Limanni without his dog, we felt that he
18 was a victim as well.

19 So that left Mr. Seka.

20 Q. You made that determination about Mr.
21 Limanni what day, November 17th, when - -

22 A. That was when an initial belief would
23 start and then that was built on as more and more
24 evidence came forward and more people were interviewed.

25 Q. And prior to coming to Court today you - -

1 or yesterday - - I apologize - - you didn't know anything
2 about Eric Hamilton being in jail and not having any
3 money or anything on his person some three days before
4 his body was found, right?

5 A. I knew that he was in jail.

6 I didn't know what paperwork he had when
7 he signed out of jail that you presented to me yesterday
8 in Court, no.

9 Q. You spoke yesterday about some feelings
10 you had related to Mr. Seka's demeanor. I think you said
11 he appeared at one point smug, to you, or you might have
12 used the word cocky. I can't remember.

13 Do you remember that?

14 A. Cocky sounds familiar. Smug doesn't.

15 Q. Prior to November 17th you had never met
16 Jack Seka, correct?

17 A. No, I had not.

18 Q. And you never had a chance to observe his
19 demeanor in any type of social setting, correct?

20 A. No.

21 Q. And you'd agree with me that there are a
22 number of people in this society that police officers
23 such as yourself make uncomfortable, correct?

24 A. I would agree with that.

25 Q. And it's very possible that somebody who

1 is uncomfortable becomes more uncomfortable when they are
2 asked to go down to homicide or to the bureau and give a
3 statement, correct?

4 A. That would be correct.

5 Q. And then when somebody such as yourself, a
6 homicide detective with all your years of experience,
7 says "I don't believe you. I think you killed another
8 person", that could cause an individual to become even
9 more uncomfortable, right?

10 A. That might make them uncomfortable, yes.

11 Q. And you don't suppose to tell this jury
12 that you knew Jack Seka and how he reacted and that his
13 reaction was somehow based on your experience with him,
14 inconsistent with his general personality?

15 A. I can only say that based on my experience
16 with many, many suspects and many, many witnesses over
17 the years that that's what I felt from his behavior.

18 Q. And just so we're clear, that's from your
19 experience with other people, not with Jack Seka?

20 A. That's correct.

21 Q. Okay. Now, you caused or at some point
22 you were able to obtain contact with the family of Peter
23 Limanni; is that accurate?

24 A. Yes.

25 Q. You instructed, I think it was his sister,

1 Diane, and I'm going to butcher her last name, Tomzivich
2 (phonetic) - -

3 A. It's a difficult one and I would do as
4 badly.

5 Q. - - to file a missing person's report?

6 A. Correct.

7 Q. And she did that on or about the 2nd of
8 December 1998, correct?

9 Does that sound right?

10 A. I don't remember the specific date.

11 MR. CHRISTIANSEN: May I approach?

12 THE COURT: You may.

13 BY MR. CHRISTIANSEN:

14 Q. I'm showing you - - you tell me if it
15 seems you recognize that document or have seen something
16 like it before.

17 A. The report date in this box here is
18 December 1, 1998. The event number which also reflects
19 the date is 11.20.1998.

20 Q. The event number would reflect what date,
21 the date that you talked to her or the date she called
22 in?

23 A. The date the event was created.

24 Q. Then in your report it should indicate In
25 relation to your interview of her what day you talked to

1 her, right?

2 A. Yes.

3 Q. And would you mind looking up - - if I
4 asked you to look at your report would it help you
5 refresh your recollection?

6 A. Yes, it would.

7 Q. Would you please do it for me? It's in
8 the big notebook, I imagine.

9 Maybe I can help you out. If you look on
10 page 15 of 20 of your 11.16 - - I'm sorry, your 12.10.98
11 report, it's about the third paragraph from the bottom.

12 It might be even a little bit before
13 there.

14 A. It's actually on the day before. It's on
15 December 1, I spoke with her. That's on page 14.

16 Q. Thank you. I was pointing.

17 A. So I'd say yeah, the December 2nd date
18 would be accurate for that report.

19 Q. According to your support of a declaration
20 an arrest warrant, you believed Mr. Limanni was killed on
21 or about November 5, 1998; is that accurate?

22 A. That's accurate, yes.

23 Q. Now, you spoke to his sister on December
24 1, 1998 and prior to that nobody in his family filed a
25 missing person's report; is that correct?

1 A. That's correct.

2 Q. You spoke to his girlfriend, Jennifer
3 Harrison, December 7, 1998 and prior to that she had not
4 filed a missing person's report; is that correct?

5 A. That's correct.

6 Q. And it was Ms. Harrison's belief that he
7 had simply up and taken off, gone to Lake Tahoe or
8 something of that nature, right?

9 A. Something of that nature, yes.

10 Q. If Mike Cerda, the property manager, had
11 seen Peter Limanni alive with a good looking blonde
12 female on the afternoon of November 6th, 1998, that would
13 be inconsistent with your beliefs about when this
14 individual was shot?

15 A. I think my report indicated that I
16 believed that he disappeared on the 5th or 6th and I
17 believe Mr. Cerda wasn't specific as to the exact date
18 that he saw Mr. Limanni and spoke with Mr. Limanni when
19 he was supposedly going to a convention.

20 Q. Mr. Cerda - - the judge had taken Judicial
21 Notice of the days of November 1998, and I'll tell that
22 you November 6, 1998 was a Friday.

23 Mr. Cerda testified here that he
24 remembered specifically Friday, the 6th, seeing Peter
25 Limanni alive and well with a good looking blonde going

1 purportedly to a cigar show.

2 Is that inconsistent with your
3 recollection?

4 A. I believe when I spoke with him on the
5 17th, Mr. Cerda was uncertain of the exact date.

6 Q. You think your report or your declaration
7 for - - in support of an arrest warrant says the 5th or
8 the 6th is when?

9 A. Whether the declaration does or the - - my
10 declaration I don't think hinges solely on Mr. Cerda's
11 information, but on information from witnesses throughout
12 the entire case, as well as physical evidence.

13 Q. If I told you it said on or about November
14 5th would that be consistent with your recollection?

15 A. That would be consistent, yes.

16 Q. Now, you know that Ms. Harrison hadn't
17 heard or seen from Mr. Limanni since the 4th, the evening
18 of the 4th of November 1998?

19 A. That's correct.

20 Q. You know on the 5th she went to the place
21 of business and saw Mr. Seka asleep or passed out on the
22 floor wearing a white T-Shirt and clean jeans about noon
23 on the 5th.

24 You recall that, right?

25 A. I recall she saw him in the business on

1 the 5th.

2 Q. And there were cellphone records
3 subpoenaed. You caused to have subpoenaed in this case,
4 right?

5 A. Yes.

6 Q. Tell the jury why you attempted to get the
7 cellphone records.

8 A. We normally try and get cellphone records
9 to try to see if we can pinpoint times of day and who is
10 using specific phones to call who.

11 Q. Cellphones have a thing called Call
12 Detail; is that right?

13 A. Call Detail?

14 Q. Where there is a record of phone numbers
15 coming into and out of a specific cellphone that you can
16 get hold of with a subpoena?

17 A. Yes.

18 Q. And you did that in this particular case
19 or made that request, correct?

20 A. That's correct.

21 Q. If I told you the date you made that
22 request was December 14, 1998, would you have any reason
23 to disagree with me?

24 A. No, I would not.

25 MR. CHRISTIANSEN: May I approach, Your

1 Honor?

2 THE COURT: You may.

3 BY MR. CHRISTIANSEN:

4 Q. Detective Thowsen, I'm going to hand you
5 what's been marked for identification purposes as Defense
6 proposed exhibit DD and ask you if that looks like your
7 request for the cellphone records.

8 A. Yes, it does.

9 Q. What numbers did you request, Detective
10 Thowsen?

11 A. A total of four numbers. Number one is
12 429-5957.

13 Q. Whose number did think that was?

14 A. Mr. Seka's.

15 Q. Okay.

16 A. The next number is 429-7411.

17 Q. Whose number was that supposed to be?

18 A. Off the top of my head, I can't tell you
19 at this point.

20 Q. Okay.

21 A. The next number was 429-9242 and the last
22 number is 745-7455.

23 MR. CHRISTIANSEN: Move for the admission
24 of Defense proposed exhibit DD.

25 THE COURT: Any opposition?

1 MR. FATTIG: None.

2 THE COURT: Proceed. Thank you.

3 BY MR. CHRISTIANSEN:

4 Q. Now, if I'm understanding you, you were
5 trying to find both Mr. Seka's phone records and Mr.
6 Limanni's, because at some point there was an issue as to
7 whether Mr. Limanni had just taken off versus being
8 harmed, correct?

9 A. As a possibility, in the very beginning,
10 yes.

11 Q. And if he had simply taken off and was
12 possibly still using his cellphone you could obtain a
13 record of that and maybe track him down or at least
14 eliminate the possibility of foul play?

15 A. Correct.

16 MR. CHRISTIANSEN: May I approach?

17 THE COURT: You may.

18 BY MR. CHRISTIANSEN:

19 Q. Detective Thowsen, this is a document
20 produced pursuant to the subpoenas you caused to be
21 issued and turned over to me.

22 That has a number there for Peter Limanni.
23 I want you to take a look it. I've circled it.

24 I want you to tell me if it's any of the
25 numbers you caused to have subpoenaed related to.

1 A. No, it does not.

2 Q. Okay. And do you have all those records
3 that you received in relationship to your subpoena?

4 A. I would believe they would be in the file.

5 Q. Is it - - is your file part of that
6 monster of a notebook sitting there?

7 A. Yes.

8 Q. Rather than have you sift through all that
9 stuff, let me show you another document contained in that
10 same piece of paper with the number you did have
11 subpoenaed, 429-7411.

12 Is that one of the numbers you had
13 subpoenaed?

14 A. Yes, it is.

15 Q. Now, can you tell me who is the owner of
16 that number back in 1998? It's right on the top of that
17 piece of paper.

18 It says Classic Landscaping?

19 A. It looks like Sic Landscaping.

20 Q. If you flip the next few pages.

21 MR. CHRISTIANSEN: May I approach again,
22 judge.

23 THE COURT: Yes.

24 BY MR. CHRISTIANSEN:

25 Q. It's a hole punch, I think right there.

1 Does it appear to be Classic Landscaping?

2 A. Yes, it does.

3 Q. Now, does Peter Limanni, Jack Seka,
4 Jennifer Harrison or anybody else in this case have
5 anything to do with Classic Landscaping, to your
6 knowledge?

7 A. No.

8 Q. As you sit here today did you ever go get
9 the correct records for the correct phone number for
10 Peter Limanni, which was 7433 and not 7411?

11 A. Without looking at what I have, I can't
12 tell you from memory.

13 Q. Take your time. Go ahead and look through
14 there then.

15 I don't mean to belabor this, but if I
16 tell you that it's nowhere in any of the things produced
17 - - and you were kind enough to let me come to your
18 office I think about three or four weeks ago, correct?

19 A. Correct.

20 Q. I went through your file with you and Mr.
21 Kane and identified things that I didn't know if I had or
22 think I had and you were kind enough to even go yourself
23 and make me copies of those?

24 A. That's correct.

25 Q. If I tell you that in all of the documents

1 you gave me there is not one mention of the correct phone
2 number for Peter Limanni would you have reason to
3 disagree with me?

4 A. No, I would not.

5 Q. So as you sit here today you can't tell
6 the people in the jury whether Peter Limanni was alive
7 and using his cellphone at any time during November of
8 1998, can you?

9 A. Would you repeat your question?

10 Q. Sure.

11 Based on your records can you tell the
12 jury whether 429-7433, Peter Limanni's telephone number,
13 whether that cellphone was used after November, we'll say
14 the 5th or 6th of 1998?

15 A. Based on my records, I can't tell you
16 that.

17 I can tell you Peter Limanni was dead,
18 though.

19 Q. You saw somebody shoot him on November 4th
20 or the 5th?

21 A. No, I did not.

22 Q. You can tell me that, based on what a DNA
23 guy told you some time in February, that items obtained
24 out of the back of the van, November 17th, seemed to be
25 Peter Limanni's blood.

1 That's what you can tell us, right?

2 A. I can tell you that Peter Limanni's blood
3 was found in the vehicle, yes.

4 Q. You're not a DNA expert, are you?

5 A. No, I'm not.

6 Q. You can tell us what David Welch told you?

7 A. That's correct.

8 Q. So if David Welch was wrong then you don't
9 know when Peter Limanni died, up until December 23rd when
10 his body was discovered in California, correct?

11 A. Again, I'm not sure if I understand your
12 question.

13 Q. If David Welch - - that's your DNA person
14 in this case - - if he gave erroneous results as to the
15 items taken out of the 1998 van - - okay, assume that for
16 me - - then you can't tell these people in the jury
17 anything about when Mr. Limanni was killed, shy of he was
18 dead when he was found in the desert December 23rd, 1998?

19 A. No.

20 I can tell you that I saw his body and it
21 was decomposed and mummified and that takes a long time
22 for it to happen.

23 Q. If Dr. Trenkel, the San Bernardino
24 coroner, said it was somewhere longer than a week would
25 you have reason to disagree with him?

1 A. I would not disagree with him, no.

2 Q. So I'll back off a week and ask the
3 question again.

4 Prior to December 16th, assuming David
5 Welch gave erroneous results of that DNA testing, you
6 can't give these people in the jury any time frame from
7 when Peter Limanni was killed?

8 A. I can, based on probable cause I believe
9 from people that have talked to him and people that we've
10 been discussing throughout the trial.

11 Q. In this Court we're dealing with beyond a
12 reasonable doubt.

13 That's not the same as probable cause, is
14 it?

15 A. No, it's not.

16 Q. When did you realize for the first time
17 that you subpoenaed the wrong records for Peter Limanni's
18 cellphone?

19 A. Apparently just now.

20 Q. And did have the correct phone number for
21 Peter Limanni?

22 A. Well, I believed at the time I sent the
23 subpoena that I had the correct number for Peter Limanni
24 on the subpoena which is why I would have sent it.

25 Q. Do you think the phone number for Peter

1 Limanni is anywhere contained in your report, the correct
2 phone number?

3 A. Without reviewing this book, I can't tell
4 you from the top of my head.

5 Q. Look at that same report I was just asking
6 you to.

7 MR. CHRISTIANSEN: Judge, can I approach
8 so doesn't have to dig through that?

9 THE COURT: Yes.

10 MR. CHRISTIANSEN: I'm looking, counsel,
11 at the 12.10.98 statement. I'm looking at page 16 of 20,
12 the middle paragraph relating to Detective Thowsen's
13 interview with Mr. Kato.

14 BY MR. CHRISTIANSEN:

15 Q. Does Mr. Kato give you the correct number
16 for Peter Limanni?

17 A. You took the other sheet away.

18 May I refer to that, please?

19 Q. I'm sorry. I apologize. I set it down
20 somewhere.

21 The number Mr. Kato gives you is 7433; is
22 that correct?

23 A. His number that he gives me was 429-7433,
24 yes.

25 Q. Found my sheet.

1 The sheet from the telephone company that
2 was produced by your office says that that is the number
3 for Peter Limanni, correct?

4 A. Yes, that's correct.

5 Q. And that's not the number that you
6 subpoenaed?

7 A. That is not on this subpoena, no.

8 Q. Did you do a subsequent subpoena that I
9 don't know about?

10 A. If it's not on the pieces of information
11 that I've given you, no.

12 I can tell you that I believe this list of
13 numbers came from a sheet that was located inside 1933
14 Western that listed cellphone numbers.

15 That's what I seem to recall.

16 Q. Okay. Well, it would have been pretty
17 easy to determine that 7411 was the wrong number if you
18 would have looked at the records because it came back
19 Classic Landscaping, right?

20 A. That's why that was discounted.

21 Q. Nothing further was done, correct, to get
22 the right number, even though you had it in your report?

23 A. That's correct.

24 Q. Now, we're talking about two separate
25 individuals that were shot with what appears to be two

1 different guns, correct?

2 A. Correct.

3 Q. And Mr. Limanni had two through and
4 through injuries to his heart and then a number of
5 injuries to his head, correct?

6 A. He had numerous injuries, gunshots to the
7 head and to the back.

8 Q. In your report yesterday you told the jury
9 about some of the inconsistencies that caused you concern
10 about Mr. Seka's statement to you that day.

11 Do you remember that?

12 A. Yes.

13 Q. And one of those was that it was your
14 belief that he had told, he being Jack Seka, had told
15 Jennifer Harrison that Peter Limanni had left in his
16 pickup truck on the morning of the 5th of November 1998.

17 Do you remember that?

18 A. I don't believe we had that conversation.

19 Q. If I told you that Ms. Harrison's
20 statement indicates that Jack told her Mr. Limanni was
21 picked up, that would be inconsistent with what's
22 contained in your report; would it not?

23 A. Are you talking about something that you
24 said I testified to yesterday?

25 I don't recall referring to Jennifer

1 Harrison's testimony.

2 Q. I apologize. Maybe you didn't.

3 But you took her statement, right?

4 A. Yes, I did.

5 Q. And do you recall what she told you in
6 terms of whether Mr. Limanni drove off in the pickup
7 truck or was picked up by an individual on the morning of
8 the 5th of November 1998, and that information came to
9 her from my client?

10 A. As I recall, I believe she said Mr. Seka
11 expressed to her that Peter Limanni spent the night and
12 got up in the morning and left in a pickup truck.

13 Q. Do you have that statement - - you have
14 that statement; do you not, sir?

15 A. Yes, I do.

16 Q. And it's in that big book, as well?

17 A. Yes, it is.

18 Q. Is that right?

19 In her statement Jennifer Harrison, she
20 turns - - the tape is turned off a number of times, on
21 and off; is that right?

22 A. That's correct.

23 MR. CHRISTIANSEN: May I approach, judge?

24 THE COURT: You may.

25 BY MR. CHRISTIANSEN:

1 Q. Showing counsel page 38 of Ms. Harrison's
2 statement, I'll ask you to read to yourself. It's a
3 long, rambling answer, but the middle portion deals with
4 what Jack told her about Mr. Limanni leaving.

5 See if that refreshes your recollection.

6 A. Yes, it does.

7 Q. Now, after reviewing this report which, to
8 be fair to you, was done a long time ago, correct?

9 A. Yes.

10 Q. And in between you've had - - I think we
11 talked about them - - more cases than you'd like to talk
12 about, right?

13 A. Yes, that's correct.

14 Q. Jennifer actually told you that somebody
15 picked up Peter Limanni, according to Jack?

16 A. According to Jack, yes.

17 How did you get the Japanese investors'
18 phone numbers?

19 You got them from Jack, right?

20 A. Yes.

21 Q. Because Peter Limanni had lied to Jennifer
22 about who owned that business, right?

23 A. I can't tell you what Peter Limanni told
24 somebody else.

25 Q. Did Jennifer think that he was the only

1 owner of Sinergi?

2 A. I don't recall.

3 Q. If she testified that she did, would you
4 have reason to disagree with that?

5 A. No, I would not.

6 Q. Okay. Jack, in his taped statement or in
7 the conversation before or after, gave you the names and
8 the phone number and I think even the address of the
9 Japanese investors from L. A., correct?

10 A. I'm not sure about the address, but I
11 remember the name and the number.

12 Q. And you may be right. I might be mistaken
13 about the address.

14 That was the way you eventually were able
15 to contact Kato and the other gentleman, his last name is
16 T-o-e, Toe; is that right?

17 A. Yes, correct.

18 Q. You actually only spoke with Mr. Kato,
19 correct?

20 A. The names are so similar. It would be the
21 same one that had the envelope that we looked at
22 yesterday in Court.

23 Q. Fair enough.

24 I have forgotten what envelope that was,
25 but we had a gentleman who came in here, I think his name

1 was Takeo Kato, and he claimed he sent that envelope to
2 you.

3 He was the person you spoke to, right?

4 A. Yes.

5 Q. You spoke to him on the telephone,
6 correct?

7 A. That's correct.

8 Q. Can you tell me when it was that you spoke
9 to him?

10 What was the date; do you remember?

11 A. I have it documented in my report. I
12 don't remember it off the top of my head.

13 Q. Would it help you to look at your report
14 to refresh your recollection?

15 A. Yes, it would.

16 Q. I'm going to have to ask you to do that
17 because I don't think I marked it when I read it.

18 Page 16 - - may I approach?

19 THE COURT: Yes.

20 BY MR. CHRISTIANSEN:

21 Q. I've found it. Right at the top of the
22 12.10 report, page 16.

23 A. I spoke with him on December 7th, 1998.

24 Q. Would you mind flipping to this part of
25 the report so if I ask you some questions you can move it

1 along? That's page 16, detective.

2 A. Thank you.

3 Q. On December 7th, that would have been
4 close to a month after when you believed Mr. Limanni was
5 killed and about two or so weeks after the body of Eric
6 Hamilton was found, correct?

7 A. Correct.

8 Q. You speak telephonically to the individual
9 named Takeo Kato, correct?

10 A. Yes.

11 Q. Do you go to L. A. to interview Mr. Kato?

12 A. No. He was about to leave the country for
13 his business at that point.

14 Q. Did you speak to his other business
15 partner, Mr. Toe, T-o-e?

16 A. No, I did not.

17 Q. Did you ask - - just so we're clear, you
18 had to call them, right?

19 A. Yes.

20 Q. These are two people that, according to
21 what information they gave you, lost over a hundred
22 thousand dollars to Mr. Limanni and his con, correct?

23 A. Yes, in the business venture.

24 Q. Call it a business venture.

25 Lost over a hundred thousand dollars to

1 Mr. Limanni in this business venture, right?

2 A. Yes.

3 Q. Mr. Limanni had, for all intents and
4 purposes - - was gone since sometime during early
5 November, correct?

6 A. Correct.

7 Q. And neither one of these gentlemen took it
8 upon themselves to contact anybody at Metro and say "Hey,
9 do you guys know where he is or he stole our money," or
10 any of that, right?

11 A. I have no idea if he contacted anybody
12 else at Metro. He didn't speak to anybody in homicide.

13 Q. When you talked to him did he mention that
14 he called somebody in the fraud unit?

15 A. No, he did not.

16 Q. After you contacted him did you ask him -
17 - were you able to discern when it was he purchased his
18 tickets to go to Japan?

19 Did he buy them before he talked to you or
20 did he buy them after he talked to you?

21 A. I don't know.

22 Q. How about Mr. Toe, the gentleman you never
23 talked to?

24 Did he buy his tickets before you talked
25 to Mr. Kato or after you talked to Mr. Kato?

1 A. I don't know.

2 Q. And in your report I believe it's
3 indicated that the hundred thousand dollars Mr. Kato was
4 going to write it off and it would be a business loss; is
5 that right?

6 A. Yes.

7 MR. CHRISTIANSEN: May I approach, Your
8 Honor?

9 THE COURT: You may.

10 BY MR. CHRISTIANSEN:

11 Q. Let me show you what has been marked and
12 entered as Defense exhibits G and I. Exhibit G is a
13 letter Mr. Kato told us he wrote to Mike Cerda, the
14 property manager.

15 What's that letter dated?

16 A. The 28th of October 1998.

17 Q. You can read through that letter, but Mr.
18 Kato has testified to it. It indicates that he wants to
19 be released as the guarantor from the lease at 1933.

20 Is that consistent with the timing and
21 your knowledge of the business relationship between Mr.
22 Kato and Mr. Limanni?

23 A. Yes, it is.

24 Q. And I'm showing you now Defense exhibit I,
25 and that is a bankruptcy petition where Mr. Kato filed

1 bankruptcy Chapter 7 liquidation in 1998.

2 And he's testified he did that as a result
3 of this business venture, okay?

4 A. Okay.

5 Q. Now, so he didn't just write it off.
6 He went bankrupt over it, right?

7 A. Based on that, yes, he went bankrupt.

8 Q. When you go bankrupt you discharge your
9 debts, correct?

10 A. Yes.

11 Q. Did you ever ask Mr. Kato who had loaned
12 him the money to loan to Mr. Limanni for this business
13 venture?

14 A. No, I did not.

15 Q. If he testified it was some people in
16 Japan would that be inconsistent with anything that you
17 know?

18 A. I would have no knowledge of that.

19 Q. Despite his bankruptcy where he could
20 discharge all of his debts, if he testified he's still
21 repaying those people some three years later, would you
22 have any knowledge of that?

23 A. No, I would not.

24 Q. But you do know that Mr. Kato was an
25 active partner in this business for a number of months

1 and actuality lived and had access to all the equipment,
2 the vehicles, the business down at 1933 Western?

3 A. No.

4 Based on what Mr. Seka told me he was a
5 silent partner and was just kind of an investor with the
6 money.

7 Q. Did you ask Mr. Kato when you talked to
8 him?

9 A. I believe I did, yes.

10 Q. Do you remember what he told you?

11 A. I believe it was the same information.

12 Q. Okay. So if he came in here to Court and
13 said he located there for three months, had access to all
14 the vehicles, then either he didn't tell the truth here
15 in Court or he didn't tell you the truth back then?

16 A. I'd say if he didn't tell me - - I don't
17 know if he would be lying, but it's information that was
18 passed on to me.

19

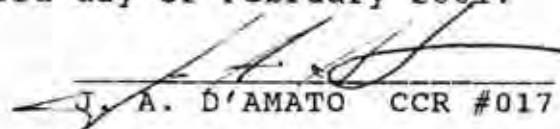
20 (2:05 p.m.)

21

22

23 ATTEST that this is a true and complete transcript of the
24 proceedings held, DATED this 23rd day of February 2001.

25


J. A. D'AMATO CCR #017

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DISTRICT COURT

ORIGINAL

CLARK COUNTY, NEVADA

* * * *

FILED IN OPEN COURT
FEB 23 2001 19

SHIRLEY B. PARRAGUIRRE, CLERK
BY Linda Skinner
LINDA SKINNER DEPUTY

STATE OF NEVADA,

Plaintiff,

vs.

JOHN JOSEPH SEKA,

Defendant.

Case No. C159915
Dept. XIV

VOLUME II

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

BEFORE THE HONORABLE DONALD M. MOSLEY

DISTRICT JUDGE

Taken on Thursday, February 22, 2001

At 2:00 p.m.

APPEARANCES:

For the State:

EDWARD KANE, ESQ.
TIM FATTIG, ESQ.
Deputy District Attorneys

For the Defendant:

KIRK T. KENNEDY, ESQ.
PETER S. CHRISTIANSEN, ESQ.

Reported by: Maureen Schorn, CCR No. 496, RPR



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E X H I B I T S

<u>STATE'S</u>	<u>DESCRIPTION</u>	<u>REF OR MARKED</u>	<u>ADMITTED</u>
20	Envelope	11	
85	Pawn Shop Records		15
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1 LAS VEGAS, NEVADA. THURSDAY, FEBRUARY 21, 2001, 2:00 P.M.

2 * * * *

3
4 CONTINUED CROSS-EXAMINATION

5 BY MR. CHRISTIANSEN:

6 Q Let's talk about October of 1998. You know
7 that Mr. Kato came to Las Vegas and took back one of the
8 vehicles that was leased in his name?

9 A That's what he told me, yes.

10 Q Do you know which vehicle he took back?

11 A I do based on information from VIN numbers.

12 Q And that information came from him, correct?

13 A Correct, I believe so.

14 Q He comes back, and I showed you bank records
15 yesterday. In October, was that business being
16 refurbished for the cigar store? Do you know?

17 A I don't know at that point.

18 Q You do know from Jennifer Harrison and
19 Mr. Kato that he was approached by Mr. Limanni and asked
20 to engage in some type of fraudulent credit scam on
21 October the 13th of 1998?

22 A I know that Mr. Kato was approached by
23 Mr. Limanni to invest in the cigar business, and had
24 expressed that if there was a problem he could get some
25 sort of identification that was inappropriate, yes.

1 Q Mr. Kato said Limanni explained that if
2 there was a problem with bad credit, he knew how they
3 could get false identification to access a fresh credit
4 line?

5 A That sounds accurate, yes.

6 Q That sounds familiar. You wrote it?

7 A Yes.

8 Q So Mr. Kato had to repossess one of his
9 vans, he's approached by Mr. Limanni with a scam. And I
10 won't call that a business venture, we'll call that a
11 scam. Is that fair enough?

12 A That's fair enough.

13 Q Now, you also know that another one of the
14 vans was in Lake Tahoe. At this time I'm talking about
15 the middle of October of 1998, right?

16 A I don't know the specific date off the top
17 of my head but, yes, I know there was a van in Lake Tahoe.

18 Q And you know that Mr. Limanni had signed a
19 lease in Lake Tahoe to open a cigar store up there?

20 A Yes.

21 Q And you know from Jennifer Harrison that he
22 wanted to move to Lake Tahoe and get out of Las Vegas?

23 A That's correct.

24 Q He was going to abandon the business here
25 that he had taken \$100,000 of these gentleman's money, and

1 go to Tahoe?

2 A I'm not sure he was abandoning it or
3 expanding it to have two businesses.

4 Q He was not doing a very good job with one,
5 was he?

6 A Didn't look like it, no.

7 Q The bank records didn't seem to indicate
8 that, correct?

9 A Correct.

10 Q So Mr. Kato, in your investigation you found
11 out he was on the lease at 1933 as guarantor, right?

12 A Correct.

13 Q On all four of the vehicles?

14 A Yes.

15 Q The one he repossessed, the one that was up
16 in Lake Tahoe, the two that were at the location, vans,
17 and the truck?

18 A That's correct.

19 Q I guess that's five vehicles. You know also
20 from talking to Ms. Harrison that he was the guarantor or
21 the signer on the Frontier phone book accounts; is that
22 correct?

23 A I believe that's correct, yes.

24 Q That's actually how she meets Peter Limanni,
25 because she calls Mr. Kato, Limanni answers the phone, and

1 he blows up the ad to a full page. Does that sound right?

2 A That sounds accurate, yes.

3 Q There was also a Sprint ad that was a
4 full-page ad, correct?

5 A I don't remember that part.

6 Q All of these things were financial
7 commitments that when the business venture went defunct,
8 Mr. Kato suffered the repercussions of it, correct?

9 A Yes.

10 Q Mr. Kato also was told by Mr. Limanni how he
11 could disappear, that being Mr. Limanni, and this is in
12 mid October of 1998; is that right?

13 A I don't specifically recall the exact words.

14 Q How about Kato said Limanni showed false ID
15 with Limanni's photograph, and said he could become
16 another person. Does that sound familiar?

17 A Yes.

18 Q So this Mr. Kato, he's had to repossess one
19 of his vehicles, he's lost over \$100,000 of money from
20 other peoples' money from Japan. He now can't find one of
21 his vehicles that's in Tahoe, Mr. Limanni has taken it up
22 there. He's a guarantor on all these different money
23 positions, we'll say. And you didn't do anything other
24 than a phone interview with him, right?

25 A That's correct.

1 Q And you didn't even interview
2 Mr. Kato -- I'm sorry, Mr. Toe in any fashion whatsoever,
3 correct?

4 A That's correct.

5 Q And, again, in these two homicides it's your
6 belief that two separate guns were used, correct?

7 A Yes.

8 Q Did you ever interview Tom Creamer yourself
9 in this case; do you recall?

10 A The name Tom Creamer isn't familiar to me.
11 I could look in the file and see if I have an indication
12 of contact with him.

13 Q If I tell you in that same report I've been
14 having you look at his name is not listed, would that
15 pretty much lead you to the conclusion that you didn't
16 interview him?

17 A I have no memory of his name.

18 Q In all your experience as a homicide
19 detective, you like witnesses that tell the same story
20 each time they're interviewed, correct?

21 A I like witnesses that tell the truth no
22 matter what it is.

23 Q And the truth, typically, comes out over and
24 over in a very similar story, correct?

25 A Not usually.

1 Q I'm not talking about identical stories,
2 Detective Thowsen. What I'm talking about is a witness,
3 and you want honest witnesses, right?

4 A I want truthful witnesses.

5 Q And you don't want witnesses who are under
6 the influence of all kinds of drugs, because that distorts
7 perceptions, memory, recall, things of that nature, right?

8 A That is a factor, but sometimes that person
9 is a witness as well.

10 Q And in your experience, if a person who is
11 under these types of drugs tells one story with very
12 specific facts one day, and then tells a 180-degree
13 opposite story the next day, that would cause you concern,
14 would it not?

15 A I'd say probably anybody that told something
16 that far off would cause concern, yes.

17 Q Do you know whether Mr. Toe, the individual
18 who lost a portion of this \$100,000, ever came back to the
19 United States?

20 A Yes.

21 Q You talked to him?

22 A I believe I talked to him and he had sent
23 some correspondence to us that we got in the mail.

24 Q I'll agree with you that Mr. Kato came back
25 to the United States, and that was the person that sent

1 that envelope that you talked about yesterday?

2 A Yes.

3 Q Did you speak to Mr. Toe, the person, the
4 other person that went to Japan?

5 A No, I did not.

6 Q Do you even know whether he ever came back
7 to the United States?

8 A No, I do not. After Mr. Seka told me he had
9 not been around for several weeks and weren't involved in
10 anything, I wasn't concerned with them based on the
11 physical evidence that we had.

12 Q And that concern didn't even rise when you
13 look at Officer Nogues' report to indicate Mr. Seka was
14 staying off and on in Spanish Trails? That raised no
15 issues for you, correct?

16 A I'm sorry?

17 Q Nothing you found out in reading any of the
18 other officers' reports caused you to go look face-to-face
19 with Mr. Kato or Mr. Toe and engage in the same type of
20 gut instinct feeling you did with Mr. Seka?

21 A Correct.

22 Q How was Mr. Kato's English when you talked
23 to him? Did he understand English pretty well?

24 A Yes, he did.

25 Q He spoke very fluent to you back and forth?

1 A Yes.

2 Q And then Mr. Kato at some point sent you
3 that list we talked about yesterday, right?

4 A That's correct.

5 Q And that's the list that somewhere on it it
6 says, "Find a home for Jake" in Jack's handwriting,
7 correct?

8 A Yes.

9 Q And Mr. Kato sent that to you to help or
10 assist you in your efforts in this case?

11 A That's correct.

12 Q Mr. Kato knew the cell phone for Jack Seka
13 as well, did he not?

14 A I believe he did, yes.

15 Q At least back then, you didn't think
16 Mr. Kato needed money, you thought he was going to be able
17 to write this off as a business loss and sort of go
18 further?

19 A Yes.

20 Q He wasn't going to be flat broke after the
21 business venture went sour?

22 A Yes.

23 Q He wasn't the type of person who would need
24 to take a ring off a potential victim and try to hock it
25 and make five, ten bucks, right?

1 A Not from my knowledge of him.

2 Q Do you know how it was that Mr. Kato
3 returned to the office at 1933 Western where he obtained
4 that envelope that was sent to you?

5 A I know it was done, I believe, through the
6 property manager there.

7 Q Through some type of eviction process?

8 A Yes.

9 Q And just so the record is clear, it's
10 Exhibit 20 I keep talking about in terms of the envelope
11 from Mr. Kato, right?

12 A Yes.

13 Q And that's State's Exhibit 20?

14 A Yes, it is.

15 Q And that was sent to you, if I look at the
16 postmark, about December 11, 1998?

17 A Yes, it is.

18 Q When was the first time you found out
19 Mr. Kato went bankrupt as a result of the scam or the con
20 Mr. Limanni had pulled with him?

21 A I found that he went bankrupt as far as this
22 today from you.

23 Q And correct me if I'm wrong, but I think you
24 told me the only reason you didn't get fingerprints or a
25 buckle swab, or doing a face-to face interview is because

1 Jack told you -- with the two Japanese gentlemen -- is
2 because Jack told you he hadn't seen them around for about
3 a month?

4 A He told me he hadn't seen them around. The
5 property manager had the same information. The evidence
6 did not point to them.

7 Q If you were going to come back to town and
8 harm somebody, would you hold up a flag and say: Here I
9 am, everybody, I'm back?

10 A Probably not.

11 MR. CHRISTIANSEN: Thank you,
12 Detective. I appreciate your candor.

13 THE COURT: Redirect?
14

15 REDIRECT EXAMINATION

16 BY MR. FATTIG:

17 Q Detective Thowsen, you remember testifying
18 regarding the defendant's statement on cross-examination
19 regarding his comment that he liked to advertize?

20 A Yes.

21 Q Did the defendant also in a statement
22 indicate to you whether or not the phone to Cinergi had
23 been disconnected?

24 A Yes, he did.

25 Q You actually went out to the scene where

1 Eric Hamilton's body was discovered on November the 16th?

2 A Yes, I did.

3 Q The Becks beer bottles, do you remember how
4 close they were to the actual body?

5 A Off the top of my head, I don't recall. I
6 didn't measure that portion.

7 Q Do you remember whether or not they were
8 real close to the body, or further away?

9 A I believe they were further away.

10 Q On cross-examination you testified about two
11 different guns being used. Is it fair to say that based
12 on your investigation that a .32 caliber weapon was used
13 to kill Mr. Limanni, and a 357 was used to Mr. Hamilton?

14 MR. CHRISTIANSEN: Objection. Leading.

15 THE COURT: Are you recapping the
16 testimony previously given?

17 MR. FATTIG: Yes.

18 THE COURT: Sir, you can answer the
19 question. I'll allow it.

20 THE WITNESS: Yes.

21 Q (By Mr. Fattig) Was that type of ammunition
22 found at 1933 Western?

23 A Both kinds were found at 1933 Western.

24 MR. FATTIG: Nothing further, Your
25 Honor.

RECROSS EXAMINATION

BY MR. CHRISTIANSEN:

Q Detective Thowsen, I neglected one thing. Did you ever have either Mr. Kato or Mr. Toe's criminal history run?

A No, I did not.

Q Is that something you are capable of doing, or were capable of doing back then in 1998?

A If they were thought of as a suspect, yes. I can't just run one on somebody because I want to run one.

Q And if you thought to consider them as a suspect, you could have done that?

A Yes.

MR. CHRISTIANSEN: Thank you, sir.

Nothing further.

THE COURT: Anything further?

MR. FATTIG: No.

THE COURT: Thank you. You're excused.

Next witness, please.

MR. KANE: Judge, at this time the State would offer, pursuant to stipulation, pawn shop records which have been marked collectively as State's Proposed Exhibit 85.

THE COURT: Objection?

1 MR. KENNEDY: No objection, Your Honor.

2 THE COURT: Those are received. Thank
3 you.

4 MR. KANE: Your Honor, the State has no
5 further witnesses to call and no evidence to present. The
6 State would rest its case in chief.

7 THE COURT: Would counsel approach the
8 bench, please.

9 (Whereupon, counsel conferred with the Court.)

10 MR. KENNEDY: Your Honor, we could have
11 a couple of Defense witnesses.

12 THE COURT: That will be fine. We will
13 do that before we have our break for the afternoon.

14 MR. KENNEDY: Margaret Daly.

15

16 Whereupon,

17

MARGARET DALY,

18 was called as a witness by the Defense, and having been
19 first duly sworn, was examined and testified as follows:

20

21

DIRECT EXAMINATION

22 BY MR. KENNEDY:

23 Q Would you please state and spell your last
24 name for the record.

25 A Margaret Daly, D-a-l-y.

1 Q Ms. Daly, do you live here in Las Vegas?

2 A No, I do not.

3 Q Where are you from?

4 A From Philadelphia.

5 Q And do you know an individual named Jack
6 Seka?

7 A Yes, I do.

8 Q How long have you known him?

9 A Since the summer of '94.

10 Q Do you know also an individual named Thomas
11 Creamer?

12 A Yes, I do.

13 Q And how do you know him?

14 A He is my ex-boyfriend.

15 Q And when did you first start a relationship
16 with Mr. Creamer?

17 A In the summer of '94, August of '94.

18 Q And has it been an ongoing relationship
19 since that time? In other words, has it been a constant
20 relationship?

21 A No. I separated with him in January of '99.

22 Q Did something happen in January of '99
23 causing to you separate from Mr. Creamer?

24 A Yes. Mr. Creamer -- I don't know how to
25 explain this. I had to have him committed.

1 Q You had to have him committed?

2 A Yes. I had to have him 302'd.

3 Q 302'd. Is that something --

4 A Involuntary commitment to a psych ward.

5 Q That's under Pennsylvania law?

6 A Under Pennsylvania law.

7 Q And did you also cause a restraining order
8 to be placed against him?

9 A Yes, definitely.

10 Q Do you remember when the first restraining
11 order you had?

12 A It was January 31st, and it ran up to
13 February 1st of 2000. And since then I've gotten one on
14 August 8th of this year.

15 Q Just so I'm clear, did you have a
16 restraining order back in January of 1999 when you had him
17 committed?

18 A Yes.

19 Q And was that the first one?

20 A That was the first one.

21 Q What happened in January of 1999 that caused
22 you to have him 302'd and to cause you to get a
23 restraining order?

24 A He was getting aggressive and angry and
25 violent with lots of people, and was making nuisance. He

1 was heavily medicated, going to several different doctors
2 for the same prescriptions.

3 Q Do you know what kind of medications he was
4 on in January of 1999?

5 A I know he was on Xanax, Paxil, and he was
6 taking muscle relaxers he got from my father.

7 Q How would you describe his behavior during
8 that time frame? And a lot of these questions are from
9 January through April of 1999, the questions I'm going to
10 ask for you. How would you describe his overall behavior
11 that you witnessed during that time?

12 A He was orational, emotional, and he just
13 didn't make any sense.

14 Q Was he aggressive towards you?

15 A He was very aggressive in January when I got
16 the restraining order. Several times before that day that
17 I went to go get it, he pushed me around, he attacked me
18 and threatened to kill several sometimes, including when I
19 went to call my sister, because I told her I would call
20 her, and he said he would strangle me with the telephone
21 cord.

22 Q And all these are factors you used to get
23 your restraining order. Is that a correct statement?

24 A Yes.

25 Q Would you see him on a daily basis before he

1 was committed in January of '99?

2 A Yes.

3 Q And you testified that about his behavior
4 and that he was aggressive, things of that type. Did he
5 suffer from any type of memory loss?

6 A Yes, he did. Frequently, I would just stay
7 with him because I was concerned that he was going to hurt
8 himself, his grandmother, or his best friend, because he
9 would take so many pills that he would be knocked out,
10 And he would wake up hours later, and going to sleep at
11 5:30 and wake up at 3:00 in the morning and say: What
12 happened, what he did, if he ate, because he couldn't
13 remember.

14 Q Was that a frequent occurrence?

15 A That was very frequent.

16 Q He told you he couldn't remember?

17 A Between October and December to January, it
18 was all the time.

19 Q Now, in January of 1999, was John Seka there
20 with you in the home where you were staying?

21 A Yes, he was.

22 Q And why was he at your home? Or, wait a
23 minute, where were you staying? Was it your house, or
24 someone else's house?

25 A Before I got the restraining order I was

1 staying with Tom's grandmother with Tom. After that, I
2 was staying with my mother.

3 Q And Jack Seka was staying with you when you
4 were staying with your mother?

5 A Yes.

6 Q Was there a reason he stayed with you?

7 A He was support for me, as well as for Tommy
8 at the time.

9 Q You didn't have an intimate relationship
10 with Jack Seka, did you?

11 A No, I did not.

12 Q So he was a friend of yours?

13 A He was a very good friend. I had met him
14 when I first met Tommy. Tommy was wanting to know what he
15 thought about me. He thought a lot about what Jack
16 thought because he was his best friend.

17 Q And so you've known Seka throughout the same
18 time that you've known --

19 A I've known him through the same time. He's
20 always been considered family.

21 Q And just so I don't get in trouble with the
22 court reporter, wait until I get done with my question and
23 then you can answer.

24 A Okay.

25 Q Now, did you know Jack Seka was in Las Vegas

1 for a period of time in 1998?

2 A Yes.

3 Q Did you know why he was out here?

4 A I thought he was working out here.

5 Q Did you know anything about who he was
6 working with, or what type of work he was doing?

7 A No. I just know that he came back for every
8 holiday to visit.

9 Q Do you know an individual named Peter
10 Limanni?

11 A No.

12 Q During the time frame that Jack stayed at
13 your home, this is from January 1999 until, I suppose, the
14 end of March, would you see Jack Seka on a regular basis,
15 a daily basis in the home?

16 A Yeah, yeah.

17 Q Did you ever have any conversations with
18 Jack about what happened in Las Vegas, what he was doing
19 in Las Vegas, or about Peter Limanni?

20 A He told me that -- well, he told Tommy and I
21 that he was questioned here. And he said on one of his
22 visits when he came back that he had given them numbers to
23 contact him if they had any questions. So as far as --

24 Q Well, did Jack tell you why he was
25 questioned by the authorities here?

1 A Yeah. He said that it was about two murders
2 that had happened here.

3 Q Did he make any statements to you saying
4 that he admitted he had any involvement in either one of
5 those murders?

6 A Not at all.

7 Q Now, in January of 1999, how long was
8 Mr. Creamer committed?

9 A He was due to get out the day after my
10 restraining order was finalized.

11 Q So he went in early to mid January and got
12 out early February?

13 A Yes.

14 Q Of your own knowledge, did you know whether
15 or not Mr. Creamer was aware that Jack Seka was staying
16 with you at your grandmother's house?

17 A Yeah.

18 Q He did know?

19 A He did know. He did know. He had someone
20 call the house.

21 Q Would Mr. Creamer call the house and speak
22 with you during this time frame?

23 A He attempted to, but my sister always
24 intercepted knowing that I had the restraining order.

25 Q So you never spoke with him?

1 A No.

2 Q Were you aware of your own knowledge whether
3 Mr. Creamer was upset that Jack was staying with you in
4 your home?

5 A Yes, yes. He was very upset. He didn't
6 want him around.

7 Q And is that -- I guess, I'm trying to
8 understand how did you learned this, without telling what
9 someone else said, how did you learn that Creamer was
10 upset that Jack Seka was there with you?

11 A Well, I could tell that he was upset because
12 the night before I had him 302'd, he was really paranoid:
13 What are you talking about? What are the talking about?
14 He just was paranoid. And I want to say that he told my
15 sister to get him out.

16 And when I did talk to him on the phone
17 before, I had a day before I got the restraining order he
18 called his grandmother's house where I was staying at the
19 time to watch her, that he wanted him out of the house. I
20 had to get him out the house.

21 Q He wanted Jack out?

22 A He wanted Jack out of the house.

23 Q Now, you've talked about this 302 process.
24 Obviously, did something happen to trigger this that he
25 would be committed?

1 A Yes, yes.

2 Q Was there an incident?

3 A There was an incident. He was off all
4 weekend, like, terrorizing his grandmother and myself,
5 threatening us and tearing the house apart, very
6 aggressive and violent behavior.

7 And I had asked Jack to come over several
8 times to help me talk him out of a trait. I knew that he
9 wasn't getting better, and he wouldn't go to his
10 counselor. And the medicine he was taking I was told was
11 supposed to mellow him out, and it wasn't mellowing him
12 out, it was making him more angry.

13 And they were upstairs and I heard all this
14 commotion up and down the stairs all night long, and he
15 threw Jack down the stairs.

16 Q Did you witness him throwing Jack down the
17 stairs?

18 A I saw Jack falling down the stairs at the
19 very bottom.

20 Q Did you hear anything that was said
21 preceding Jack falling down the stairs?

22 A Tommy had come downstairs and he started
23 screaming how dare he tell me to --

24 Q What, exactly, did he say?

25 A He said, told me to shut the fuck up. Who

1 the hell does he think he is.

2 Q Referring to Jack?

3 A Referring to Jack.

4 Q Did Mr. Creamer tell you at that time that
5 Jack Seka had threatened him in some way?

6 A Not at all.

7 Q That Jack Seka said he would harm him in
8 some way?

9 A No. He just was furious that Jack was
10 disrespectful to him.

11 Q And it was later on that night that you
12 started this process to get him committed; is that
13 correct, or shortly thereafter?

14 A Well, it ended up being that I told Jack to
15 go. Jack didn't go. Tom tried to get him -- to be
16 aggressive with him, but Jack wouldn't. He just sat in
17 the chair and said: I don't want to do this, I don't want
18 to do this. And they went back upstairs and Tom was
19 completely calm like nothing had ever happened.

20 And next thing I know, Jack is down the
21 stairs again, and I'm up the stairs pushing Tommy up, and
22 he locked us in there and he left. Then Tom calmed down
23 again. And when we got downstairs out the door he was,
24 like: Okay, baby, now I'm going to walk the dog. I think
25 the dog has to go to the bathroom, like nothing

1 happened, like completely normal.

2 And I opened the door and noticed that Jack
3 was trying to get into the car, our car to go to get out of
4 there because Thomas was upset. And I stood in the door,
5 and then he kept saying: What's wrong? What's wrong?
6 What's wrong?

7 And I said nothing, and I tried to close the
8 door and acted like nothing was going on, and he saw Jack
9 standing outside. And he just lost his mind and he
10 started attacking me. And I put myself in the doorway and
11 held on as long as I could until he got me -- physically
12 forced me to the floor and started hitting me in the head
13 until I couldn't hold on.

14 Q And you were able to get yourself free of
15 him?

16 A And then he took off out the door with the
17 dog and was chasing after Jack. And I turned around and
18 locked the door, called my sister and told her to call
19 911. I told her I couldn't talk about it right now, just
20 do it. And I went back and I used my body to brace the
21 door shut.

22 Q So the authorities did come and that's what
23 started it?

24 A The authorities did come, and I wouldn't let
25 him in until they arrived.

1 Q Now, the records that we have show that on
2 March 31st, either the FBI or the Philadelphia Police
3 arrested Jack at your home; is that right?

4 A Yes.

5 Q Were you there at that time?

6 A No, I was not.

7 Q Did you come home later and find out?

8 A I found out right away. My sister had
9 called me.

10 Q Was it at that time that you learned that he
11 was arrested for incidents here in Las Vegas?

12 A Yes.

13 Q Before that time, had you known of any
14 problems that were in Las Vegas that would cause him to be
15 arrested?

16 A Well, I had known. Tommy had talked about
17 that that was Jack's problem, because Jack called him from
18 the office where they were and he had mentioned this to
19 talk to someone. And that's as far as I know, that that's
20 where he got this from. That's where I think he got it
21 from.

22 Q Do you have any knowledge as to why the
23 authorities showed up at your home on March 31st as to who
24 had been there?

25 A I had known it was coming. I knew before I

1 was -- they actually told me who did.

2 Q They being the authorities?

3 A The Philadelphia homicide detectives who
4 questioned all of us.

5 Q And did you give a statement to the
6 Philadelphia authorities?

7 A Yes, I did.

8 Q And do you still have a restraining order
9 against Mr. Creamer to this day?

10 A Yes, I do.

11 Q So you don't have a relationship with him,
12 do you?

13 A No, not at all.

14 MR. KENNEDY: Pass the witness, Your
15 Honor.

16 THE COURT: Cross-examination?

17

18 CROSS-EXAMINATION

19 BY MR. KANE:

20 Q You've known Mr. Seka for the same length of
21 time that you've known Mr. Creamer, correct?

22 A Yes.

23 Q Did Mr. Creamer and Mr. Seka know each other
24 before you met them both?

25 A Many, many years before that.

1 Q Do you know how long?

2 A Probably about six or seven years before
3 that.

4 Q Do you know how they first met?

5 A I'm not sure how they met. I just know that
6 they have been -- I was told that they were best friends
7 for a long time, and that he wanted to know what Jack
8 thought of me because he thought highly of what Jack
9 thought.

10 Q So at least up to the time that you first
11 met them they were best friends, and had been so for a
12 long time?

13 A Yes.

14 Q Did you they remain best friends after you
15 and Tom started going out?

16 A Yeah. I mean, because I've known him from
17 the time I started going out with Tom until the time I
18 left. He was always there, he came for holiday visits and
19 birthday visits.

20 Q And except for the erratic behavior that you
21 talked about around the end of 1998 and the beginning of
22 1999, had they stayed friends all that period of time?

23 A They were friends that whole time.

24 Q And the incident where Tom threw Jack down
25 the stairs, your testimony is that Tom did that because

1 Jack was disrespectful to him?

2 A Yes.

3 Q And can I ask you what address it was that
4 Jack was arrested at? What the street address was?

5 A Yeah. It was 1418 Rosalie Street, my
6 mother's house, R-o-s-a-l-i-e.

7 MR. KANE: Thank you. Nothing further,
8 Your Honor.

9 THE COURT: Anything further?

10 MR. KENNEDY: No redirect.

11 THE COURT: Thank you very much.
12 You're excused. Next witness, please.

13 MR. KENNEDY: Your Honor, the Defense
14 was call Christine Caterino.

15
16 Whereupon,

17 CHRISTINE CATERINO,
18 was called as a witness by the Defense, and having been
19 first duly sworn, was examined and testified as follows:

20

21 DIRECT EXAMINATION

22 BY MR. KENNEDY:

23 Q If you could state your name and spell your
24 last name for the record.

25 A Christine Caterino, C-a-t-e-r-i-n-o.

1 Q Ms. Caterino, where are you from?

2 A Philadelphia.

3 Q And do you know Jack Seka?

4 A Yes.

5 Q And how long have you known him?

6 A About five years.

7 Q And do you have any sort of special
8 relationship with Mr. Seka?

9 A He's the father of my daughter.

10 Q And what's your daughter's name?

11 A Kylie Seka.

12 Q And when did you and Jack have this child?

13 A On November 2nd, 1997.

14 Q Are you married to Mr. Seka?

15 A No.

16 Q Since 1997, has Mr. Seka helped support
17 Kylie?

18 A Yes.

19 Q Financially?

20 A Uh-huh.

21 Q Is that a yes for the court reporter?

22 A Yes, sorry.

23 Q Were you aware that in 1998 Jack came out to
24 Las Vegas to do some work?

25 A Yes.

1 Q Did he explain to you, did Jack tell you he
2 was going to Las Vegas for some particular purpose?

3 A Yes.

4 Q Did he say who he was going to Las Vegas
5 with to do this work?

6 A He was going out there to work, and he was
7 going to stay with Pete Limanni.

8 Q Did you know Peter Limanni?

9 A I didn't know him. I had heard of him,
10 heard Jack talk about him, but I didn't actually meet him
11 until I came out here.

12 Q So you came out here on a visit?

13 A Yes.

14 Q What month was that in 1998?

15 A September.

16 Q And where did you stay when you came out in
17 September of '98?

18 A I stayed for two or three nights at the shop
19 where they worked and lived in the back of. And then I
20 stayed another seven days at Bally's.

21 Q Do you remember the address of that shop?

22 A No. I don't remember the address.

23 Q Had you been to Las Vegas before?

24 A No.

25 Q And so you stayed at the shop for three days

1 or so?

2 A Yes.

3 Q Was Peter Limanni there during these first
4 three days?

5 A Yes. He was there. He wasn't there the
6 first day. He was in Lake Tahoe with his girlfriend, and
7 then he came while I was there.

8 Q Who was his girlfriend at the time? Did you
9 know her?

10 A Jennifer. I don't know her last name.

11 Q Did you get a chance to meet her while you
12 were here on this trip?

13 A Yes.

14 Q So when he got back -- so you were there in
15 the office with Jack and, I guess, Peter for at least two
16 days out of that three; is that correct?

17 A Right.

18 Q Did you notice anything unusual about the
19 relationship? Would they argue or fight?

20 A No, not at all.

21 Q Did you ever hear during that trip that
22 Peter used any type of disparaging words against Jack, or
23 ordered him around, or do anything one would consider
24 mean-spirited?

25 A No.

1 Q The balance of your trip, did you all go out
2 together, or did you do any gambling?

3 A We went out to kind of, like, in between
4 lunch, dinner. We went out to a restaurant and had a meal
5 together.

6 Q And you said together; yourself, Jack,
7 Peter?

8 A Yeah; my daughter and his girlfriend. We
9 all went.

10 Q How would you describe that dinner or
11 luncheon you went to?

12 A It was fine. He just told us about how
13 their trip was at Lake Tahoe, things that they did, asked
14 about the baby, you know, just said how cute she was, and
15 everything was fine. We just had normal conversation.

16 Q And after you returned to Philadelphia from
17 that trip in September, did you have regular contact with
18 Jack?

19 A Yeah.

20 Q On the telephone, I assume?

21 A Right. We would talk back and forth once or
22 twice a week.

23 Q And on those once or twice a week phone
24 conversations, would Jack ever mention how Peter was
25 treating him, that he was just upset or pissed off about

1 how he was being treated?

2 A No.

3 Q Did you ever hear Peter Limanni in the
4 background on any of those phone conversation yelling at
5 Jack: Get off the phone, you've got things to do, things
6 like that?

7 A No.

8 Q Now, Jack went back to Philadelphia towards
9 the end of October; is that right?

10 A Yeah. He was there for Halloween.

11 Q Do you remember how long he was there?

12 A He was there -- I don't know if it was
13 Halloween day, or maybe the day before, and he stayed
14 until maybe two days after. Probably he went back on the
15 4th or the 5th.

16 Q Are you sure?

17 A Yes. I know -- I'm not exactly sure. I
18 know it was 4th or 5th.

19 Q About that time frame?

20 A Right.

21 Q And when he got back to Las Vegas did you
22 contact him by phone?

23 A Yeah. We talked on the phone maybe the day
24 after he had got back, and just asked how the flight was,
25 and everything was fine.

1 Q Did you have any later conversations with
2 Jack wherein some problems that were noted?

3 A I talked to him probably two days after he
4 had gone back, you know, and I just remember him saying
5 that Pete wasn't there. He was, you know, he left,
6 whatever, in the morning and he hadn't come back.

7 And there was a later conversation that we
8 had that he said, you know, that he got a notice that he
9 only had five days to get out of the shop and he didn't
10 have any money, and he wasn't sure. I don't know if the
11 rent wasn't paid, or something like that.

12 Q So you had at least two conversations with
13 him on the phone after he got back from the trip to see
14 you?

15 A Right.

16 Q And he told you Peter was gone?

17 A Uh-huh.

18 Q And he was telling you about these problems
19 he was having?

20 A Right.

21 Q Did he ever tell that you he knew where
22 Peter Limanni was?

23 A No.

24 Q Did he ever indicate to you that he had done
25 something to Peter Limanni?

1 A No.

2 Q On one of those conversations, or perhaps a
3 subsequent one, did he mention to you where he was living?
4 You said that he got a five-day notice to evict from the
5 office where they were living in the back. Did he tell
6 you that he was living somewhere else?

7 A He said that he was staying at a place. I
8 don't remember the name of it. He was staying with
9 friends that he had met while he was out there, someone
10 that he knew while he was there, that he was staying there
11 because he didn't have any place else to go, that he had
12 to be out the shop and he only had five days.

13 Q Do you remember Jack telling you that he was
14 staying at a home in Spanish Trails?

15 A That was it, yes.

16 Q Did he tell you who lived at that home?

17 A I don't remember names.

18 Q After those first couple of conversations
19 when he got back, did you have later conversations with
20 him on the phone, regular contact?

21 A Yeah, we always talked. I mean, ever since
22 we got out there we always kept in touch.

23 Q And, of course, he did come back to
24 Philadelphia later on in '98?

25 A Right. He came back and he was there for

1 Thanksgiving and Christmas.

2 Q And did he spend some time with you around
3 Thanksgiving?

4 A Yes. He stayed at my parents' house with me
5 while he was there. He was kind of back and forth. He
6 stayed with me at my parents house, and he stayed some
7 with Margaret and Tommy.

8 Q Did you know Tommy Creamer?

9 A Yes.

10 Q Do you know him very well?

11 A No. I didn't know him very well. I met him
12 a few times, like, in Atlantic City, and just because him
13 and Jack were good friends.

14 MR. KENNEDY: Pass the witness, Your
15 Honor.

16 THE COURT: Cross-examination?

17

18 CROSS-EXAMINATION

19 BY MR. KANE:

20 Q Mr. Seka helps with your daughter's support?

21 A Well, he did up until the last two years.

22 Q When did that stop?

23 MR. CHRISTIANSEN: Objection, Your
24 Honor. May we approach?

25 THE COURT: You may.

1 (Whereupon, counsel conferred with the Court.)

2 THE COURT: You may proceed, counsel.

3 Q (By Mr. Kane) If I tell you that there was
4 testimony in this trial that after Jack came back from the
5 Halloween visit back east, that he was upset because he
6 had had some sort of altercation with his girlfriend, do
7 you know who they would be talking about?

8 A Altercation?

9 Q Did Jack have a girlfriend when he was back
10 for the Halloween visit back in Philadelphia?

11 A No. Not that I know of, unless he was
12 talking about me. We were still kind of on and off as far
13 as our relationship went.

14 Q And did anything awful happen in terms of
15 your relationship during that Halloween visit?

16 A No, not at all.

17 Q So if I told you that there was testimony
18 that when he came back here he was really upset over
19 something that had happened with his girlfriend, either
20 the person was incorrect, or they weren't talking about
21 you; is that correct?

22 A Right.

23 MR. KANE: Nothing further.

24 THE COURT: Anything further?

25 MR. KENNEDY: Briefly,

REDIRECT EXAMINATION

BY MR. KENNEDY:

Q Ms. Caterino, when you came out here on your trip in September of '98 and you stayed at the business, the days you stayed, was it during the business week between Monday and Friday?

A Actually, no. It was -- when I got there I believe that it was a Friday, because they went to Lake Tahoe over the weekend and then came back Sunday night, and that's when I was there.

Q And so you were there from Friday through Sunday?

A Actually, I was there, I think, until the following night. I think I left on a Monday.

Q And so these three days, or two or three days you were there by yourself with Jack; is that right?

A Right.

Q Did you notice any other people coming and going from the store?

A Yeah. There were guys. I mean, I'm not sure if they were the men that worked there, but there was people coming in and out and: Hi, how are you doing, and he talked to people a lot.

Q Jack would talk to people?

A Yes.

1 Q Did you notice any individuals that appeared
2 Asian, of Asian descent?

3 A Yeah, there was. Actually, I didn't know if
4 they were Asian, Chinese, something, but I met him and his
5 wife. He had part of his finger missing or something.

6 Q And were these people customers, or you
7 didn't know?

8 A No. As far as I know, he worked for them.
9 I mean, he drove one of the work trucks.

10 Q And how did you get that impression?

11 A Well, we had gone out to lunch with him one
12 day. We had gone out to lunch and he wore, like, work
13 clothes, I guess, like a uniform or whatever.

14 Q And is this an Asian man?

15 A He would tell Jack: I have this call at
16 this place, so that's how I got the impression that he
17 worked for them.

18 Q Did you see any people that appeared to be
19 customers coming and going from the store?

20 A There was lots of people. I really don't
21 know who everyone was.

22 MR. KENNEDY: Pass the witness, Your
23 Honor.

24 THE COURT: Anything further?

25 MR. KANE: No, Your Honor.

1 THE COURT: Ma'am, thank you very much.
2 You're excused.

3 Is there another witness available at this
4 time?

5 MR. KENNEDY: Lee Polsky.

6
7 Whereupon,

8 LEE POLSKY,
9 was called as a witness by the Defense, and having been
10 first duly sworn, was examined and testified as follows:

11
12 DIRECT EXAMINATION

13 BY MR. KENNEDY:

14 Q Would you please state your name and spell
15 your last name for the court reporter here.

16 A Lee Polsky, P-o-l-s-k-y.

17 Q Mr. Polsky, where are you from?

18 A Woodbury, New Jersey.

19 Q Is that near Philadelphia?

20 A Yes.

21 Q How close is that from Philadelphia?

22 A Probably about 11 miles.

23 Q You know an individual by the name of Jack
24 Seka?

25 A Yes.

1 Q And how do you know him?

2 A He worked for me.

3 Q What did he do for you?

4 A Little bit of everything. I had a car lot,
5 a car business, automobile business, and he helped me out.
6 He was a salesman.

7 Q How long did he work for you?

8 A I guess all told, probably about four years.

9 Q Do you know an individual named Tom or
10 Thomas Creamer?

11 A Vaguely.

12 Q Did you ever met him?

13 A Once or twice; perhaps twice.

14 Q How do you know him? What was the tie?

15 A I knew him through Jack.

16 Q As a friend of Jack's?

17 A He was a friend of Jack's, yes.

18 Q Now, are you aware that in 1998 that Jack
19 came out to Las Vegas, came out here to work?

20 A Yes.

21 Q Did he tell you, is it something where he
22 said: Hey, I'm going to Vegas, I've got a job opportunity
23 out here?

24 A Yes.

25 Q Were you that close to him that you would

1 see him?

2 A Sure.

3 Q Did he tell you who he came out here to work
4 with?

5 A Yes.

6 Q Who was that?

7 A Pete Limanni.

8 Q Do you know Pete Limanni?

9 A Yes.

10 Q And how did you know him?

11 A I knew Pete. I've known Pete since he was a
12 kid; well, younger. But Pete grew up in the area, and we
13 had mutual friends, and Pete had done some work for me at
14 my house.

15 Q So you were aware that Pete was bringing
16 Jack out to Las Vegas to start up a business, or were you
17 aware of that?

18 A I remember when Jack left, sure.

19 Q And when Jack was in Las Vegas, were you
20 close enough to him that he would call you now and then
21 and tell you what's going on as a friendly call?

22 A They both used to call me.

23 Q Pete would call you as well?

24 A They must have had two phones, because I
25 would speak to both of them at once.

1 Q Did you ever hear Jack complain to you on
2 any of these phone calls that Peter was treating him very
3 badly?

4 A No, not at all.

5 Q Would he ever complain to you at all about
6 Pete, that Pete was making him do work he didn't want to
7 do, or things of that type?

8 A No.

9 Q Now, in November of 1998, a sequence of
10 events happened and I just want to understand, did you
11 come to learn in November of 1998 that something happened
12 in Las Vegas involving Mr. Limanni and Jack?

13 A I had heard.

14 Q What was your -- did you have a conversation
15 or a phone call with Jack Seka in early '98?

16 A Yes.

17 Q Do you remember when that was? Do you
18 remember what day it was, or time frame?

19 A It was right after -- it was probably -- I
20 know he was home for Halloween. I know that, and I think
21 his daughter's birthday was then. But I remember he was
22 in for Halloween and he went back shortly thereafter, then
23 he called me.

24 Q So he left Philadelphia and gave you a call
25 a few days later?

1 A Yeah. I think it was a few days later.

2 Q More than three?

3 A I don't recall. It could have been, but it
4 could have been right in that area.

5 Q Okay. Do you remember what Jack told you on
6 that first phone call?

7 A Yeah. We were talking and he said that he
8 didn't know where Pete was. And I said, "What do you mean
9 you don't know where he is?" He said, "I don't know where
10 he is." And I said, "Maybe he left while you were away."
11 And he said, "No. He picked me up at the airport."

12 Q Peter picked him up at the airport and
13 brought him back?

14 A Brought him back. And I'm just trying to
15 recall the sequence. He picked him up at the airport and
16 maybe they went home and went to sleep. Maybe they went
17 to work the next day. They worked the next day together,
18 and then the next morning Jack woke up and Pete wasn't
19 there.

20 And he said, "I thought he went out for
21 coffee," because he always goes out for coffee in the
22 morning.

23 Q Jack told you that?

24 A Yes. And he says, "He's not back and I've
25 been trying to reach him." And I said, "Maybe he took off

1 and went on vacation. Who knows what Pete would do."
2 And he said, "No, he wouldn't go anywhere because his dog
3 is here. He wouldn't go anywhere without his dog, and the
4 dog is here."

5 Q And, obviously, this was a phone
6 conversation. You've had phone conversations with Jack
7 before; is that right?

8 A Yeah, sure.

9 Q How did he sound on the phone? Did he sound
10 worried or concerned?

11 A I wouldn't say that he sounded worried. I
12 would say that he sounded like -- he sounded like he
13 couldn't believe it, that he couldn't believe Pete wasn't
14 there. The dog was there but he wasn't, and he couldn't
15 believe that he couldn't get a hold of him.

16 Q After this conversation, did you have any
17 other further phone conversations with Jack Seka in
18 November of '98? Did he call you again?

19 A Yeah. He called me. I don't know if it was
20 a week or two weeks afterwards. I really don't remember.

21 Q What did he tell you?

22 A I said, "How did you do with Pete?" And he
23 said, "He's not around. I don't know what happened to
24 him." He said, "The police picked me up and they
25 questioned me for seven or eight hours."

1 I said, "About what?" And I think he said
2 about a guy who worked close to them, a guy who worked
3 close to them. And I said, "What did they question you
4 for?" And he said, "They just questioned me and I don't
5 know what's going on."

6 And I said, "What about Pete?" And he said,
7 I don't know." I said, "You haven't heard from him?" And
8 he said no.

9 And I think he even said that he checked
10 Lake Tahoe, because they were going to -- or they, or Pete
11 was going to open up a business there, and he thought he
12 might have went there. And he even checked there and
13 there was no Pete.

14 Q Did you have any other conversations with
15 Jack after that one on the phone in November of '98?

16 A Not that I recall; no, I don't think so.

17 Q Did there come a point in time in either
18 November or early December of '98 that you called Tom
19 Creamer?

20 A Yes.

21 Q And why did you do that?

22 A I had heard around town -- I live in a small
23 town. I know everybody. I was born and raised there.
24 And I am in the automobile business, for the most part,
25 along with some real estate. But be that as it may, in

1 our town there's different car dealers and we all know
2 each other.

3 And a friend of mine who owns a car
4 dealership which was catty-corner from mine called me and
5 he said, "Hey, did you hear that Jack killed Pete
6 Limanni?" And I said, "What are you talking about?" And
7 he said, "Well, I was talking to Pete's brother, Steve."

8 Q Do you know Peter's brother?

9 A Sure. This fellow -- well, I was talking to
10 Pete's brother, and Pete's brother said the detective
11 called and said that they know that his brother is dead,
12 but they can't find him and that Jack shot him, or did
13 something to him. I don't know.

14 Q And that's what you heard from an auto
15 dealer where Steve Limanni works; is that correct?

16 A Not where Steve Limanni works, he's friends
17 with him. Steve Limanni is in the fuel oil business, and
18 this guy is a car dealer.

19 Q Did you also hear amongst the scuttlebutt in
20 the town that Jack was dead?

21 A Yes.

22 Q You heard that too?

23 A Uh-huh. That's, I think, I had called Tommy
24 Creamer because I knew that Creamer and him were friends.
25 And I figured if anybody would have heard, Creamer would

1 hear, or Jack's girlfriend. And I guess that was a circle
2 there, they all knew each other.

3 Q So when you called Tommy Creamer, you were
4 just trying find out where Jack was?

5 A Yes.

6 Q Did you call Tommy Creamer and tell him that
7 Jack had killed Peter Limanni?

8 A No, I would never do -- no, I would never
9 do that.

10 Q In other words, you didn't know what
11 happened to Pete Limanni, did you, at that time?

12 A No, no.

13 Q Did you see Jack when he did come back in
14 December of '98? November, December of '98, did you see
15 him when he came back after he came back to Las Vegas?

16 A Yeah. I think I did see him.

17 Q Did you have a chance to meet with him, or
18 just see him on the street and say hi or something?

19 A I saw him. I think I had coffee with him.

20 Q Did you see him on more than one occasion
21 in, say, December of '98?

22 A I don't think so.

23 Q The conversation you had with Tommy Creamer,
24 did you have another conversation, or was that the only
25 one?

1 A I could have had another conversation but
2 I'll be truthful, I don't recall. I don't remember it. I
3 could have had another conversation and said: Hey, have
4 you heard from Jack? I might have, but I don't know.

5 MR. KENNEDY: Pass witness, Your Honor.

6 THE COURT: Cross-examination?

7 THE WITNESS: I am on the phone all day
8 long with people.

9 THE COURT: Cross-examination?

10 MR. FATTIG: No, Your Honor.

11 THE COURT: Thank you very much, sir.
12 You're excused. What's the status?

13 MR. CHRISTIANSEN: Judge, we have
14 Richard Ferguson as the next witness.

15 THE COURT: Very good.

16
17 Whereupon,

18 **RICHARD FERGUSON,**
19 was called as a witness by the Defense, and having been
20 first duly sworn, was examined and testified as follows:

21

22 **DIRECT EXAMINATION**

23 BY MR. CHRISTIANSEN:

24 Q Good afternoon, again, Mr. Ferguson.

25 A Good afternoon.

1 Q Mr. Ferguson, you're the gentleman that owns
2 the trophy shop that was right next door to Cinergi, and
3 you testified last week for the State, correct?

4 A Correct.

5 Q And after your testimony you had occasion to
6 meet with my investigator and he came and asked you some
7 questions, and that's this gentleman right here, correct?

8 A Yes.

9 Q On the day you called the police about the
10 broken window in 1929, which is November the 17th, 1998;
11 is that right?

12 A Correct, yes.

13 Q Did you have any conversations with any
14 police officers or anybody from Metro about a dumpster in
15 the back being empty?

16 A No conversation with them about it.

17 Q You never told any police officer that
18 dumpster behind your business had been empty?

19 A No. I didn't tell them it was empty.

20 Q Now, you looked at the dumpster at some
21 point that day; is that right?

22 A Correct.

23 Q And I think you told us it was about 1:00
24 o'clock?

25 A Somewhere around there.

1 MR. CHRISTIANSEN: May I approach, Your
2 Honor?

3 THE COURT: You may.

4 Q (By Mr. Christiansen) I'm handing you
5 what's been marked for identification purposes as
6 Defendant's Proposed Exhibit EE, and I'll tell you that a
7 crime scene analyst, a Metro employee testified that he
8 took a picture of inside of that dumpster late in the
9 evening, and that's what it looked like.

10 Is that what it appeared to you like at 1:00
11 o'clock when you went out there?

12 A Yes. I see the items now that I am
13 specifically looking at them. But I just glanced in there
14 and it was just a little bit of trash in the bottom of it,
15 and I didn't think nothing of it.

16 Q So this is a fair and accurate depiction of
17 what you saw about 1:00 o'clock, November 17th, 1998?

18 A Yes, sir.

19 MR. CHRISTIANSEN: I move for the
20 admission of Defense Proposed Exhibit EE.

21 MR. KANE: No objection, Your Honor.

22 THE COURT: It is received. Thank you.

23 MR. KENNEDY: Nothing further. Pass
24 the witness. Thank you.

25 THE COURT: Cross-examination?

1 MR. FATTIG: No.

2 MR. KANE: No questions, Your Honor.

3 THE COURT: Mr. Ferguson, thank you,
4 sir. You're excused. Counsel?

5 MR. KENNEDY: Your Honor, at this time
6 the Defense has a stipulated exhibit I'd like to admit.
7 It's Defendant's Proposed CC. This is a group of
8 documents which constitute what we'll call the Tahoe lease
9 documents, the lease entered into between Peter Limanni
10 and the leasing company for business location in Tahoe.

11 It includes those documents, as well as some
12 bank records, if I'm not mistaken, and the ultimate
13 complaint for a lawful detainer filed for nonpayment on
14 the lease. So this is a stipulated exhibit and I would
15 move for its admission.

16 MR. KANE: Yes, Your Honor. They're
17 from my files and I have no objection to the admission.

18 THE COURT: It is received. Thank you.

19 Shall we take our break at this point?

20 MR. CHRISTIANSEN: Yes, Your Honor.

21 THE COURT: "Ladies and gentlemen, it
22 is your duty not to discuss among yourselves, or with
23 anyone else, any subject connected with the trial; or
24 read, watch or listen to any report of, or commentary on
25 the trial or any person connected with the trial by any

1 medium of information, including without limitation,
2 newspapers, television and radio; or form or express any
3 opinion on any subject connected with the trial until the
4 cause is finally submitted to you."

5 We'll take 15 or 20 minutes. Court's in
6 recess.

7 (Whereupon, a 20-minute recess was taken.)

8 THE COURT: The continuation of
9 C159915, State versus John Joseph Seka. The record will
10 reflect the presence of the defendant; his counsel,
11 Mr. Christiansen and Mr. Kennedy; Mr. Kane and Mr. Fattig
12 present for the State. The absence of the jury is noted.

13 Mr. Seka, could I ask you to stand, please,
14 sir. I want you to be aware of some rights that you have.

15 And I haven't gone over these with you
16 before?

17 THE DEFENDANT: No, sir.

18 THE COURT: You have a right under the
19 Constitution of the United States and under the
20 Constitution of the State of Nevada not to be compelled to
21 testify in this case; do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You may, if you wish, give
24 up this right and take the witness stand and testify. If
25 you do, you will be subject to cross-examination by the

1 District Attorney's, and anything that you may say, be it
2 on direct or cross-examination, would be the subject of
3 fair comment when the District Attorneys speak to the jury
4 in their final argument; do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If you choose not to
7 testify, the Court will not permit the District Attorneys
8 to make any comments to the jury concerning the fact that
9 you have not testified; do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you elect not to
12 testify, the Court will instruct the jury, if your
13 attorneys request, the following instruction. I would
14 read this along with the other jury instructions:

15 Quote: "The law does not compel a defendant
16 in a criminal case to take the stand and testify, and no
17 presumption may be raised, or know inferences of any kind
18 may be drawn from the failure of a defendant to testify,"
19 unquote.

20 That instruction, or something very similar
21 to that, would be read if your attorneys request.

22 Are you with me so far?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you have any questions?

25 THE DEFENDANT: No, sir.

1 THE COURT: The last thing I want you
2 to understand is this: If you elect to testify, the
3 District Attorneys may inquire of you on the stand about
4 any criminal record that you may have stemming back ten
5 years that is criminal in nature, and a felony over the
6 last ten years.

7 They cannot go into it at length, but merely
8 the time of crime, when it was committed, and when you
9 suffered the prosecution, things like that. Of course, in
10 essence, the jury would know your criminal record, if you
11 have one; do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, the last thing I tell
14 people such as yourself in this situation is, simply, that
15 it is your decision to make. It's your right to either
16 invoke or not to testify.

17 I would, however, commend you to whatever
18 advice your attorneys will give you, because it is a very
19 critical strategy. There's a lot involved here. And
20 they're experienced in these kinds of things, so I would
21 suggest that you pay attention to them, and make your
22 decision based on all the factors, okay?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have your seat.

25 Counsel, what witnesses or witness do we

1 have?

2 MR. KENNEDY: We'll be prepared to rest
3 at this point, Your Honor.

4 THE COURT: You've discussed the
5 questions with your client?

6 MR. KENNEDY: Yes, we have. He will
7 not be testifying.

8 THE COURT: Will there be rebuttal?

9 MR. KANE: No, Your Honor.

10 THE COURT: So, essentially, they will
11 come back in and sit down. Do we have our proposed
12 instructions?

13 MR. KANE: Yes, Judge. I exchanged
14 them this morning.

15 THE COURT: I will approach the jury,
16 if you will acquiesce, of them possibly coming in at 10:00
17 o'clock tomorrow. Would that be good?

18 MR. KENNEDY: That's fine.

19 MR. KANE: That's fine with us, Your
20 Honor.

21 THE COURT: Mr. Bailiff, please.

22 (Whereupon, the jury entered the courtroom.)

23 THE COURT: Would counsel stipulate
24 that all members of the jury are present and properly
25 seated?

1 MR. KENNEDY: Yes, Your Honor.

2 MR. KANE: Yes, Your Honor.

3 MR. CHRISTIANSEN: Yes, sir.

4 MR. KENNEDY: Your Honor, the Defense
5 at this time would rest.

6 THE COURT: Any rebuttal, counsel?

7 MR. KANE: No, Your Honor.

8 THE COURT: Ladies and gentlemen,
9 counsel and I are going to utilize the remainder of our day
10 this afternoon formulating jury instructions. You heard
11 me make mention of the jury instructions during our voir
12 dire.

13 They're rather lengthy, it takes some time
14 to tailor each case instructions to fit the situation in
15 each case, so it's a rather lengthy process. There's no
16 need for you to remain here. We will begin tomorrow with
17 the attorney's closing remarks and, of course, I will read
18 you the instructions before they begin those remarks.

19 My preference tomorrow, if it's not an undue
20 hardship to everyone, is to start at 10:00 o'clock in the
21 morning. Would that be a problem for anyone?

22 Be honest and fair to yourself if you have
23 something.

24 JUROR CUSTARD: I can reschedule. I
25 just made my daughter an appointment for 9:45. It's

1 tomorrow, and she's having problems hearing out of one of
2 her ears. I'll try to reschedule for next week.

3 THE COURT: Would you like to use our
4 phones? We will accommodate you any way we can.

5 JUROR CUSTARD: I can arrange it.

6 THE COURT: The reason is, typically my
7 morning calendars are just incredible. There's no sense
8 in trying to come in here and have a trial before noon.
9 We gave that up years ago. Fridays, however, is a
10 different situation, I have a very small calendar. So if
11 I start the calendar at 9:00 I'll be well finished by
12 10:00, so we could begin and get something accomplished in
13 the morning.

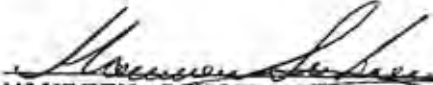
14 Now, please, let's not one of us forget.
15 Let me read to you the admonition.

16 "It is your duty not to discuss among
17 yourselves, or with anyone else, any subject connected
18 with the trial; or read, watch or listen to any report of,
19 or commentary on the trial or any person connected with
20 the trial by any medium of information, including without
21 limitation, newspapers, television and radio; or form or
22 express any opinion on any subject connected with the
23 trial until the cause is finally submitted to you."

24 So 10:00 o'clock tomorrow morning. Please
25 keep that admonition in mind. Court is adjourned.

1 Counsel, see you in chambers.

2
3 ATTEST: Full, true and accurate transcript of
4 proceedings.

5
6
7 
8 MAUREEN SCHORN, CCR NO. 496, RPR

71

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
February 26, 2001
SHIRLEY B. PARRAGUIRRE, CLERK
BY *Linda Skinner*
LINDA SKINNER DEPUTY
No. C159915
Dept No: XIV

THE STATE OF NEVADA,

Plaintiff,

vs.

JOHN JOSEPH SEKA,

Defendant.

ORIGINAL

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

VOLUME I

February 23, 2001
10:10 a.m.
Department XIV

APPEARANCES:

For the State:

MR. EDWARD KANE
MR. TIMOTHY FATTIG
Deputy District Attorneys

For the Defendant:

MR. KIRK KENNEDY
MR. PETER CHRISTIANSEN
Attorneys-at-Law



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

1 THE COURT: The continuation of C159915,
2 State versus John Joseph Seka. Let the record reflect
3 the presence - - where is Mr. Seka?

4 MR. CHRISTIANSEN: We'll waive his
5 presence for purposes of resolving jury instructions.

6 MR. KENNEDY: We would.

7 THE COURT: - - the presence of Mr.
8 Christiansen and Mr. Kennedy for the defense will be
9 acknowledged, Mr. Kane and Mr. Fattig for the State. The
10 absence of the jury is noted.

11 Mr. Kane, Mr. Fattig, you are aware, are
12 you not, of the jury instructions the Court indicated it
13 would read, 1 through 39?

14 MR. KANE: Yes, Your Honor.

15 MR. FATTIG: Yes.

16 THE COURT: Do you have any additional
17 instructions to offer?

18 MR. KANE: No, Your Honor.

19 THE COURT: Do you have any objections to
20 any one of those?

21 MR. KANE: No, Your Honor.

22 THE COURT: Mr. Kennedy, you are aware of
23 the jury instructions the Court has indicated it would
24 read?

25 MR. KENNEDY: Yes, your honor.

1 THE COURT: Do you any additional
2 instructions to offer?

3 MR. CHRISTIANSEN: Judge, I have offered
4 to the Court - - I'll start - - there are two
5 instructions which probably, for convenience, should be
6 marked as court's exhibits one and two dealing with
7 exculpatory evidence.

8 The first one reads exculpatory evidence
9 is evidence which tends to excuse or clear the Defendant
10 from alleged fault or guilt.

11 The following instruction reads "If you
12 find the State lost or mishandled evidence which at one
13 time - - which was at one time in its possession and such
14 evidence would be seriously considered by the jury in
15 determining guilt or innocence, then you must presume
16 that such evidence would have been exculpatory evidence
17 in favor of the Defendant."

18 I've offered those with the case law cited
19 on the bottom. The evidence in this case that these
20 cases or that these instructions relate to is the DNA
21 evidence which Mr. Welch admitted he used up entire
22 portions of samples, all dealing with the samples that
23 have proved inculpatory, specifically those that were
24 taken from the 1998 Toyota pickup truck, the bed of that
25 pickup truck and the 1998 van, the back of the van, both

1 of those samples allegedly come back as the DNA or the
2 blood of the two victims, Eric Hamilton and Peter
3 Limanni, respectively, and they were completely used up.

4 We had no ability to test those. Both Mr.
5 Welch as well as other experts, Randy McPhail, who
6 testified on behalf of the State, thought that such a
7 procedure to use them up was fundamentally unfair.

8 This, combined with the fact the State, as
9 we've previously discussed, failed to, per the statute,
10 notify the defense of its intention to call a DNA expert,
11 statute is 174.241, I believe, amounts to severe
12 prejudice to the Defendant.

13 I think a way to potentially cure that is
14 to offer this curative instruction and I would leave it
15 at that.

16 THE COURT: Response?

17 MR. KANE: I don't think that the evidence
18 at trial bears out any misplacing or negligent
19 destruction of evidence.

20 Mr. Welch's testimony was clear that,
21 under the technology available at the time, the samples
22 were used up in testing.

23 He did state that with newer technology
24 less of the sample has to be used and so these days he
25 always makes sure that some is maintained, but he said

1 you couldn't do that back then.

2 Further, the argument, as I understand it,
3 is based on our failure to notify someone that we were
4 doing these tests so they could test them if they wanted
5 to.

6 These tests were done, first round in
7 December 1998, second round in February of 1999, so all
8 tests were completed and all samples were exhausted by
9 February 9. The charges in this case weren't filed until
10 February 26 of 1999, partially based on the results of
11 these tests.

12 At the time Mr. Seka had left the
13 jurisdiction and was back east there was nobody to
14 notify. So to the extent that if a case was in existence
15 there might have been a duty to notify.

16 There certainly was no such duty there and
17 there's been no mishandling of the evidence.

18 Just to round out this DNA issue, the
19 Court is aware that there was an issue with notice of the
20 DNA expert that ties in with this. I just wanted to
21 complete the record by indicating that last weekend, that
22 is last Saturday, I believe I received a call, a message
23 from Mr. Christiansen asking if I could secure the
24 release and expedited shipment of DNA samples to his
25 expert so they could be examined.

1 I called back on Sunday, was unable to get
2 him, but left a message that, yes, I had no problem with
3 that and I would be at the office all day on Monday, even
4 though Monday was a holiday.

5 On Tuesday morning I got a call from Birch
6 Henry, who is the head of the DNA lab, indicating he was
7 shipping the stuff out Federal Express to Mr.
8 Christiansen's expert and just make sure I had no
9 objection and I told him that sure and go ahead and do
10 that.

11 THE COURT: Good enough.

12 I don't disagree with Mr. Christiansen's
13 statement of law, basically. The thing that troubles me
14 about these instructions is that I have seen nothing that
15 would suggest that the State lost or mishandled these
16 substances.

17 I think the issue of the standard utilized
18 at the time these tests were performed and the science at
19 the time, requiring additional samples to be exhausted,
20 which is what we have heard in the way of evidence,
21 belies any argument of mishandling.

22 I think the law that that the instruction
23 sets forth is designed to prohibit, first of all,
24 probably either a negligent or certainly a purposeful
25 losing or secreting samples, but even if it was

1 inadvertent I think you'd have to show more than we have
2 here in this case. The facts just don't bear out that
3 instruction.

4 For the record, the first instruction will
5 be characterized as A and that is the one beginning with
6 exculpatory evidence.

7 The second, if you find the State lost,
8 that would be B.

9 MR. CHRISTIANSEN: Judge, so the record is
10 complete - - and I understand the Court's ruling - - and
11 I'm not continuing to challenge that - - the harm that's
12 done by not having notice of an expert combined with
13 using up all the samples - - and it's not cured in any
14 way, whatsoever, by giving my expert the data in the
15 middle of trial - - is that I now cannot call and get an
16 expert here and was unable to procure somebody to come
17 here and say how fundamentally unfair it is to use up the
18 these samples.

19 That is the harm to the Defense. I
20 understand the Court's ruling.

21 I wanted to make that clear for the
22 record.

23 THE COURT: Thank you.

24 Additional instructions you would offer?

25 MR. CHRISTIANSEN: Yes, Your Honor.

1 You have two - - and I apologize, I think
2 the Court has my copy - - they are the jurisdictional
3 instructions that correlate to the one that has been
4 numbered as instruction number four. I will submit those
5 on my offer.

6 I would prefer those versus the one that
7 we have, the Court has drafted, which incorporated part
8 of my instruction into the one offered by Mr. Kane.

9 I'd like to offer them as proposed
10 instructions.

11 THE COURT: All right.

12 MR. KANE: I would note for the record,
13 instruction number four as originally proposed by the
14 State was in the exact wording of the jurisdictional
15 statute, but in a compromise I agreed not to oppose the
16 addition of the word "substantial" in the first line of
17 instruction number four, and I believe that makes it an
18 even more fair instruction and makes Defendant's C and D
19 unnecessary.

20 THE COURT: All right.

21 Well, I elected to read the one that was
22 supplied by the District Attorney's office because I
23 think it's clearer. It's more easily understood and it,
24 of course, is the exact language or was, until we amended
25 it, of the statute.

1 In particular, I had some concern with
2 those two instructions and I've characterized them as C
3 and D, proffered by Mr. Christiansen and Mr. Kennedy, in
4 that in line three it talks about such acts being a
5 substantial and an integral part of an overall continuing
6 crime.

7 Then several lines down it talks about
8 acts which were carried out in partial execution of the
9 plan to murder.

10 It looks to me that that could be
11 confusing to a jury and it suggests two standards,
12 different standards. I can see quite a discussion
13 between our jurors as to which is to actually apply.

14 I believe it's confusing and I have
15 elected to read the simpler version. I believe there's
16 one other.

17 MR. CHRISTIANSEN: Yes, Your Honor.

18 The last one, which the Court will I'm
19 sure mark as Exhibit E, is an advisory verdict that is
20 taken directly from our statute.

21 I requested the Court and am requesting
22 the Court giving an advisory verdict on Count III which
23 is the robbery count of Eric Hamilton.

24 There's been no evidence adduced in any
25 part of the case that Mr. Hamilton ever had anything that

1 was taken from him.

2 In fact, the only thing of value which it
3 appears that can be accurately and 100 percent identified
4 as belonging him is the ring that's on his finger when
5 he's found south of town in the desert.

6 So with that I'd submit it. It's a
7 discretionary - - I believe a discretionary decision for
8 the judge to decide on an advisory verdict and I'd ask
9 the Court to give it.

10 MR. KANE: Judge, the jacket found at the
11 scene had bullet holes in it.

12 As I stated before, unless somebody, after
13 shooting Eric Hamilton, decided to put a few bullet holes
14 in the jacket, it was on him and it's a fair inference
15 that it was removed after the use of force was applied.

16 Additionally, there was a bracelet at the
17 scene, along with the jacket and cap. It had been tossed
18 to one side.

19 Dr. Green testified that Eric Hamilton had
20 a mark on his wrist which was not inconsistent with that
21 bracelet having been forcibly removed.

22 I think there's sufficient evidence to
23 present the question of fact and forward this issue to
24 the jury rather than handle it be way of advisory
25 verdict.

1 THE COURT: I agree.

2 The facts are sufficient to enable a
3 finding and that should remain in the jury's province.
4 So it will be declined.

5 Any others to offer?

6 MR. CHRISTIANSEN: No, sir. Just some
7 objections to the ones the Court is going to give.

8 THE COURT: State those, please.

9 MR. CHRISTIANSEN: Number 13 is the malice
10 instruction. The Defense objects to the malice
11 instruction as given under the cases of Coleman and
12 Wagner which were recently handed down and stand for the
13 proposition that there is no situation in which the State
14 has a right to presume malice to raise an otherwise
15 non-First Degree Murder case to the level of
16 premeditation and malice aforethought and I'd object to
17 the Court giving that instruction.

18 THE COURT: Response?

19 MR. KANE: The cases cited by Defense, I
20 would believe, were specifically relevant to the area of
21 child abuse and not to the Felony Murder Rule itself.

22 I believe this is still a proper
23 instruction under the law of Felony Murder.

24 THE COURT: The Court's determination is
25 that 13 is a proper statement of the law.

1 MR. CHRISTIANSEN: Next objection, Your
2 Honor, is to number 14.

3 That is the unanimity instruction.

4 The Defense objects, under the due process
5 clause, that the unanimity instruction takes away from
6 the jury the onus of having the State prove unanimously
7 one theory of guilt beyond a reasonable doubt.

8 I understand the recent case of Leonard
9 disagrees with my position. However, I think the law in
10 Nevada is inconsistent with the federal law which sets
11 the ceiling or the floor, depending how you look at it,
12 on Constitutional standards and I'd ask that that
13 instruction not be given.

14 MR. KANE: Your Honor, I acknowledge
15 counsel's right to argue for a good faith change in the
16 law, but the law, as it is, says this is a proper
17 instruction and we'll submit it.

18 THE COURT: I agree.

19 Is there another objection?

20 MR. CHRISTIANSEN: Yes, Your Honor.

21 Judge, instruction number 25 deals with
22 the issue of punishment and it instructs the jury not to
23 consider punishment.

24 My objection is to the second sentence of
25 that instruction which states "Your present duty is

1 confined to the determination of the guilt or innocence
2 of the Defendant."

3 That is an incorrect statement of the law.

4 Nowhere in any courtroom that I am aware
5 of is the jury instructed that they are ever to consider
6 innocence. That is typically a media misstatement of the
7 law.

8 The jury is to determine whether the State
9 has met its burden of proving guilt beyond a reasonable
10 doubt.

11 I would ask that the sentence be
12 reconstructed to say "Your present duty is confined to
13 the determination of whether the State has proven the
14 defendant guilty beyond a reasonable doubt.

15 THE COURT: Response?

16 MR. KANE: I think taking the
17 instructions, as a whole, there's no possibility of
18 conviction to the jury.

19 All this instruction tells them is that
20 when making the determination as to guilty or not guilty
21 they are not to consider punishment.

22 THE COURT: As I indicated in chambers,
23 this is an instruction that has been read for some 20
24 years in this Court. I don't think that the word
25 innocence is going to be particularly damning one way or

1 the other. I'm going to read this as written.

2 Anything else?

3 MR. CHRISTIANSEN: Instruction number 30
4 is the instruction offered by the prosecution which is
5 not in compliance with the statute dealing with robbery.

6 Mr. Kane has cited some older cases,
7 specifically a 1950 and a 1976 case from Nevada that are
8 outdated and, in my opinion, not in compliance with the
9 law and not a reflection of the statute.

10 I'd ask 30 not be given and the Court
11 simply rely on the statutory language set forth by our
12 Legislature.

13 THE COURT: Response?

14 MR. KANE: Age in a case is not as painful
15 to an individual as in the law. These cases may not be
16 fresh and new, but they haven't been overruled.

17 This instruction is a proper statement of
18 the law and was, in fact, used in one capital case in
19 which I am aware during the last calendar year.

20 THE COURT: It is that which has been
21 utilized, historically. I'm going to read it.

22 Any other objections?

23 MR. CHRISTIANSEN: The last one, I
24 believe, Your Honor, is instruction number 33.

25 The objection is to the first sentence

1 which reads "The Defendant is presumed innocent until the
2 contrary is proved."

3 The objection is to the word until.

4 Until is a burden-shifting word. It
5 presumes the State is going to meet that burden that is
6 placed upon it.

7 The correct statement of the law is to
8 replace until with unless, so the sentence would read
9 "The Defendant is presumed innocent, unless the contrary
10 is proved."

11 While I will concede that is the statute
12 as set forth by our Legislature, the statute on malice,
13 which has been ruled unconstitutional and is never
14 offered now by the District Attorney's Office has still -
15 - is still on the books and it hasn't been fixed by our
16 Legislature.

17 So just because it's on the books doesn't
18 mean it's a correct statement of the law. Ask the Court
19 to give unless, rather than until, and I will tell the
20 Court in 20 some odd murder cases I've never had a judge
21 deny that request over objection every time by the State.

22 THE COURT: You've never - - in other
23 words, you have prevailed in each instance?

24 MR. CHRISTIANSEN: I've prevailed in every
25 instance, Your Honor.

1 THE COURT: That's impressive.

2 MR. KANE: Much as I hate to ruin a
3 perfect record, this is a correct statement and I think
4 th Nevada Supreme Court has ruled that you tamper with
5 the definition of reasonable doubt and the definition of
6 the presumption over innocence at your peril.

7 I don't want to see the wording changed.

8 Further, to the extent that the single
9 word "until" it could possibly be confusing to the jury
10 and lead them to believe that this instructs them that
11 they are going to find the Defendant guilty.

12 Any of that is taken away by the last
13 sentence which reads "If you have a reasonable doubt as
14 to the guilt of the Defendant he is entitled to a verdict
15 of not guilty."

16 Read as a whole, this instruction can
17 hardly be said to suggest to the jury what they are
18 supposed to find.

19 THE COURT: Thank you.

20 Well, I think it's a minor item. Not to
21 be discourteous, certainly, but Justice Mowbray used to
22 announce from the bench in the Supreme Court occasionally
23 when he was faced with such a circumstance similar to
24 this "Counsel, you seem to be fly specking."

25 I tend to think that's kind of where we

1 are. It will be read in its form as it certainly exists.

2 Any further objections?

3 MR. CHRISTIANSEN: No, sir.

4 THE COURT: All right.

5 MR. KANE: One final thing.

6 In the case that we mentioned - - and I
7 apologize for not having the citation, but the case that
8 said you will give this definition of reasonable doubt
9 and no other, the Nevada Supreme Court also chastised the
10 habit of prosecutors of using examples of what is a
11 reasonable doubt, like reasonable doubt is when a member
12 of your family needs to have surgery and things like
13 that, and found those arguments to be improper.

14 I don't - - I do everything I can to avoid
15 interrupting counsel in closing argument. I'm not sure
16 if Defense counsel plans on using any examples like that,
17 but my position is that they are improper under existing
18 law, that reasonable doubt is what is defined in here and
19 you can argue whether or not it exists in a particular
20 case, but can't use examples as a glossary to further
21 define it.

22 I would make a contemporaneous objection
23 if that argument is made. I mention it now, just hoping
24 to avoid that.

25 MR. CHRISTIANSEN: Your Honor, I think,

1 I've read the case Mr. Kane is referring to.

2 The case says it is improper to tell the
3 jury what is reasonable doubt or what quantifies
4 reasonable doubt. It is not - - and nowhere in the case
5 or any case law I'm familiar with say it is improper to
6 say to the jury "If you believe that something, a weighty
7 affair in your life is buying a house, then you may
8 analogize it here."

9 "If you believe that it is choosing your
10 child's teacher as a weighty affair in your life," which
11 is the part of the instruction that we're talking about,
12 "then you can do or think of it in that fashion."

13 That does not quantify. That says leave
14 it up to you folks in the jury. I don't know what you
15 consider a weight affair in your life.

16 If it's one of these, great. If it's not,
17 then you think of something that's a weighty affair in
18 your life.

19 I use that analogy all the time. I've
20 never, ever in 35 criminal cases had a judge tell me I
21 couldn't do it.

22 THE COURT: Never?

23 MR. CHRISTIANSEN: Never.

24 I know that tempts you, but - -

25 MR. KANE: I think it is precluded by that

1 case. I think that's exactly what they were talking
2 about. The language of the case says every time you get
3 into using a specific example, a specific event, you're
4 seeking to quantify what we've said can only be defined
5 by the words in the statute.

6 Again, I think the Defense is free to
7 argue whether or not reasonable doubt, as defined in the
8 instructions, exists, but not to seek to further narrow
9 or quantify the definition.

10 THE COURT: Well, counsel, specifically
11 what you alluded to initially, Mr. Kane, was an example
12 defining reasonable doubt.

13 What Mr. Christiansen is talking about is
14 the element of a weighty affair.

15 Now, is there a distinction to be made
16 there?

17 MR. KANE: This may be like the debate
18 between until and unless, but I don't think so.

19 The definition of reasonable doubt is
20 composed of a number of words. When you go to define
21 those underlying words or terms you're adding to the
22 definition of reasonable doubt which is what the
23 Legislature and the Supreme Court have said you can't do.

24 THE COURT: What is the need, Mr.
25 Christiansen, to give an example or call to the attention

1 of the jury this weighty affair phrase?

2 MR. CHRISTIANSEN: Because, quite frankly,
3 the juries don't understand the instructions, as written.

4 They are written by lawyers for lawyers to
5 understand and they say, you know, you have to have an
6 abiding conviction as you would in a weighty affair of
7 your life.

8 To the jury an abiding conviction and a
9 weighty affair, I'm entitled to say to them, if a weighty
10 affair in your life is - - and give an example, then that
11 is something you can think of it like.

12 If it's not, then you choose.

13 I tell them in every case, I say I'm not
14 telling you, because I'm not allowed to tell you what is
15 a weighty affair in your life.

16 However, if it is buying a new home,
17 choosing your child's teacher, something of that nature,
18 then you can analogize the situation to that that you can
19 correlate to or, now, that you live with in your everyday
20 life.

21 I never tell them that's what it is. In
22 fact, I tell them right up front, and I will tell them
23 that I can't quantify it for them.

24 THE COURT: Well, I'm going to allow you
25 to go ahead and utilize the argument. I hope it's more

1 effective to the jury than it is to me.

2 I don't quite see why this has anything to
3 do with anything. I'll leave that up to you.

4 MR. CHRISTIANSEN: Thank you, judge.

5 MR. KANE: Giving with one hand and taking
6 away with the other.

7 MR. KENNEDY: Yesterday the Defense
8 closed. There were two exhibits we failed to put in,
9 Defendant's proposed H which is a guarantee document that
10 was shown to Takeo Kato and Defendant's proposed exhibit
11 BB, which are the records of Nevada State Bank from Peter
12 Limanni.

13 The State has agreed to admit these
14 without objection.

15 MR. KANE: That's correct.

16 In fact the jail records which were marked
17 as Defense exhibits, Mr. Kennedy told me they were going
18 to offer those.

19 I have no objection to those either.

20 MR. KENNEDY: No objection?

21 MR. KANE: That's right.

22 MR. KENNEDY: Also move for the admission
23 of the jail records.

24 THE COURT: Do you have them labeled Ms.
25 Ms. Clerk?

1 MS. CLERK: Yes.

2 MR. KENNEDY: Which are, for the record,
3 Defendant's proposed exhibit A.

4 Move for their admission.

5 THE COURT: Those items are received.

6 Will counsel stipulate the jury

7 instructions have been settled in open court?

8 MR. KENNEDY: Yes.

9 MR. KANE: Yes, Your Honor.

10 THE COURT: Are you desirous of having the
11 instructions read prior to closing argument?

12 MR. KANE: Yes.

13 MR. KENNEDY: Yes.

14 THE COURT: For the record, Mr. Seka is
15 present in the courtroom at this juncture. I believe,
16 Mr. Christiansen, you indicated you waived his presence
17 during our argument on the instructions.

18 MR. CHRISTIANSEN: I did. I'm sorry, Your
19 Honor, yes.

20 THE COURT: For the record, he had not
21 been brought over from the jail quite at the time we
22 started. He was brought in in mid argument.

23 Anything else outside the presence of the
24 jury?

25 MR. KENNEDY: No, sir.

1 MR. CHRISTIANSEN: No, sir.

2 MR. KANE: No.

3 THE COURT: Mr. Bailiff, please.

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

6 (Whereupon the clerk of the court called
7 the roll of the jury.)

8 MS. CLERK: The panel is present, Your
9 Honor.

10 THE COURT: Very good. Good morning,
11 Ladies and Gentlemen.

12 The time has come, Ladies and Gentlemen,
13 for me to read to you the jury instructions that you've
14 heard me make mention of. I will read them slowly so you
15 could be follow along as I read them.

16 They are somewhat complicated, certainly
17 at the first reading. You will have the actual copy that
18 I'm reading from to take with you when you retire to the
19 jury room to begin your deliberation.

20 I'm not at liberty to explain or repeat
21 the instructions at this juncture, merely to read them
22 the one time.

23 As you probably have noticed in the last
24 few days, my voice is not the best. If you cannot hear,
25 because I won't be looking at you, I'll be reading, if

1 you can't hear, someone just say something.

2 A JUROR: A little louder.

3 THE COURT: You're saying something
4 already. Bear with me. I will repeat - - if I can't be
5 heard, I will re-read that portion that you haven't
6 heard, certainly.

7 (Whereupon, the Court read the
8 instructions to the jury.)

9 THE COURT: Closing remarks, counsel?

10 MR. FATTIG: May it please the Court,
11 counsel, Ladies and Gentlemen of the Jury.

12 The instructions that you just heard might
13 have sounded a little bit intimidating, but at this point
14 keep in mind that the essence of what you have to do as a
15 jury is the same in this case as it is in any other case.

16 Essentially at this point in time there
17 are two main questions that you need to consider and
18 answer.

19 One is what crimes were committed, if any,
20 and number two is who committed them?

21 Now, these questions must be answered by
22 any jury. However, a murder case can be a little bit
23 different than a more mundane case, say a burglary,
24 shoplifting-type case.

25 The way you go about answering those two

1 questions might be a little bit different in a murder
2 situation.

3 Obviously in a murder case the most
4 important witnesses, often times the only eye witnesses
5 cannot testify. They are deceased. The perpetrator has
6 made sure that the main eye witnesses against him or her
7 can't come into court and testify.

8 People don't generally go around
9 committing murders in front of other people. It's
10 usually a crime done in secret. It's a crime done out
11 of, say, a surveillance camera's reach.

12 Consequently, the instruction dealing with
13 common sense becomes very important. It becomes very
14 important for each one of you in the deliberating room to
15 go in there and bring what you have to the table about
16 what you know about how the world works.

17 Specifically instruction 37 deals with
18 that. And it deals with the fact that you need to use
19 your common sense. It tells you that you are to use your
20 common sense to draw reasonable inferences as to what you
21 believe happened.

22 The the instructions also talk about two
23 different types of evidence that the law recognizes.
24 That would be direct evidence and circumstantial
25 evidence.

1 Instruction 34 explicitly tells you that
2 direct evidence is the testimony of a person who claims
3 to have personal knowledge of a given event.

4 Now, in this particular case there
5 obviously wasn't a lot of direct evidence because you
6 didn't have any eye witnesses to the murders.

7 However, you did hear from many witnesses
8 that told you what they saw and what they did regarding
9 the particular piece of evidence. You heard from a
10 couple witnesses about what they observed between the
11 relationship between the Defendant and Peter Limanni.

12 You heard several witnesses tell you what
13 they heard from the Defendant, statements the Defendant
14 made to them, certain statements that were inconsistent
15 with other evidence in this case.

16 You heard of statements he made to Thomas
17 Cramer, his a long time friend, a statement of confession
18 that he killed Peter Limanni. Some of that direct
19 evidence is necessary to put in context. The
20 circumstantial evidence which is the other kind of
21 evidence you have heard in this case.

22 Specifically instruction 34 tells you what
23 circumstantial evidence is. It is the proof of a chain
24 of facts and circumstances which tend to show whether the
25 Defendant is guilty or not guilty.

1 Now, sometimes circumstantial evidence
2 gets a bad wrap. I'm sure you've heard the phrase "It's
3 just a circumstantial case", as if it's a derogatory type
4 term.

5 It's important to recognize that the law
6 and instruction 34 specifically talks about this,
7 recognizes that circumstantial evidence can be just as
8 compelling and just as important as direct evidence.

9 The law recognizes that direct evidence
10 can have just as many faults. People obviously are human
11 beings. Their recollection of events can be wrong.

12 Now, at times when the only eye witness to
13 the actual events are either dead or on trial it is
14 necessary for you to use the reasonable inferences and
15 your common sense about the evidence in the case to reach
16 a specific conclusion.

17 Now, what is the evidence, what has the
18 evidence showed in this case?

19 How does it show that John Seka committed
20 the murder of Eric Hamilton and Peter Limanni?

21 What evidence did you hear concerning 1933
22 Western, the Sinergi office building, in the Fall of
23 1998?

24 What was going on?

25 You heard from Jennifer Harrison. Do you

1 remember her? She was the former girlfriend of Peter
2 Limanni.

3 Jennifer testified that she was dating
4 Peter and was around him quite a bit and around the
5 offices of Sinergi quite a bit, between August 1,
6 November 4th of 1998.

7 Now, granted it didn't sound like the two
8 of them, Jennifer and Peter, had a perfect relationship.
9 She did testify that she was planning on breaking it off
10 about the time all this came down.

11 She testified, however, that she was
12 around quite a bit, so she was aware of the relationship
13 between Jack and Peter.

14 Now, also from the evidence I think it was
15 clear that Peter Limanni was no angel. He treated the
16 Defendant in a way that the Defendant was somehow beneath
17 him.

18 The evidence was that Peter was very
19 controlling when it came to all sort of things with
20 regards to the Defendant in this case. Peter controlled
21 the money, how much money the Defendant got and when.

22 He gave him orders, he gave him lists of
23 things to do, errands to run for the business, getting
24 coffee, those sort of things. Remember a couple specific
25 incidents that Jennifer talked to you about that she

1 witness that Fall.

2 She testified about an incident at the
3 airport. She testified that her and Peter were going to
4 Lake Tahoe on a trip and Jack, the Defendant in this
5 case, drove them to the airport.

6 When they were getting out of the car she
7 testified that Peter ordered Jack to take the luggage
8 out. Jack said no.

9 Peter ordered him again. He did it.
10 These are the types of things, the type of relationship
11 they had.

12 She also testified about an incident with
13 some spilled paint and she testified that one time she
14 witnessed in the offices of Sinergi the Defendant spill
15 some paint and she said it wasn't that big of a deal, but
16 she witnessed Peter blow it out of proportion and became
17 extremely angered, angry with him and showed his temper
18 towards Jack.

19 She testified that after that incident
20 occurred the Defendant came up to her and the Defendant
21 said "You haven't seen anything. That's just the tip of
22 the iceberg."

23 You also heard testimony from the
24 Defendant's long time friend Thomas Cramer. Mr. Cramer
25 testified that during one of his many conversations with

1 the Defendant, in the Fall of 1998 on the telephone,
2 while Mr. Cramer was back east, he overheard a
3 conversation between the Defendant and Mr. Limanni and
4 Mr. Limanni, if you remember, became enraged that the
5 Defendant was even on the telephone and Mr. Cramer
6 testified that he had not heard someone behave in such a
7 way towards another person before.

8 Now, the evidence in the case is has also
9 shown that the Defendant, in late October, October 29, he
10 stated in his statement to Detective Thowsen, took a trip
11 back east. He arrived back, he told Detective Thowsen,
12 on November 3rd.

13 He - - during the trip - - you heard
14 evidence that the Defendant saw something that, according
15 to Jennifer Harrison, caused him to be very distressed
16 and depressed and upset.

17 She testified that the Defendant told her
18 on a phone conversation on the 5th when she was calling
19 to look for Peter that he was very depressed and upset
20 because he had caught his girlfriend back east in bed
21 with another man.

22 On November 4, 1998, Jennifer Harrison saw
23 Peter Limanni for the very last time. Peter came over
24 that night to her place. She testified that they had a
25 pleasant evening and that they made plans to have lunch

1 together that next day.

2 Again, I don't think you can characterize
3 their relationship as perfect at this time. However, she
4 did testify that her feelings in terms of breaking off
5 the relationship were more internal.

6 They basically had plans to continue to
7 see each other, especially that very next day, that it
8 was a pleasant visit on the 4th.

9 On the morning of November 5th, which was
10 a Thursday, she attempted to get hold of Peter on his
11 cellphone. She testified that normally it was quite easy
12 to get hold of Peter. She talked to him quite a bit.

13 He had given her a cellphone. They
14 contacted each other all the time. She testified it was
15 rare that it was turned off and when she would leave a
16 message he would generally return it.

17 Now, on the morning of the 5th she finds
18 it strange that Peter doesn't return her call. She can't
19 get hold of him.

20 So after failing to contact Peter a couple
21 times she calls the Defendant up at some point that
22 morning and the Defendant tells her that Peter Limanni
23 got up early that morning and he left with someone, but
24 he didn't know who.

25 And again, that was also the conversation

1 that the Defendant said he was very depressed, because he
2 caught his girlfriend in New Jersey, back east, in bed
3 with another man.

4 Now, at around noon on the 5th Jennifer
5 sensed that something wasn't right so she went to 1933,
6 looking for Peter Limanni.

7 She entered the business. She saw the
8 Defendant passed out on the floor. There was a girl in
9 there with him.

10 She went to the bedroom looking for Peter,
11 noticed that the door was locked. She testified that was
12 unusual. She eventually got in the room and when she
13 looked inside she noticed that all of Peter's shoes were
14 still present, and she found that out and she found it
15 odd that Jake was there, alone with the Defendant, but
16 not with Peter.

17 When she went out and she noticed Jack - -
18 she also noticed something unusual and she noticed what
19 she said was about two hundred dollars in cash on the
20 table near where Jack was at. She said that was unusual
21 in Sinergi to have cash laying around.

22 Now, after she left that particular day
23 she kept calling Peter, attempting to contact him, but
24 had no luck.

25 She also looked for Peter by calling the