

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 6**

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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:

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1 Defendant. During one of those conversations she
2 indicated that she wanted to file a missing person's
3 report with the police.

4 The Defendant told her "No, don't do that.
5 He is missing because he wants to be missing."

6 Now, Jennifer didn't think that Peter
7 would leave without taking his dog, because he was very
8 close to Jake. However, she did admit on
9 cross-examination that it was possible that he might do
10 that.

11 However, there was another item that she
12 believed Peter would never leave behind. If you
13 remember, she testified that Peter had a box or a crate
14 and she testified that Peter told her about this crate,
15 and that it had a very special meaning to Peter.

16 He said there were several sentimental
17 photos of family. He said there was a bottle of Crown
18 Royal in there, an unopened bottle he planned on opening
19 on a special occasion, like if he got remarried or the
20 birth of a child.

21 She even testified that Peter told her
22 that he liked "to travel light". However, that was one
23 of the things he always kept with him.

24 That explains why Jennifer asked the
25 Defendant specifically whether Peter had taken that crate

1 with him. The Defendant told her that Peter Limanni had
2 taken that crate.

3 Now, State's exhibit 25, Jennifer Harrison
4 identified that crate at the bottom of State's exhibit
5 25.

6 State's exhibit 25 was admitted after
7 crime scene analyst Randy McPhail testified that this was
8 a photograph he took on November 17, 1998 inside of 1933.
9 Clearly, the Defendant did not want Jennifer to contact
10 the police.

11 He didn't want a missing person's report
12 filed on Peter Limanni. He wanted everyone to believe
13 that Peter just picked up and moved.

14 He wanted to hide the fact, the fact that
15 Peter Limanni had already been brutally murdered and left
16 in a gravesite over the border in California.

17 Remember back to Michael Cerda? He was
18 the landlord or the manager of this shopping mall, this
19 strip mall where all of these businesses were at.

20 He was the very first witness in this
21 case. He testified that he saw Peter Limanni around this
22 time.

23 Mr. Cerda testified regarding some dates
24 and events in terms of when they happened and he seemed a
25 bit confused as to exactly what happened when.

1 He testified that he "seemed" to remember
2 seeing Peter Limanni on Friday, November 6th.

3 Now, he was not exactly sure of the date,
4 but he thought it was the 6th, on Friday. He also
5 testified that he saw the Defendant on the day the
6 officers came by and discovered the glass at 1929 Western
7 when they were called out to the adjacent vacant
8 business.

9 He testified rather assuredly on that
10 point that he definitely knew when they came out it was a
11 Wednesday and he believed that it was November 11.

12 Well, from the evidence we know that Mr.
13 Cerda was wrong on both counts, not only on the day, but
14 the date. He was off on the date by six days, because it
15 was November 17th when the officers went out there, a day
16 after Eric Hamilton's body had been discovered just off
17 of Las Vegas Boulevard.

18 He was also wrong on the date of the week,
19 because it was a Tuesday when they went out there. It
20 wasn't a Wednesday, but he, when he testified, was sure
21 it was a Wednesday.

22 Now, could Mr. Cerda have been confused in
23 terms of when exactly he saw Peter Limanni for the last
24 time? Of course he could.

25 It could have been November 4th, a

1 Wednesday, rather than November 6th, just as easily.

2 The 4th was still after the rent came due on that month
3 and the gist of the conversation, if you remember the
4 last conversation between Mr. Cerda and Mr. Limanni was
5 when Mr. Limanni was going to pay the rent because it was
6 overdue.

7 It was obviously due on the 1st. If he
8 saw him on the 6th, rather than the 4th, it would also
9 mean Jennifer Harrison - - that Peter Limanni had
10 successfully avoided Jennifer Harrison for a full 48
11 hours.

12 And Jennifer Harrison seemed like a rather
13 determined woman, to me. I'll leave that to you to
14 determine whether or not that's reasonable or not.

15 Now, the Defense has cited several times
16 to the fact that Peter was with someone, with a blonde,
17 shapely woman during the conversation between Mr. Cerda
18 and Mr. Limanni.

19 However, my memory of Mr. Cerda's
20 testimony was that Peter merely said Hi to a woman as she
21 walked by. She may have been walking out of the business
22 or near the business.

23 On cross-examination, Mr. Cerda was asked
24 specifically by Mr. Christiansen whether or not she was
25 with Mr. Limanni and and Mr. Cerda testified no.

1 Now, remember also that Mr. Cerda
2 testified that the last time he saw Peter Limanni he was
3 with - - Peter Limanni had a rather large amount of cash
4 on his person. He testified he had between two and
5 \$3,000 in cash and that he allowed Peter to delay paying
6 the rent until that next week and Peter kept that money.

7 Mr. Cerda never saw Mr. Limanni again and
8 he never saw that month's rent.

9 The cash that Mr. Limanni had on him was
10 also never found. His body was found weeks later in
11 California, clothed only in boxer shorts.

12 There was no identification and certainly
13 no money and nothing of value on him. It was also never
14 found inside the business there on Western.

15 Now, the next Monday Mr. Cerda testified
16 he came by and he posted a five-day notice and later he
17 testified the Defendant called him back and that same day
18 after the notice has been posted and the Defendant said
19 he didn't know where Peter was at, but that he was
20 planning on paying the rent for that month.

21 Well, the Defendant never paid the rent
22 and, in fact, by November 12, just one week after Peter
23 Limanni came up missing, the Defendant was planning on
24 leaving town.

25 Remember, Mr. Kato testified that - - at a

1 point in time after Peter Limanni came up missing, he
2 found a to-do list inside of 1933 Western. And that is
3 State's Exhibit 20, which is the envelope along with the
4 list.

5 Now, State's exhibit 20, the list, has
6 been stipulated among the parties that it is a list
7 written in the Defendant's handwriting, and the list
8 clearly shows a couple of things. The first thing it
9 shows is that when it was written and it's dated, again,
10 Thursday, November 12, 1998.

11 The Defendant was planning on leaving
12 town. He was planning most likely to go back east.

13 There's several entries on the list that
14 are of note, FedEx to brother, need address, Danny there
15 to pick up stuff, Carlos there to pick up stuff. Rest of
16 stuff to Emir; number six, figure out new address. Call
17 Christine, FedEx to Christine; number eight, need cash,
18 cigars from Gallo to Emir.

19 Number 15, call Tommy Cramer back east.
20 Call Jen. Get phone back. There's also on this list
21 evidence that, on November 12, 1998, just days after
22 Peter Limanni came up missing, the Defendant was not
23 expecting Peter Limanni to ever return.

24 The note contains an entry, number 14, it
25 states find home for Jake. It's also interesting that

1 number 18 talks about liquidating things, liquidating the
2 cigars, pens, cutters, stuff. Clearly the Defendant was
3 anticipating Peter Limanni would never return.

4 The Defendant knew Peter Limanni was close
5 with Jake, everyone knew that, yet he somehow knew by the
6 12th that Peter was not going to return. Take care of
7 Jake.

8 He knew that Peter Limanni was not going
9 to return to take care of the cigar business. He knew
10 that he was not returning to the business despite the
11 fact that many of his possessions were still at the
12 business, including his driver's license, his birth
13 certificate, a Social Security card, the crate of the
14 sentimental things that I already mentioned. If not
15 nearly all of his clothes, many of his shoes.

16 How could he have known that by November
17 12, 1998?

18 Use your common sense.

19 What is reasonable?

20 Now, on early Monday, November 16, a body
21 of a person later identified - - identified at the time
22 as John Lumber Doe, but later identified as Eric Hamilton
23 was discovered 2.1 miles south of Lake Mead Drive on the
24 southern side of town just off of Las Vegas Boulevard.

25 The body was found some 30 feet off the

1 road with seven pieces of wood attempting to cover it.
2 The wood had certain identifying marks that you heard
3 testimony, when later compared to some wood found at 1933
4 Western, seemed to match up.

5 The testimony was that Vincent Roberts, a
6 crime scene analyst, impounded that wood and he took it
7 to the lab.

8 Fred Boyd, the fingerprint expert you
9 heard from in this case applied several chemicals to that
10 wood in an attempt to develop these latent or hidden
11 fingerprints.

12 He testified that on two different pieces
13 of wood he found the Defendant's fingerprints. On the
14 third piece of wood he found Peter Limanni's
15 fingerprints.

16 Now, clearly some of the wood from 1933
17 Western was used in a rather weak attempt to hide Eric
18 Hamilton's body.

19 I would submit to you, Ladies and
20 Gentlemen, that it was such a weak attempt to hide the
21 body that it might leave a reasonable person to believe
22 that the person that tried to do that may have been
23 intoxicated from drinking beer at the time they attempted
24 to do that.

25 Now, the wood is not even close to being

1 the only thing that links up Eric Hamilton with that
2 strip mall on Western.

3 Inside the pocket of Mr. Hamilton was a
4 piece of paper. On the piece of paper it said Jack and
5 it had the Defendant's cellphone number, the same
6 cellphone number he was carrying on November 17th.

7 Now, Vincent Roberts, the crime scene
8 analyst, also testified that when they went out to the
9 body they noticed a set of tracks. There is a diagram
10 that's been admitted from the crime scene showing the
11 tracks coming off the road towards the body and leaving
12 the body.

13 There's also the photographs of those
14 tracks. They photographed a particular section near
15 where the body was at of those tracks and then they
16 poured a plaster cast over that in order to develop an
17 impression of that track.

18 The cast and the photos were then used by
19 Fred Boyd again, and Mr. Boyd compared the known prints
20 of the tire tracks of the 1998 Toyota pickup that the
21 Defendant was driving that next day and compared them
22 with the samples he had from the crime scene.

23 Mr. Boyd testified that the same type of
24 tire that existed on that particular Toyota pickup made
25 the impression near Eric Hamilton's body.

1 He was unable to positively ID that
2 particular tire from that particular truck, but he
3 testified there wasn't a unique quality about the tire
4 and/or the impression in the dirt.

5 There wasn't a nail in it or a rock or
6 something to that effect on both of them so that's why he
7 was unable to positively ID.

8 However, he did say that they were - -
9 that the tire that was on that truck made that
10 impression, that same type of tire.

11 Now, additional evidence that links up the
12 murder of Eric Hamilton to this Defendant is the blood
13 evidence. And you heard from crime scene analyst Gary
14 Reed, he testified that the day after the body was
15 discovered, he was part of the investigation at 1933
16 Western, and he testified that he conducted several tests
17 in the bed of the 1998 brown Toyota pickup truck.

18 He testified that as part of those tests
19 he applied a chemical called luminol to the bed of the
20 truck in an attempt to determine whether or not there was
21 blood in the bed of that truck.

22 State's exhibit 32 is a photograph of that
23 luminol showing the blood in that back of that 1998
24 Toyota pickup truck.

25 Now, the samples were impounded and David

1 Welch from the DNA lab conducted some tests. You
2 remember Mr. Welch. He testified last week.

3 Mr. Welch testified that he's been in DNA
4 analysis for approximately five years. He testified that
5 he examined several samples with regards to Mr. Hamilton.

6 One of those samples was the glass
7 fragments with apparent blood, which on State's exhibit
8 35 is the second item down. And that evidence was
9 gathered by Mr. Ruffino on November 17, 1998, from 1929
10 Western.

11 Mr. Ruffino testified that he impounded
12 some glass fragments with some blood on it or possible
13 blood from 1929 Western.

14 Now, Mr. Welch testified that he examined
15 the blood and his standard practice - - it's labeled
16 apparent blood until he conducts a further test at the
17 lab which he said - - he testified he did on all of the
18 samples in this case and all of them came back positive
19 for human blood, so initially he tested it. It came back
20 positive for human blood.

21 Then he tested it in regards to DNA. His
22 analysis concluded that both Peter Limanni and the
23 Defendant could be certainly excluded as the donors of
24 that particular blood found inside 1929 Western.

25 He concluded that Mr. Hamilton could not

1 be excluded as the donor of the blood. In fact, Mr.
2 Welch testified regarding probabilities and on this
3 particular item of evidence the blood inside 1929
4 Western, the probability that it was someone other than
5 Eric Hamilton's blood was 2.8 million to one.

6 As you can tell, Mr. Hamilton - - you've
7 been told - - and the picture shows an African American
8 individual and that's the probability when it comes to an
9 African American individual.

10 Now, I asked Mr. Welch a specific question
11 about that in terms of the race issue and he testified
12 that it wasn't just 2.8 million to one people. It was
13 2.8 million to one African American people that it could
14 have been someone other than Mr. Hamilton's blood.

15 Now - - and that, of course, was blood
16 that was found in the same room with the jacket with the
17 holes in it and the spent .357 ammunition.

18 Mr. Welch also testified that he examined
19 samples taken from Gary Reed and Mr. Reed is at the
20 bottom of exhibit 35, this particular sample.

21 And Mr. Reed testified that he took that
22 sample from the back of that Toyota pickup truck and Mr.
23 Welch testified that he determined, once again, that the
24 back of that Toyota pickup truck, the blood in that was
25 definitely not the Defendant's or Peter Limanni's.

1 He said he could absolutely exclude them
2 based on the DNA analysis, but again, he testified that
3 Eric Hamilton could not be excluded and again, the ratio
4 on the blood, the probability is the exact same as it was
5 on the glass fragments, 1 in 2.8 million or 2.8 million
6 to one chance that it's someone else's besides Eric
7 Hamilton.

8 You also heard testimony that the jacket
9 that was recovered from 1929 had several bullet holes in
10 it and the bullet holes seemed to match up with the
11 wounds on Mr. Hamilton's body.

12 Now, in examination of - - an examination
13 of Mr. Hamilton by Doctor Sheldon Green, who you heard
14 testify on November 17, during Mr. Hamilton's autopsy,
15 revealed several interesting details.

16 Mr. Green, excuse me, Dr. Green testified
17 initially that Mr. Hamilton was definitely murdered
18 sometime within 24 hours preceding when his body was
19 found. That means, since his body was found on the 16th,
20 takes us to the 15th, November 15th or possibly the early
21 morning hours of November 16th.

22 How was he killed?

23 Well, Ladies and Gentlemen, under the law
24 there are some questions, some issues that the State has
25 to prove, beyond a reasonable doubt, in order to hold

1 someone accountable for their actions and others in which
2 the law recognizes that we do not have to prove in order
3 to hold someone accountable.

4 Now, do we have to prove the types of
5 crimes committed?

6 Of course we do.

7 Do we have to prove it was a homicide - -
8 yes - - versus a suicide or accidental?

9 Do we have to prove whether the homicide
10 was done with premeditation and deliberation?

11 Yes, of course we do. We accept that
12 burden.

13 Do we have to prove who did it?

14 Once again, of course we do.

15 Those issues go to the two questions I
16 talked about initially, that go to the essence of what
17 you have to do.

18 Now, while of course we have to prove what
19 particular crimes were committed and who committed them,
20 beyond a doubt which is reasonable, we do not have to
21 prove why they were committed or exactly how the
22 perpetrator went about committing them.

23 Now, the law recognizes that those types
24 of questions, depending on the case, may not be able to
25 be proven beyond a reasonable doubt. Instruction 32

1 specifically talks about that.

2 It tells you that motive or why a person
3 did what they did is not an element of the offenses.
4 This may be one of those cases.

5 Now, do we want to know exactly why things
6 were done, why actions were taken?

7 Certainly. We're a curious species.
8 However, it's important to recognize that the law does
9 not impose such a burden upon a jury.

10 What does the evidence suggest with
11 regards to how the crime was committed?

12 There is evidence that suggests what may
13 have happened. Dr. Green testified that Eric Hamilton
14 had three thru-and-thru wounds. Three shots went through
15 his body.

16 He was shot in the back about the mid
17 chest, once. He testified it went through his aorta,
18 which is a main artery of the heart, and exited out the
19 chest.

20 He was also shot, he testified, in the
21 left flank area, that went through and punctured yet
22 another artery and went out and he testified there was a
23 third shot that came from behind and shot him in the
24 right thigh and out the front of the right thigh.

25 Now, Dr. Green testified that it is

1 difficult to tell the order of the wounds. However, he
2 was able to testify regarding the most likely scenario in
3 his opinion, based on his years and years of experience.

4 He testified that the wound to the left
5 side of Mr. Hamilton, the left flank he described it on,
6 came before the wound to the back that went through the
7 aorta and out the chest.

8 He testified that he made this conclusion
9 based on the fact that since the aorta is such a major
10 artery it would be more likely that the wound, initial
11 wound came from the left, because the initial wound bled
12 more or bled a significant amount.

13 He said if the first wound came from the
14 back and struck the aorta, the wound down below wouldn't
15 have bled as much as it did.

16 Now, what did the Defendant say in regards
17 to Eric Hamilton?

18 Well, in an interview the day after Mr.
19 Hamilton was discovered, the interview with Detective
20 Thowsen, the Defendant seemed to describe someone that
21 generally fitted the description of Mr. Hamilton.

22 The Defendant told Detective Thowsen that
23 he was familiar with a person he named Seymour, although
24 he wasn't sure if that was his real name or not.

25 He said Seymour did some work around the

1 business, and that Seymour had, in fact, called him on
2 his cellphone, the same cellphone that Eric Hamilton had
3 the number in his pocket when he was found murdered.

4 In his statement to Detective Thowsen the
5 Defendant told Detective Thowsen that he hadn't talked to
6 Seymour since about five days prior to the day he left
7 for his trip to New Jersey.

8 He said that that was October 29, so five
9 days prior to that would put it at around October 24,
10 according to the Defendant's statement.

11 He also indicated that in that statement
12 that Seymour had not been at the business for
13 approximately two weeks prior to that. That would mean,
14 according to the Defendant, Mr. Hamilton had not been
15 inside of Sinergi since around October 10 of 1998.

16 There are two problems with that.
17 Initially, if you remember Michelle Hamilton, who was the
18 sister of Eric, and Ms. Hamilton testified that Eric was
19 living with her in California until he left and moved to
20 Las Vegas in late October early November of 1998.

21 Also we have the situation of Randy
22 McPhail who is the crime scene analyst at 1933 Western.
23 Mr. McPhail recovered several latent fingerprints off of
24 several beer bottles inside of 1933 Western on November
25 17.

1 The beer bottles, again, were examined by
2 Mr. Boyd. Lo and behold, we have the Defendant's
3 fingerprints on bottles, beer bottles, along with Eric
4 Hamilton's.

5 The testimony was that the bottles with
6 the fingerprints of the Defendant and the bottles of the
7 fingerprints with Mr. Hamilton were taken out of the
8 exact same trash can out of 1933 Western inside that
9 southeast room.

10 Now, the Defendant's statement to
11 Detective Thowsen about Seymour just doesn't add up. We
12 know from Dr. Green that Eric Hamilton was killed
13 sometime on either November 15 or November 16.

14 We know from all the other evidence that
15 Mr. Hamilton was killed inside the front reception area
16 of a vacant business immediately adjacent to 1933
17 Western.

18 We know that from the blood, the spent
19 bullets, the jacket with the holes in it. We know that
20 Eric Hamilton had the Defendant's name and his cellular
21 phone number in his pocket.

22 We know that the Toyota pickup that was
23 used to drive off his body to dump it was owned by
24 Sinergi right next door. And we know that sometime after
25 he arrived in Las Vegas in late October, early November

1 1998, he was inside 1933 Sinergi, drinking Miller Lite.

2 Now, what would reasonably explain the
3 circumstances of his death?

4 Who had access to that truck, that 1998
5 Toyota pickup truck that carried away his body and dumped
6 it?

7 A little more than 24 hours after the body
8 is discovered the Defendant is seen driving that truck.
9 You heard that from Officer Kroll, Officer Noguez. You
10 also heard it from Mike Cerda who was the
11 manager/landlord of that business, that strip mall, and
12 you also heard it from Rick Ferguson who is the man in
13 the trophy shop business right next door.

14 You also heard it from Detective Tom
15 Thowsen who testified that afternoon, on the 17th, the
16 Defendant had the key to that truck in his pocket.

17 Now, how did Mr. Hamilton get inside 1933
18 Western to drink that beer?

19 Who had control over the business?

20 The Defendant did. Clearly, the evidence
21 has shown that, as of November 15, November 16, Peter
22 Limanni was not around. The Defendant was clearly in
23 control of the business.

24 I would point you to State's exhibit 80
25 which is the tape recording you heard and you'll be

1 provided that tape and you'll be provided it with a
2 recorder and I urge you to listen to it very carefully.

3 In the Defendant's own statement to
4 Detective Thowsen the Defendant had an exchange with
5 Detective Thowsen about who lived at that business and
6 who was in control of things.

7 Detective Thowsen asked him "Was anyone
8 else staying there with you", referring to Sinergi, and
9 the Defendant said "No. Staying at the place?"

10 Detective Thowsen said "Yes."

11 The Defendant said "No. No one ever stays
12 there but me or him."

13 Detective Thowsen said "Just you or
14 Peter?"

15 The Defendant said "Right, that's it."

16 Now, it is also reasonable to conclude
17 that the Defendant and Hamilton were together when they
18 were drinking beer inside of 1933, because the beer was
19 collected from the very same trash can.

20 Now, there were some bottles collected in
21 the south central room, as well as the southeast room of
22 1933, but there was no evidence to suggest that this
23 particular business was a pig sty.

24 You have some photographs. You can judge
25 for yourself. There was no evidence to suggest that

1 garbage like that was laying around for a long time.

2 It's reasonable to conclude that Mr.
3 Hamilton ended up on the floor at 1929 Western on
4 November 15 or November 16 at some point, because earlier
5 he had been at 1933 Western with the Defendant.

6 Now, what happened? Why did the Defendant
7 start shooting and eventually murder Eric Hamilton?

8 Was it in relation to a robbery of Mr.
9 Hamilton? That is a question that is your job to answer,
10 but once again, it is not why, only what and who that are
11 critical to your deliberations.

12 An examination of the crime scene and Dr.
13 Green's testimony regarding the sequence of shots could
14 also be telling to determining who killed Mr. Hamilton.

15 Again, Mr. Green's testimony suggests that
16 the first shot into Mr. Hamilton was into goes into his
17 left side and that would make sense if you consider the
18 entry points to the other two shots that went through
19 him, that being in the back, the one in the back and one
20 in the back side of the right thigh.

21 Now, think what is reasonable if you were
22 shot in the side, the left side. If someone is shot in
23 the left side of their body what would they do?

24 Of course, they would turn and run away
25 from the shooter, run away from the danger. That causes

1 your back to be exposed and for the additional shots to
2 strike you in the back.

3 Now, examine the crime scene at 1929 where
4 it appears that Mr. Hamilton either fell through the
5 window that was right next to the front door area or
6 perhaps he jumped through it in an effort to escape the
7 person that was shooting at him and into him.

8 Consider that he was dragged away after
9 his jacket and a bracelet and a hat and whatever money or
10 possessions he may have had had been removed.

11 Where was he running from when he was shot
12 at and/or being shot?

13 Well, you remember the layout of that
14 strip mall there. You remember where 1929 is placed in
15 relation to the other businesses in the area.

16 If you look at it that way there are three
17 possibilities of which direction he was coming from when
18 he ended up at 1929. North of 1929 is 1921. There was
19 testimony that that business was also vacant.

20 Now, west of 1929 is the street, Western,
21 and the sidewalk to the south of 1929 is 1933, the
22 Sinergi business.

23 Now, what makes sense, considering all
24 that evidence?

25 Where and who was Eric Hamilton running

1 from on November 15 or 16?

2 Does it make sense he could have been
3 running from the sidewalk? Perhaps.

4 From the vacant building next to 1929 on
5 the north side or from 1933?

6 Well, also consider that Mr. Hamilton's
7 body had no bullets in it.

8 The testimony was that the shots went
9 through his body. On - - at 1933, on November 17 that
10 next day, Mr. McPhail recovered three spent cartridges of
11 .357 ammunition. And remember that a fourth spent
12 cartridge of .357 ammo was recovered by Mr. Ruffino.

13 That was a few weeks later and that was
14 part of a stipulated exhibit, a stipulation between the
15 parties.

16 You heard testimony from Torrey Johnson
17 who is the firearms expert. He testified he examined
18 those four cartridges of .357 ammunition. He concluded
19 that all four of them were fired from the exact same
20 weapon.

21 Now, where were those cartridges found and
22 under what circumstances?

23 That gets us to the events of November
24 17th and helps link up the murder of Eric Hamilton with
25 the murder of Peter Limanni. Evidence showed that

1 sometime in the morning of November 17 Rick Ferguson, who
2 is the owner of that trophy shop, called the police
3 because of the discovery of the broken glass at 1929.

4 The evidence showed that around 10:25 that
5 morning Officers Kroll and Noguez showed up to
6 investigate. They were met by not only Mr. Ferguson, but
7 Mike Cerda, the landlord.

8 They initially walked around the scene at
9 1929 looking for possible victims. They noticed blood
10 and some spent .357 bullet there.

11 They noticed the jacket, the bracelet and
12 after finding no people, no injured people or any
13 suspects in the area in the vacant business at 1929, they
14 began to canvass the outside of the strip mall.

15 Officer Noguez went around in the back
16 area and he testified he saw a dumpster that was in the
17 back area and the evidence has shown it's just within a
18 few feet of that back door to the 1933 Western which was
19 the offices of Sinergi.

20 He testified that he was generally looking
21 for possible victims of a possible shooting that occurred
22 because of the blood and the ammunition.

23 He testified that he looked inside the
24 dumpster behind that strip mall and to him it looked like
25 it was basically empty, there was just a few

1 miscellaneous papers, but to him it looked like that
2 dumpster had been emptied.

3 He testified that he actually could see
4 the bottom of that dumpster in several places. He then
5 eventually walked to the front where Officer Kroll was at
6 and the Defendant pulled up in that brown Toyota pickup
7 truck.

8 Of course, that brown Toyota pickup truck
9 had Eric Hamilton's blood in the back of it. Officer
10 Kroll then approached the Defendant and he obtained
11 consent to go into 1933 to look for any possible victims,
12 look around the area.

13 He talked to the Defendant and he
14 testified that the Defendant told him that he had
15 recently just got back from New Jersey and that he had
16 not heard or seen anything suspicious in the area.

17 He testified that the Defendant told him
18 that he had not seen his partner, Peter Limanni, a person
19 he was working with, since November 5.

20 The Defendant also indicated to Officer
21 Kroll that he thought Mr. Limanni might be in Lake Tahoe
22 with his girlfriend.

23 Now, Mr. Mike Cerda came into those
24 premises about that time as well. Officer Noguez was
25 more serving as cover, but Officer Kroll testified he

1 walked inside and he noticed a couple of knives and he
2 also noticed what he found very peculiar was a bullet
3 sitting straight up on its side, pointing straight up in
4 the air on a desk.

5 At this point he testified that, for
6 officer safety, he handcuffed the Defendant. And because
7 there was no evidence of a crime, in terms of the
8 Defendant's relation to a crime at that point existed, he
9 unhandcuffed him and they left the premises of 1933.

10 Now - - and the Defendant of course was
11 left alone in there. Now, at some point during the
12 morning the evidence revealed that Officer Kroll and
13 Nogues contacted their supervisor regarding 1929 and the
14 crime scene there.

15 Their supervisor contacted the crime scene
16 analyst in order to process that crime scene. The
17 testimony was that around 11:30 that morning David
18 Ruffino came out and started processing 1929.

19 He testified that he looked around 1929.
20 He noticed the blood, he noticed the spent cartridges, he
21 noticed the .357 bullets. He noticed the jacket with the
22 holes in it. He noticed the broken glass and he, based
23 on his experience, concluded it was a murder scene.

24 He then contacted his supervisor, Al
25 Kabralis, who eventually joined him on 1929. The

1 testimony has come out and mostly through the incident
2 recall sheet which I believe is Defendant's Exhibit C,
3 that Officer Kroll and Nogues left that strip mall right
4 around 12:08.

5 The evidence also showed that Mr.
6 Kabralis, Mr. Ruffino's supervisor, arrived about 12:09.
7 Both Officer Kroll and Nogues testified that they do not
8 remember David Ruffino ever telling them before they left
9 that he believed it was a murder scene.

10 They testified that they wouldn't have
11 likely gone to lunch had he told them that.

12 Mr. Ruffino could not remember whether or
13 not he informed those officers that he believed it was a
14 murder scene before they left.

15 Either way, the evidence indicates that
16 right around 12:09 the Defendant was inside 1933 and Mr.
17 Ruffino and Mr. Kabralis were inside 1929, documenting
18 and collecting the evidence that existed there.

19 Remember that Mr. Ruffino testified that
20 1929 was his assignment. That's where his concentration
21 was at.

22 He was not concerned about 1933, because
23 1933 had ended up being assigned to someone else. Randy
24 McPhail later became responsible for that evidence
25 collection.

1 Mr. Ruffino testified that he was alone
2 inside 1929 for approximately a half hour with Mr.
3 Kabralis before homicide detectives arrived in the area.

4 And again, that time is confirmed by the
5 incident recall sheet which indicates that Detective
6 Buczek was actually en route at 12:33. It does not
7 indicate when he arrived.

8 It indicates that Sargeant Hefner from
9 homicide actually arrived at 12:47. So also remember
10 that Mr. Ruffino testified that the back door to 1929
11 Western was locked and that he never made it out to the
12 back until much later in the day, the back area where
13 that dumpster is at.

14 Now, after homicide gets to the scene
15 someone looked in the dumpster and they noticed a couple
16 of items that appeared to be burnt or charred. They
17 found that odd, as it would - - any reasonable person
18 would find that a bit odd.

19 They contacted the original patrol
20 officers, Kroll and Nogues, who then came back. Officer
21 Nogues looked in the dumpster a second time and the
22 dumpster again, as you can tell from the photographs and
23 the crime scene diagram, is just a few feet from the back
24 door of Sinergi. Officer Nogues testified that he
25 noticed several items in that dumpster that hadn't been

1 there.

2 Well, how did those items get in there?

3 What would be a reasonable explanation for
4 that?

5 Initially we know that the items that were
6 in the dumpster came from 1933 Western. That's because
7 the items that were found are directly related to that
8 business.

9 Randy McPhail testified that he found
10 several things in that dumpster including papers
11 associated with Mr. Limanni. He found the two canceled
12 checks from Sinergi's account.

13 He found a phone card in the name of
14 Tiffny Limanni. He found one Case athletic shoe, the
15 other one that matches up with that was found inside
16 1933.

17 He also found several of those Miller Lite
18 bottles empty. Many more were left inside. He found a
19 blue-colored shirt with burn marks on it that said
20 Limmani Mechanical Services on it. He also found a Green
21 shirt that had some significant burn marks on it.

22 He also found several gaming cards in the
23 name of Peter Limanni and those were located on the
24 ground between the dumpster and the back door area of
25 1933.

1 The cards, perhaps were dropped by someone
2 or actually obviously I think they were dropped by
3 someone, but perhaps they were dropped by someone who was
4 hurriedly taking items from the back door to that
5 dumpster behind 1933.

6 Now, on this particular point the
7 Defendant's own statement, again State's exhibit 80, I
8 think is enlightening when it comes to this issue. I
9 urge you to listen to it again carefully.

10 He mentions on two brief occasions that
11 after Officer Kroll and Nagues left 1933. That day he
12 did a little clean up of certain items. He mentioned at
13 one point that he picked some stuff off the floor and he
14 threw some beer bottles out that were on a desk.

15 He also used the phrase "I cleaned up a
16 little bit." Maybe he was referring to cleaning up
17 himself and maybe he wasn't.

18 What about the bullet that came up
19 missing?

20 Officer Kroll and Mike Cerda both
21 testified that they saw a similar type of bullet sitting
22 straight up on that desk. When confronted by Officer
23 Kroll to its whereabouts, after Officer Kroll came back
24 to the scene, Officer Kroll testified the Defendant
25 acknowledged that there was a bullet there, but he

1 claimed he didn't know what happened to it and he
2 suggested maybe Mike Cerda took that bullet.

3 In an interview with Detective Thowsen
4 later in the day the Defendant claimed he didn't see the
5 bullet, never saw it.

6 He claimed that, despite the fact that two
7 other people in the same room he was at saw that bullet,
8 he claimed that even though the presence of that bullet
9 was a major basis for him being handcuffed by Officer
10 Kroll.

11 Now, does that make sense?

12 You would think that a reasonable person
13 who allegedly is a completely innocent bystander who was
14 being handcuffed would at least want to know why and want
15 to see why they were being handcuffed.

16 They would want to see that actual bullet
17 sitting on that desk, if they hadn't seen it yet.

18 THE COURT: Mr. Fattig, can I ask you to
19 approach, please?

20 (Discussion off the record.)

21 MR. KANE: Now, what would explain why the
22 Defendant would do these odd types of things?

23 What would explain why he would hide a
24 bullet or dump some items out into that dumpster?

25 What would explain why police found a .32

1 caliber cartridge laying at the bottom of that toilet,
2 the only toilet inside of 1933?

3 What would explain why Peter Limanni's
4 wallet or - - it was described as a cardholder - - why
5 Peter Limanni's driver's license, why Peter Limanni's
6 birth certificate, why Peter Limanni's Social Security
7 card were all hidden above a tile, one of those ceiling
8 tiles inside of 1933?

9 What would explain why yet another .32
10 caliber cartridge was above a ceiling tile in the
11 northeast office of 1933?

12 What would explain why four, .357
13 cartridges that had all been fired from the same bullet,
14 were scattered about in odd places throughout the
15 business?

16 Well, maybe it is one of those things that
17 has no explanation, just a series of strange and
18 unrelated coincidences, or maybe the reasonable
19 explanation is is that the Defendant is responsible for
20 the murders of Eric Hamilton and Peter Limanni.

21 If the Defendant was responsible, then up
22 until the mid morning of November 17 of 1998 when he
23 drove up to 1933 Western in that brown 1998 pickup truck
24 and he saw Officer Kroll and Nogues there, the Defendant
25 must have felt pretty comfortable in his existence.

1 Until he saw those officers he had no
2 reason to believe that police were even in the ballpark
3 of developing him as a suspect in either case.

4 At that point there was one murder and
5 there was one - - a missing person, although the missing
6 person hadn't even been found yet. Again, a large part,
7 in part, because the testimony you heard from Jennifer
8 Harrison was the Defendant convinced her not to do that.

9 In the testimony he said "Peter is
10 missing, because he wants to be missing." And the
11 testimony was of a missing person's report on Peter
12 Limanni wasn't even filed until December 2.

13 Now, since no missing person's report had
14 been filed and the Defendant knew that the body hadn't
15 been discovered he really didn't have any worries at that
16 point with regards to the Peter Limanni incident.

17 What about Eric Hamilton?

18 Well, Mr. Hamilton was - - appeared to be
19 a transient/vagabond type of character and it was likely
20 that no one, besides Peter, knew that Mr. Hamilton even
21 worked for Sinergi, since apparently he did so very
22 sparingly.

23 What about the fact that the crime scene
24 to Mr. Hamilton's murder is right next door?

25 This wouldn't necessarily bother the

1 Defendant either.

2 He told Detective Thowsen in his statement
3 that the neighborhood was a bad one. Now, the body had
4 been taken away and dumped miles away and he likely
5 reasoned that it was difficult to link up - - for police
6 to link up the body and the crime scene, but once linked
7 up there would still be no reason to suspect the
8 Defendant more than anyone else.

9 The one thing the Defendant didn't count
10 on and the major link was the piece of paper in Mr.
11 Hamilton's pocket with the Defendant's name and his cell
12 number on it. That allowed police to link up the two
13 crime scenes rather quickly.

14 Now, after Officer Kroll and Noguea leave
15 1933 the Defendant's world obviously was turned upside
16 down. His perspective, in terms of his safety, had been
17 shattered.

18 What did the Defendant do at that point?

19 What could he do, considering the
20 circumstances?

21 He tried to hide or discard whatever he
22 could. The problem was was that he was pretty much
23 trapped.

24 Next door was Ruffino and Kabralis and
25 within a few minutes homicide detectives arrived on the

1 scene. Consequently he didn't do a very good job of it.

2 What about the way, the manner in which
3 the bodies were discarded?

4 I find it interesting.

5 MR. CHRISTIANSEN: Objection as to what
6 the prosecution finds interesting.

7 Irrelevant and improper.

8 THE COURT: Sustained. Proceed.

9 MR. FATTIG: The person that clearly had a
10 link to the Defendant, the person that had a bad temper
11 and often treated the Defendant in a very disrespectful
12 and demeaning way was driven across the state line,
13 stripped virtually naked and buried.

14 He was also murdered in an extremely
15 brutal way, extremely in a way that you might be found
16 held as a personal vengeance upon someone. Many shots to
17 the head.

18 Now, the person that was a vagrant and had
19 no obvious link to really anyone, especially in Las
20 Vegas, and no known association to Sinergi, wasn't buried
21 at all. In fact, he was left with his clothes on.

22 He was left on the side of Las Vegas
23 Boulevard with just a few pieces of lumber, hardly enough
24 to cover him over him. He was also killed in a rather
25 impersonal way.

1 He was shot in the side and then in the
2 back only three times. The testimony was he wasn't shot
3 at a distance that would cause tatooing or which was
4 described as when the gun powder attaches.

5 Now, what about the other evidence that
6 links up the Defendant to Peter Limanni? The two items I
7 haven't mentioned yet that are very compelling are the
8 blood inside the 1998 Dodge van and the bullet that was
9 found in the wall that was shot through the couch at 1933
10 Western.

11 There was testimony by Randy McPhail at
12 the autopsy of Mr. Limanni he impounded several bullets
13 and fragments and those were taken to Torrey Johnson, the
14 firearms expert, and he later compared those .32 caliber
15 bullets to a bullet that had been found in the wall at
16 1933.

17 The bullet in the wall was also .32
18 caliber, the same caliber that was in the body of Mr.
19 Limanni.

20 Mr. Johnson testified that the bullet in
21 the wall had been fired from a gun with a misaligned
22 chamber. He also testified that three of the bullets
23 recovered out of Mr. Limanni, the ones he could examine,
24 also were fired from a gun with a misaligned chamber.

25 On November 17, after the Defendant came

1 back from his interview with Tom Thowsen, he told
2 Detective Thowsen he had a dinner engagement and he asked
3 if he could take one of the vehicles.

4 Detective Thowsen informed the Defendant
5 he couldn't take the Toyota because they were processing
6 it. The Defendant asked to take the van. Detective
7 Thowsen asked him if he could get the keys. He went in,
8 fetched them, brought them outside.

9 Detective Thowsen testified that the
10 Defendant acted as if he wanted to take the Dodge van
11 with a sign on it. Before he allowed him to do that
12 Detective Thowsen looked into the van and lo and behold
13 he saw what appeared to be blood to him.

14 Mr. McPhail testified he processed that
15 van and again samples were taken and on the chart here
16 Mr. Welch testified with regards to some of that
17 evidence.

18 The very top one is one of the samples
19 taken out of the van and he compared that evidence and
20 the results of those tests showed that Mr. Hamilton and
21 Mr. Seka were absolutely excluded as the source of the
22 blood out of that van.

23 The results also showed Mr. Limanni could
24 not be excluded. And, in fact, the testimony was the
25 odds were 1.8 million to one that the blood in that van

1 was someone other than Peter Limanni.

2 The testimony was there was three samples
3 taken out of the van. One was from the interior right
4 side of the van, and that's the top one on the chart, and
5 one was taken from the interior side of the removed
6 plastic threshold cover and that is not in the chart.

7 One was taken from magnetic cards or
8 business cards with Peter Limanni's name on it and again
9 that's the third one here on the chart.

10 The results of the first one on top of the
11 chart here, since Mr. Limanni is a caucasian, the result
12 was 1.8 million to one. The business cards that were
13 found in the back pocket with blood on them of that Dodge
14 van, again, 1.8 million to one that that blood on the
15 business cards was anyone else but Peter Limanni. It
16 makes sense, since the business cards were in the name of
17 Peter Limanni.

18 The third sample which isn't on the chart
19 came back to be 35,500 to one that the blood found inside
20 that van was someone other than Mr. Limanni's and Mr.
21 Welch testified that often times, due to various
22 circumstances chemicals that may be present when the
23 sample is taken, those sort of things he may come up with
24 a number less than some other tests which is why - -
25 explains why it was less than 1.8 million to one.

1 Now, the Defendant, after he left the
2 scene on November 17, he drove that plain, white van, the
3 one that wasn't used to dump Peter Limanni's body off in
4 California.

5 The Defendant told Detective Thowsen that
6 he was coming back after his dinner engagement to take
7 care of the business. The evidence I've showed is that
8 the Defendant did not come back. He didn't come back to
9 lock up the business, didn't come back to take care of
10 Jake who was still there.

11 What did he do instead?

12 You heard testimony from Jennifer Harrison
13 that the Defendant used the term underground. That he
14 was underground. The testimony was at one point he saw
15 Jennifer Harrison outside a 24-hour fitness club.

16 He asked her if he could drive her car
17 rather than the van. She told him no.

18 The Defendant told her that the police
19 were following him and that they were trying to blame him
20 for the death of some guy.

21 On another occasion the Defendant told
22 somebody he was calling her from Arizona. He ended up,
23 as you've heard, back in Pennsylvania.

24 And when he went back to Pennsylvania he
25 saw his friend Thomas Cramer. In a conversation before

1 Christmas, Mr. Cramer asked him if he had something to do
2 with Peter's disappearance.

3 You remember that the Defendant told him
4 that he didn't and the police hadn't even found the body
5 yet. In a confrontation between the two in - - seemed
6 like a rather heated argument in January, the Defendant
7 threatened Mr. Cramer by asking him if he wanted him to
8 do to Mr. Cramer what he did to Mr. Limanni,

9 Mr. Cramer knew the Defendant for years
10 and he took that very seriously. Finally, the Defendant
11 told Mr. Cramer on another occasion that Mr. Limanni came
12 at him with a gun that he wrestled it free and he shot
13 Mr. Limanni.

14 The Defendant told Mr. Cramer that Mr.
15 Limanni fell against a wall and he just kept shooting
16 him.

17 Now, how did Mr. Cramer know that he was
18 killed by a gun?

19 How did he know that Mr. Limanni was shot
20 multiple times?

21 He knew because he heard it from the
22 person, the only person on earth that knew how Peter
23 Limanni had been killed.

24 Granted, the killing of someone by using a
25 gun is not that unusual, but what about the fact that Mr.

1 Limanni was shot multiple times?

2 It doesn't necessarily take multiple shots
3 to kill someone. One good, aimed shot could do it.

4 Obviously at this point time is growing
5 long. There are a few subjects that I will leave to my
6 co-counsel, Mr. Kane, to address in rebuttal.

7 The State appreciates your patience and
8 your service as jurors in this case and upon
9 deliberations the State is asking you to return verdicts
10 of guilty on all counts.

11 Thank you.

12 THE COURT: Thank you. Ladies and
13 Gentlemen we'll break for lunch at this point.

14 (Whereupon, the Court admonished the
15 jury.)

16 THE COURT: We are rapidly approaching the
17 time when you can discuss the matter. Please for a bit
18 more resist that.

19 I expect some of you will be going to
20 lunch together. Please don't talk about this at lunch.
21 Very soon you can. We'll be back here at 1:30.

22
23 ATTEST that this is a true and complete transcript of the
24 proceedings held, DATED this 25th day of February, 2001.

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ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
FEB 27 2001 19

SHIRLEY B. PARRAGUIRRE, CLERK
BY Judy Norman
JUDY NORMAN DEPUTY

STATE OF NEVADA,
Plaintiff,

vs.

JOHN JOSEPH SEKA,
Defendant.

Case No. C159915
Dept. XIV

VOLUME II
REPORTER'S TRANSCRIPT
OF
JURY TRIAL

BEFORE THE HONORABLE DONALD M. MOSLEY
DISTRICT JUDGE

Taken on Friday, February 23, 2001
At 1:30 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.

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AA 001292

1 LAS VEGAS, NEVADA. FRIDAY, FEBRUARY 23, 2001, 1:30 P.M.

2 * * * *

3
4 THE COURT: The continuation of
5 C159915, State of Nevada versus John Joseph Seka. The
6 record will reflect the presence of the defendant; his
7 counsel, Mr. Christiansen and Mr. Kennedy; Mr. Kane and
8 Mr. Fattig for the State.

9 Would counsel stipulate that all members of
10 the jury are present and properly seated?

11 MR. KENNEDY: Yes, Judge.

12 MR. KANE: Yes.

13 THE COURT: Mr. Christiansen?

14 MR. CHRISTIANSEN: Thank you, Your
15 Honor.

16 Good afternoon. I have the unfortunate luck
17 of talking to a jury on a Friday afternoon right after
18 lunch. And every study will tell you that that indicates
19 half will sleep and the other half will listen. So I'm
20 going to attempt to dart back and forth to keep you awake.

21 As Mr. Fattig explained in his closing
22 argument, this is the time where we as the attorneys have
23 an opportunity to tell you, or attempt to persuade you how
24 we saw the evidence, and how we believe the evidence came
25 out. And it's not evidence what I say, what Mr. Fattig

1 says, and in the end what Mr. Kane will, undoubtedly,
2 argue is not evidence.

3 What is evidence is what you remember, what
4 you remember from the people who hit the stand in the last
5 nine court days, two weeks. We had a short week this
6 week. So I would urge you to listen to everybody, but if
7 there is a discrepancy as to between what I say so-and-so
8 said on the stand and what you recall, you obviously have
9 to rely on your own memory.

10 Mr. Fattig took the liberty of explaining
11 some jury instructions, and I'm going to do the same.
12 I've blown a few up. I don't expect you to memorize them.
13 You'll have them when you go back.

14 I've also underlined some stuff on my
15 blow-ups. Those are my markings. The versions you get
16 won't have anything underlined. I simply am attempting to
17 draw your attention to certain areas and know the
18 emphasis. And the part I underline is not any more
19 important than the other parts, so I wanted to make that
20 clear.

21 About nine court days ago Mr. Kennedy stood
22 up, and he said this is like a bad novel, a bad mystery
23 novel, and at the end of the trial you're not going to
24 know what happened. And the State stood up and they said
25 very specifically this is what happened, the evidence is

1 going to show. It's going to show a variety of things.

2 And the question you have to answer for
3 yourself today is, who was right? Did the evidence show
4 what Mr. Kane promised you it would show, or did it sort
5 of end up about as discombobulated as we predicted?

6 I would submit to you, the second version is
7 what in truth and fact happened, if you put together and
8 draw reasonable inferences from what the witnesses said.

9 One of the instructions, Instruction No. 37
10 in your books deals with common sense. It says you're
11 supposed to consider the evidence that you hear here in
12 court, but you're not supposed to leave all the sense
13 you've developed over however many years you've been alive
14 at the door.

15 You're supposed to come in here with your
16 common sense and look at what the people testified about,
17 and draw what I underlined, reasonable inference.
18 Reasonable inferences are not speculation. I'm not asking
19 you to think the man on the moon came down and did
20 something like this.

21 And by us talking about it over two weeks,
22 it's probably at some point struck each and every one of
23 you that these were two lives that were lost. And we've
24 all done trials like this, and I can't remember one where
25 a juror doesn't come up afterwards and say: Don't you

1 realize you're talking about people, and you're talking
2 about it like they're things or its. None of us mean to
3 do that.

4 Just because Mr. Hamilton had a drug problem
5 and was homeless and had other personality disorders,
6 doesn't make the loss of his life less important. The
7 same with Mr. Limanni. Yes, he was a con man. Yes, he
8 told lies and cheated people out of money, but that
9 doesn't minimize the loss of his life.

10 So with that said, I would ask you to draw
11 reasonable inferences in this case. A reasonable
12 inference is that there were fingerprints found on the
13 board and the Becks bottle surrounding the body of Eric
14 Hamilton on November the 16th.

15 And it was explained to you by various
16 experts, they can only match fingerprints with a known
17 quantity. And Mr. Kato and Mr. Toe, the gentleman that
18 lost over \$100,000 in this business, they were never
19 printed. Nobody did a DNA test on them. Nobody ran such
20 a simple thing as a criminal background check.

21 So it is a reasonable inference for you to
22 know that there were fingerprints. They were not compared
23 to what should have been a suspect in this case. The
24 State has the obligation to do that, and it was not done.

25 The next instruction I'll draw your

1 attention to is the believability of a witness. As we
2 told you, and I think Judge Mosley actually told you when
3 we started, you're the judges of the facts.

4 You folks get to decide: Hey, so-and-so
5 didn't look to me like they were telling the truth, but
6 the other person, they seem like they were. And you do
7 that by their demeanor on the stand, by how they reacted
8 to our questions, by what seems as if it's truthful and
9 logical, and also if you find that they lied,

10 If they gave a misstatement of the fact,
11 this instruction tells you that you can disregard -- it's
12 what the last sentence says: "If you find that a witness
13 has lied about any material fact in the case, you may
14 disregard the entire testimony of that witness, or any
15 portion of that testimony."

16 Now, Tommy Thowsen -- and you probably could
17 all tell that I know Detective Thowsen, and I respect
18 Detective Thowsen. He is an individual who works very
19 hard. He is also an individual that in this case didn't
20 look at all the evidence.

21 On the stand he was forced to admit he
22 didn't know Mr. Kato had declared bankruptcy. He thought
23 he was just going to write it off. He thought it was
24 Kato's money. It wasn't Kato's money. That was, in part,
25 because Mr. Kato lied to Detective Thowsen.

1 Detective Thowsen also on the stand had to
2 tell you folks that the phone records he subpoenaed were
3 wrong. I had the phone records, and I even entered an
4 exhibit and I showed him to match them up, and he never
5 got Peter Limanni's phone records, perhaps the only thing
6 that would tell us whether Peter Limanni was using his
7 phone after November the 6th when Mike Serta saw him.

8 Now, the argument was made today that Mike
9 Serta doesn't know what day he really saw him. Mike Serta
10 is the property manager. Rent is due on the 1st. And you
11 saw him smile at me when I asked him: How do you know it
12 was the 6th? He said: In our contracts we give them five
13 days. And that's the statutory deal, everybody gets to be
14 five days late on their rent. Some of you may have
15 experienced that. There's landlords or tenants.

16 They gave him the five-day grace period, and
17 when he saw Peter Limanni on Friday the 6th, Peter Limanni
18 was late, and he asked him for a favor: I am going to a
19 cigar show. Give me a couple of days, I'll pay you on
20 Monday.

21 The truth of the fact was, no cigar show, he
22 wasn't going to pay on Monday. Peter Limanni took off.
23 Did he go to Tahoe? Did he go back to LA? We don't know.
24 But we do know he was not dead November the 5th when he
25 was hiding from Jennifer.

1 Jennifer testified at length, and she wasn't
2 pleased at times to hear us talk about or confront her
3 with the things she had called her ex-boyfriend; a con
4 man, a thief, somebody that takes money from woman,
5 somebody who attempted to borrow 2,000 bucks from her. He
6 wanted to borrow \$2,000 from her, and he lied to her about
7 he couldn't cash a check.

8 And if you put it all together, and I'm
9 going to try to do that for you, that's at a time when he
10 is in San Monica or LA talking to Mr. Kato, because he
11 can't pay the note that's come due for October the 10th.
12 He can't pay it.

13 He's there on the 13th and he's talking
14 about this new con he's thought of: We're going to get
15 the cigars going, I can disappear, let me show you some
16 fake IDs. And that's the same time he's calling Jennifer.

17 So I'm going to try to put it together for
18 you and make some chronological events and, hopefully, it
19 will make sense when we're done here.

20 The Instruction No. 4 is the jurisdictional
21 instruction. It says, in essence -- I can read it to you,
22 and I encourage you to read it. But to summarize it, it
23 says a substantial part of a crime has to occur in Nevada
24 for you to convict Mr. Seka of that crime, if you think he
25 did it.

1 That means the State has to show you that a
2 substantial part, or part and parcel of all four crimes
3 that are alleged occurred in Nevada. Now, that's pretty
4 easy on Mr. Hamilton. Mr. Hamilton, his blood is at 1929.
5 His body is found just south of Vegas. It's in Nevada.

6 But has the State shown you that anything
7 was done to Mr. Limanni in Nevada? There was no blood of
8 Mr. Limanni in that business, which flies directly in the
9 face of what Tom Creamer got up here and told you.

10 If Mr. Limanni was shot in the business and
11 he's gurgling and shot through the heart or something, and
12 he gurgling and bleeding all over the place like
13 Mr. Creamer said, where is the blood? It's not there.

14 The State hasn't met its burden to show you
15 that anything happened to Mr. Limanni within the confines
16 of our state. And for that reason alone, Mr. Seka is
17 entitled to verdicts of not guilty as to the two counts
18 that pertain to Mr. Limanni. That is Jury Instruction
19 No. 4, and I would ask you to look at it when you go back.

20 There are about seven jury instructions
21 dealing with the elements of first degree murder. That's
22 the premeditation, malice aforethought, and willfulness.
23 And there's seven because it's important. And there's
24 seven of them, and they are numbers 6 through 13. There's
25 seven of them because our Supreme Court has said there is

1 a large burden to be met by the State to prove somebody
2 guilty of first degree murder.

3 I would ask you to take a look at them,
4 because the State has shown no facts or no witnesses that
5 can demonstrate premeditation, malice aforethought, or any
6 of the elements that you need to get to first degree
7 murder pursuant to those instructions.

8 Now, Mr. Fattig explained to you the felony
9 murder rule. If you believe that during the course of a
10 commission of a felony somebody is killed, that
11 presumptively raises the bar to first degree murder.

12 As to Eric Hamilton, I submit to you that
13 there was no robbery proved. Eric Hamilton had on his
14 person nothing of value some three days before his body
15 was found when he was released from the Las Vegas City
16 Jail. Detective Thowsen didn't know that.

17 If you recall, I approached him, I showed
18 him the records. He admitted that he had no money, he had
19 no wallet, he had nothing of value. And when he is found,
20 he has something of value.

21 So what evidence has been presented to
22 convince you that something was taken from him? There
23 was -- Dr. Green was asked by, I think, Mr. Kane about a
24 nick on Mr. Hamilton's wrist. And Dr. Green said it could
25 have been made by a bracelet, like a fake gold bracelet

1 that was found in 1929.

2 And then Mr. Kane sat down and I stood up
3 and I said: Dr. Green, you and I have been doing this for
4 a while with each other. Could you measure? Can you tell
5 me it was made by that bracelet? And he said: No, I
6 can't tell you.

7 So what was taken from Mr. Hamilton? I
8 submit to you that he didn't have anything to take. The
9 State has proven nothing in relationship to the robbery,
10 so they can't guarantee the felony murder rule. They've
11 got to go the traditional route; premeditation, malice
12 aforethought. There are seven instructions that deal with
13 that. The State hasn't met its burden as to any of those
14 instructions.

15 Finally, if you believe -- and I'm almost
16 done with the instruction -- if you believe that somehow
17 Mr. Creamer's version of events of what Jack allegedly
18 told Mr. Creamer, then Mr. Seka is entitled to a
19 not-guilty verdict as to the murder of Mr. Limanni, or a
20 minimum of voluntary manslaughter.

21 Because Mr. Creamer said Limanni attacked
22 Jack. That's his version, with a gun because he was mad.
23 Now, in this state you've got a right to protect yourself.
24 And if somebody has got a gun, you've got a right to
25 defend yourself. And in the course of defending yourself,

1 the person that comes at you with the gun gets shot,
2 that's self-defense, and you're not guilty.

3 If you don't believe he was dead and you
4 believe that Mr. Seka, after being attacked fired a number
5 of shots, then that's a heat of passion argument, it's a
6 voluntary manslaughter.

7 I submit to you that Mr. Creamer should be
8 discounted entirely. He is an individual that was under
9 the influence of narcotics, and in a minute I'll talk to
10 you about the conditions and the timing in which he
11 develops this story that he uses to get Jack away from
12 Margaret Daly, his girlfriend, who has a TPO against him.

13 I've done some chronological charts to try
14 to make it make a little bit of sense. In August of 1998,
15 Jack moved to Las Vegas to be with Limanni, his friend.
16 There is nowhere in any evidence presented in this
17 courtroom that Peter Limanni is characterized as anything
18 but Jack Seka's friend.

19 Ask yourself, why do you kill your friend?
20 And after the fact, why don't you tell anybody else? And,
21 admittedly, say what Mr. Creamer says, and I'm going to
22 get to Mr. Creamer. But you don't tell your girlfriend,
23 Christine, the little girl's mother. You don't tell your
24 friend Margaret. You don't tell Lee Polsky, your friend.
25 You don't tell Jennifer, you don't tell anybody.

1 Why do you kill your friend?

2 In October, Christine and the little girl,
3 Kylie, come and visit. Everything is normal. Contrary to
4 the assertion of Jennifer, Jack's got money. Jack puts
5 her up at Bally's for seven days. Remember, she stays at
6 the hotel.

7 She is also around the business over the
8 weekend because this correlates to the other evidence,
9 Peter is gone with Jennifer up in Lake Tahoe. They're on
10 a vacation. Peter has still got the Japanese guy's money.
11 He's still spending it freely, they're eating out and
12 going on trips. And he's up there getting signed up for
13 the new cigar business. And she's stays at the business
14 and she says people are in and out all the time, Christine
15 does.

16 There is an Asian gentleman, the only thing
17 she can I remember is that he had part of one of his
18 fingers missing. There was an Asian gentleman who worked
19 there with work clothes. People were in and out.

20 And unlike the allegations made by the
21 State, numerous people had access to those keys and those
22 cars, especially Kato. What did Kato lie to Detective
23 Thowsen about which was very telling in this case?

24 He tells Detective Thowsen that he's never
25 lived in Las Vegas and worked on that business. Remember?

1 Then I asked Detective Thowsen: Did he tell you that?

2 And he said: No, he didn't tell me that.

3 What did he tell you folks? He lived here
4 for three months, worked all the time and he hated
5 Limanni, so he left. They didn't like each other. Now,
6 isn't that the same motive that the State now uses against
7 John Seka? Except, how did they prove Jack didn't like
8 Peter? Kato admitted on the stand, although he didn't
9 tell Detective Thowsen. I think that bears some
10 consideration in the case.

11 Jack is back east for three days, his
12 daughter's birthday and halloween. He comes back, and if
13 he's miserable, why does he come back? If he's being
14 brow-beaten to the extent the State would have you
15 believe, why does he come back?

16 He returns. Peter Limanni picks him up. On
17 the 5th Jennifer talks to him. He tells Jennifer Peter is
18 gone. Peter -- he was picked up this morning and he's
19 gone. Jennifer doesn't believe him. Jennifer comes down,
20 remember, she thinks Limanni is with some other lady, or
21 has just taken off, or whatever.

22 She beats on the back door, she beats on the
23 door to get in. She finally gets in and Jack is laying on
24 the ground passed out, sleeping, whatever, and he's clean.
25 He's wearing a white T-shirt and Levis, and he's clean.

1 Now, the body of Peter Limanni -- and
2 Detective Thowsen told me in response to one of my
3 questions, he believes Peter Limanni was killed between
4 November the 4th and November 5th.

5 Now, the body of Peter Limanni is buried
6 some, what is it, 60 miles from here to State line, 45 to
7 60 miles, and then off to the side he's buried. How is
8 Jack clean at 11:00 in the morning, with a woman that's
9 been there for a few hours that morning, the woman from
10 Cheetah's that we talked about that he had some drinks
11 with?

12 How was that possible if he's just shot and
13 killed his only friend in Las Vegas, driven him out there,
14 brought him back, or brought the van back, cleaned the van
15 out, and now he's laying down and sleeping and he's clean?

16 How is it possible? And Peter Limanni -- I
17 think it was Dr. Trenkle, the doctor from San Berndardino
18 that said that Peter Limanni was probably about a
19 two-hundred pound man.

20 When you go back there's a number of
21 exhibits, but look at Exhibit Q, Defense Exhibit Q,
22 there's a picture of Jack taken November the 17th. And
23 ask yourself: Does this look like a guy that could
24 physically move a 200-pound man, hoist him in the back of
25 the truck, drive him out to State Line, dig a hole, bury

1 him, come back, pick up a girl, and be clean and passed
2 out on the floor at 11:30 in the morning? How does that
3 happen?

4 Now, the first instruction you're given is
5 the Information, and that's the charging document. And I
6 submit to you, by reading the charging document alone, you
7 can tell that the State has not met its burden.

8 The State can't even tell you folks when
9 these murders happened. While Detective Thowsen thinks it
10 happened on the 5th, that contradicts Mike Serta who sees
11 him alive the 6th.

12 So what the State does is, they give you a
13 time frame. Now, rather than the 5th, he was killed
14 either somewhere between November 5th and December 23rd.
15 If they've met their burden beyond a reasonable doubt, why
16 are we talking about 45 days, 50 days?

17 Where is it that they have to be specific to
18 get through that hurdle? And Detective Thowsen didn't
19 want to talk to me about that hurdle. And I was asking
20 questions about what do you need to arrest somebody?
21 Probable case. Is that slight amounts of evidence? Yes.
22 What do you need to convict somebody beyond a reasonable
23 doubt? And he didn't want to get into what the
24 differences were.

25 The same goes for Mr. Hamilton. If they

1 know Mr. Hamilton was killed the 15th, because Sheldon
2 Green says his body was no less than 24 hours old,
3 Doc Green, the elderly gentleman that came in, why is it
4 charged that somewhere between November the 10th and
5 November 16th?

6 They don't believe their own witnesses. How
7 are you folks supposed to get beyond a reasonable doubt
8 when they can't tell you when it happened within any
9 reasonable time frame?

10 Who else does Jack tell? I asked Detective
11 Thowsen: Detective, good witnesses are believable people,
12 tell the same story over and over. He didn't want to
13 answer that. He said truthful people tell it over and
14 over, right?

15 Well, truthful people; Jack tells Jennifer.
16 Jack tells Officers Nogues and Kroll. Jack tells
17 Detective Thowsen, Detective Hefner, Detective Buzcek,
18 Christine, Margaret Daly, Lee Polsky, all the same story
19 eight times, eight people, probably a heck of a lot more
20 than eight times, the same story.

21 Now, if you use their detective's criteria
22 for people who tell the truth, and do it over and over and
23 over, he was telling the truth. Tommy Creamer didn't tell
24 the truth. He testified at the preliminary hearing with a
25 very different version of events than what he told you

1 folks. And I'm going to get to him in a minute.

2 Jack tells all his friends, everybody he
3 knows on these days between November the 6th and November
4 the 17th that Limanni is gone, that he needs money. He
5 tells his friends he needs money. He tells his friends
6 he's staying in Spanish Trails. That's what Christine
7 told you, she couldn't remember the name, but she said he
8 was staying somewhere else.

9 He also tells Officer Nogues, remember
10 Officer Nogues admitted to me that in his report Mr. Seka
11 told me he was staying with a friend in Spanish Trails.
12 And independent of anybody who testified in here, and
13 anybody that's tied to Mr. Seka, who verifies that?

14 It's the witness that I talked to Detective
15 Thowsen about, Marilyn McNully. This is the woman who
16 called Detective Thowsen looking for a third party, a
17 friend of Peter Limanni's. And she had told Detective
18 Thowsen that there was somebody with a white van staying
19 in Spanish Trails that she thought belonged at Cinergi.

20 That is a party completely away from all of
21 us in here, not advocating any position objectively. And
22 she verifies Jack's story. And when he's staying in
23 Spanish Trails, who has access to the business? There's
24 telemarketers two doors down. There's the workers.
25 There's Kato. Do you think that a man who put 100,000

1 bucks into a business and lived there for three months
2 doesn't still have a key?

3 Mr. Kato obtained -- when did he get the
4 knowledge that Mr. Hamilton was gone? Now, he's
5 interviewed December 7th by Detective Thowsen
6 telephonically. The detective admitted he doesn't do the
7 same litmus test he does with my client, with Jack, which
8 is the gut instinct, this guy is telling the truth or he's
9 not telling you the truth.

10 What is the irony of Detective Thowsen's
11 answer to me as to why he didn't go and interview
12 Mr. Kato? He said: Jack told me he hadn't been around.
13 Now, think about that.

14 Jack told him, and he believes Jack about
15 Kato, but he doesn't believe Jack about anything else.
16 You folks heard the tape. Listen to it again. Find for
17 me the inconsistencies. Find for yourselves the
18 inconsistencies where they are so blatant, according to
19 Detective Thowsen in that tape. Listen to it. Does it
20 sound like a guilty guy, or does it sound like somebody
21 giving quick responses to questions pointed at him?

22 People that are looking to fabricate don't
23 respond immediately. They sit, they think, they mull it
24 over and give you what they think you want to hear.
25 Listen to the sequence of questions and answers.

1 And other than being a blabbermouth and
2 talking a lot, Jack doesn't do anything else. He answers
3 the questions, and they're all consistent with stories he
4 tells everybody else, because Detective Thowsen told you
5 it's an indication of somebody being truthful.

6 I talked to you already about Mr. Hamilton
7 and Detective Thowsen having no knowledge that he was in
8 jail. And if you remember during opening
9 statements -- and because this is a capital case, we get
10 daily transcripts. And that means what happened
11 yesterday, these reporters work all night and they get to
12 us by today. So I've got the transcript of what Mr. Kane
13 told you people he was going to show during his opening
14 statement.

15 And Mr. Kane told you that he was going to
16 show that Mr. Hamilton was robbed for money. Where? Show
17 me where there is money in Mr. Hamilton's pocket at any
18 point from any evidence the State put on in this case.

19 I had to show you that he didn't have any
20 money, and that's a sad event. It's a sad state of
21 affairs that somebody is homeless, has mental problems,
22 has drug addictions, is using, because he was using, and
23 is wondering the street. But the fact remains, that he
24 didn't have money like Mr. Kane promised you he would
25 demonstrate Mr. Hamilton did.

1 And Jack needs money. Through a stipulation
2 we've entered the pawn shop tickets that demonstrate from
3 the time of November the 7th through about November the
4 12th, Jack is pawning various items that were used in
5 conjunction with the air conditioning business.

6 He's broke. He's telling his friends he's
7 broke, he doesn't know how he's getting back east. He's
8 pawning the stuff. If he's pawning stuff, why does he
9 leave the one item of value on Eric Hamilton's body? Why?

10 And there is such a thing as being called
11 felony stupid, but why in the world would you take
12 somebody's jacket off, you take their bracelet, you take
13 their hat, all the things that were left in 1929, but you
14 leave your own stinking name and phone number in his front
15 pocket?

16 The State may argue that's felony stupid. I
17 submit to you that it's a very good way to have the police
18 go down the wrong trail and never come to LA to question
19 you if you're Mr. Kato.

20 The time frame for which Mr. Hamilton is
21 killed is about, like Mr. Fattig said, sometime November
22 the 15th, or early morning November the 16th. That's
23 about between 48 and 72 hours between the time when Jack
24 is seen in the vehicle.

25 And are Jack's fingerprints in the Toyota?

1 Heck, yes, they're in the Toyota. And I even questioned
2 Mr. Boyd: That would be logical, right? I mean, he's
3 driving the thing when the police see him, right? And
4 he's driving the thing.

5 Mr. Fattig argued something this morning,
6 he's trapped, he's got to somehow push all the ceiling
7 tiles aside and jump up and dump bullets and cartridges in
8 them to hide them, and throw on the lamp shades, whatever.
9 But if he's guilty and he's done something wrong, and one
10 of the scenes next door, why in the heck does he pull up
11 to the place with the cops all over?

12 Is this just America's dumbest criminals,
13 the TV show, is this one of those? Or is it a guy that
14 pulls up because he hasn't done anything? He hasn't been
15 staying there, he's got the truck back. He's gone out and
16 done his laundry, I think is what they said, and brought
17 his laundry back.

18 You look at the pictures. The State
19 introduced them. The place is a pig sty. Jennifer
20 Harrison called it a pig sty, the police described it as
21 messy. It's a pig sty. And in one of the pictures
22 there's a big pile of dirty laundry, or I imagine it's
23 clean because he brought it back.

24 Does somebody who just committed two murders
25 pull back up and thumb their nose at the police and say:

1 I'm smarter than you are, blah, blah, when one of the
2 scenes is next door? And if you believe the State, the
3 other scene is in the office where there's no blood found,
4 unexplainably.

5 When Jack leaves Las Vegas, he tells
6 everybody he is leaving. He tells Detective Thowsen his
7 parent's address. It's on the tape, listen to the tape,
8 it's on there. This is where my parents live, it's 1116
9 Atlet, or something like that, back in Philadelphia. And
10 where is Jack found? In Philadelphia.

11 And they have a flight instruction in here.
12 And it essentially says if somebody flees from
13 prosecution, then you can consider that as evidence of
14 guilt if you think they were doing it to get away from
15 being prosecuted.

16 He tells them where he is from. He tells
17 them where he's been and where his child is, then he goes
18 back to that area. And, remember, from November the 17th
19 when he leaves Detective Thowsen, that's great, Detective
20 Thowsen wanted him to come back and secure the premises.

21 He had no obligation. And the nonsense
22 about he had to take care of the dog is crap. That's the
23 way for Detective Thowsen not to answer the question,
24 because it benefits the Defense, because Jack did not have
25 to go back.

1 There wasn't even a warrant issued for him
2 until February 28th. So we're at November 17th, there's
3 no warrant until February 28th. Would any of you go back
4 after a homicide detective -- and you're cooperative. You
5 go down and give a statement to homicide, and they look at
6 you and say: You're lying. You killed this guy. We know
7 you killed this guy.

8 And you get a little nervous and you say:
9 Hey, are you going to arrest me, or are you going to let
10 me go? Jack's not a lawyer. He's not a Defense lawyer.
11 He doesn't know to say: Give me a lawyer.

12 And you heard Detective Thowsen, if he said
13 that, everything stops and Detective Thowsen can't talk
14 about it in court. He cooperates and gives a statement
15 and he then goes, he leaves. Would you go back? He just
16 said: I don't believe you.

17 I represent there's a whole segment of
18 society that would not go back, people that don't trust
19 the police, people that think that once the cops got it in
20 their mind that you're their man, that's it, it's over.

21 And does this case reflect such an idea?
22 Was Tom Thowsen's investigation done November 17th as soon
23 as he talked to John Seka? What else did he tell you that
24 he did? Talked to a bunch of other people, didn't talk to
25 Kato, didn't find out he filed bankruptcy.

1 Is this a case where you find a suspect and
2 you work the case around it to get to that guy? And is
3 that the type of police work you people are going to hold
4 up and say: That's right, and bring it back to a
5 conviction?

6 Or do you want police that go in to look at
7 everything, find all the suspects, talk to everybody and
8 then come up with a defendant? I'll tell you, David Wall,
9 who is a Chief Deputy District Attorney, he didn't want
10 them to do it that way, because he told them: You don't
11 have enough evidence, let Jack Seka go. That's what he
12 told them November the 17th. He said: Let's wait for
13 forensics. We're going to talk about that.

14 So Jack tells them the truth about Kato,
15 Jennifer, Peter Limanni, the Tahoe business, California,
16 the phone company, the phone numbers, the bank records,
17 which he didn't have either. He didn't know Limanni had
18 closed out the bank records and they're in evidence, I
19 believe.

20 Look for yourself. Peter Limanni closed out
21 his bank accounts. He was bouncing checks all over
22 creation and closed them out November the 2nd 1998.
23 Detective Thowsen didn't know any of this, I had to show
24 him when he got on the stand.

25 And with all due respect to Detective

1 Thowsen, that shouldn't be the case when he comes here to
2 trial trying to put somebody to death. It shouldn't be
3 the case.

4 Thomas Creamer. I'll be brief about
5 Mr. Creamer. Mr. Creamer testified that he talks to Jack
6 on the phone, Jack denies any involvement with Limanni.
7 And through Mr. Polsky you heard about how this little
8 small town back east, some of you may be from back east.
9 It's not like Las Vegas, very small, everybody knows
10 everybody. Everybody knows what's going on, rumors are
11 flying.

12 And there's rumors flying in this little
13 town about, one rumor is that Jack is dead. One rumor is
14 that Limanni is dead, one rumor is Jack killed Limanni.
15 Creamer is hearing this stuff and even talks to Mr. Polsky
16 about it.

17 Then at some point Jack denies it on the
18 telephone and said: I had nothing to do with it, which is
19 what he told everybody else. Then Creamer has some mental
20 problems, and I'm not trying to demean him, but they get
21 worst.

22 According to Margaret Daly, they get far
23 worse. He forgets things, he gets violent, wakes up an
24 hour later and wants to walk the dog, doesn't know what
25 happened. He's taking Prozac, all kinds of stuff. I'm

1 not a doctor, I don't remember all the names.

2 But if he's scared of Jack when he throws
3 Jack down the stairs and Jack runs around like a coward
4 out front. And Creamer is no force to be reckoned with,
5 you guys all saw him. He's about that big and about that
6 big around.

7 And what does Jack do besides run from Tommy
8 Creamer, his only friend? He runs. And if Creamer was
9 threatened like he told you folks he was -- and that was
10 the first he said it. He never said it at the prelim, he
11 never said it when he talked to the cops back east.

12 The first time he was in here when he got up
13 on the stage and he could do the most damage to keep Jack
14 away from a girlfriend that he can't get near because
15 there's a protective order. What does he say? I'm
16 threatened.

17 Well, if he's threatened and Jack has told
18 him: I'm going to do you like I did Limanni, or something
19 to that effect, why doesn't he tell the cops right then
20 and there when they come to get him? It's not until
21 sometime in March when he talks to the police, sometime
22 after he's been institutionalized.

23 And by his own admission -- I've forgotten
24 the drug. The wasn't Prozac and it wasn't Xanax, but
25 there was one drug that he told you folks he's never taken

1 again, because is it made him so nuts that he wanted to
2 kill himself during that time of being institutionalized.
3 He said: I'll never take it again.

4 And that's when he makes the story. That's
5 when the story comes up, is when he is in the institution,
6 not when it should come up, if it's the truth, when the
7 cops come. When the cops come to me and some guy says:
8 I'm going to do you like I just killed this other guy in
9 New York, I would say: Mr. Police, would you arrest that
10 guy. He just told me he whacked some guy in New York, and
11 he's going to do me that way. I don't want no business
12 with this guy.

13 I don't wait until I've been
14 institutionalized for three weeks or a month, however long
15 it was; 302'd they called it. And they give you all kinds
16 of mind-altering medication, some of which he took, some
17 of which he didn't take, some of which he mixed with
18 alcohol, some of which he just decided on his own not to
19 take, and some of which he mixed with downers, as Margaret
20 Daly told you. He would get her father's downers and take
21 it with his prescribed medication. That is the
22 recollection the State would have you hang their hat on to
23 obtain a conviction in this case.

24 I submit that it is not reliable, it is not
25 somebody -- when you read Instruction No. 35 about

1 credibility and believability of witnesses, that you
2 should put any credence in it.

3 I'm trying to move quickly. One thing for
4 your benefit, this is a capital case. Typically, both
5 Defense lawyers get up and do closing argument. You can
6 rest assured only one of us is doing it today so we are
7 trying to move it along.

8 Let's talk about Mr. Kato. He invests over
9 \$100,000 with Limanni, all of which he loses. He lies to
10 the Detective Thowsen about living here in Las Vegas, and
11 why do you think he lied? He lied to Detective Thowsen
12 thinking he was around and at ease, he had access.

13 He had access to all vehicles and he
14 borrowed -- the money wasn't his, that's somewhat
15 important. He told Detective Thowsen it was an investment
16 he was going to write off. And Detective Thowsen,
17 admittedly, was surprised when I showed him the
18 bankruptcy.

19 He filed bankruptcy, and I don't know squat
20 about bankruptcy, except when you file it, the creditors
21 get held off by the bankruptcy court. This guy is still
22 paying his people back in Japan. Sounds like he might be
23 worried about the people whose money he had lost so
24 frivolously with Peter Limanni.

25 Let's talk about the monetary commitment.

1 He had the lease at \$825 a month for 24 months that he was
2 the guarantor on. He wrote a letter, and that was
3 introduced into evidence, and I would ask you to look at
4 it, calling Limanni all kinds of distrustful, doesn't want
5 to be related to the guy in any way whatsoever.

6 Mike Serta said no. Four vehicles, I
7 estimated maybe 1200 a month, maybe a thousand a month for
8 four leased vehicles that were in his name. The Frontier
9 Directory, about 5,000 a month for that full page ad, and
10 Sprint the same thing, plus the interest and/or principle
11 to the Japanese. That's what he had to lose. This was
12 Jack's place of employment, why terminate it?

13 Let's talk about what Mr. Kato knew when
14 people started disappearing and funny things started
15 happening. On 10/13/98, he's told about this cigar store.
16 Limanni tries to approach him on another scam. He's going
17 to do a cigar store.

18 The guy says: No. I'm not giving you money
19 for a cigar store, and he figures out the note that's due
20 and payable in two days on the 15th is not getting paid.
21 So he turns around and he goes to Vegas. He picks up one
22 of the vans.

23 Remember, there's a total of four vans.
24 There's only two when the cops get on the 17th to 1933
25 Western, one is back in LA, and the fourth is in Tahoe.

1 As between the van that was in LA and the vans that are
2 here, the only information the police have to verify which
3 vans are where, or how they moved, is the information Kato
4 gives them. Somebody, if he's trying to be self-serving
5 is surely going to cover his tracks.

6 He solicits Mr. Kato in an illegal scheme.
7 Now, Kato told us that he was interested in that scheme
8 and sort of played along. He was going to go along and
9 get along, because he wanted to get his vans back and try
10 to minimize his losses.

11 And that's what he said in here, and he
12 never told Detective Thowsen that, and Detective Thowsen
13 admitted that. Credibility or believability. If somebody
14 lies to you about something, you can disregard everything
15 they say. It's up to you as a jury.

16 But now Mr. Kato is being told about how
17 Limanni could disappear. And how does he know that's
18 true? Limanni shows him fake IDs. Limanni shows him fake
19 credit cards, tells him he can get fake lines of credit.

20 For that matter, how about the credits cards
21 and stuff on the ground behind 1933, the birth
22 certificate, social security card and the driver's
23 license? Has the State shown you that those were real
24 identification, or fake ID?

25 And if you're trying to disappear and those

1 are your real IDs, and you're going to change and you're
2 going to blow out the town, you're closing your bank
3 accounts, do you leave your fake stuff? Do you maybe try
4 to burn it? The stuff in the trash can or the dumpster,
5 or do you take your real stuff with you?

6 I am asking you to use your common sense and
7 draw reasonable inferences from the evidence that's been
8 presented here.

9 What does Kato know when Mr. Limanni leaves
10 on the 13th, besides that his money is going to disappear,
11 and if he doesn't get to Vegas and do something about it,
12 everything is going to disappear? He's already lost a
13 bunch of money.

14 He comes and gets his van after that, comes
15 back. He sees, I'm sure, the state of Cinergi. Cinergi
16 is a mess. You guys all saw pictures of it, they're
17 trying to do a cigar store. The heating and air
18 conditioning business has gone down the tubes, it's a
19 mess. He sees the state of affairs of the business, and
20 he verifies that one of his vans is now missing, it's in
21 Tahoe.

22 On the 6th we've talked about Mr. Limanni
23 being seen by Mike Serta. That makes sense because of the
24 five-day notice and the rent coming due. On the 16th
25 Mr. Hamilton is found. The week of the 9th is the week

1 Mr. Serta tells you that he files a five-day notice, and
2 he also told us that he contacted the guarantor on the
3 lease, Mr. Kato.

4 Now, the 9th is the Monday, right? 6th is a
5 Friday, 9th is a Monday. If he contacts him and files the
6 five-day notice, the 9th Mr. Kato knows he's got to get
7 back to Vegas a pick his stuff up. Because as many of you
8 may know, if you don't pay by five days they lock the
9 place up and hold your assets until you can pay, or work
10 something out.

11 So how does he get to Vegas to get the list,
12 Jack's list? How does he get this list if he doesn't come
13 back to Vegas in between that week when the five-day
14 notice is posted? The week before the Monday -- Monday is
15 the 16th, the week before the Monday where Eric Hamilton's
16 body is found, how does he get this list?

17 Is it a coincidence that when he is
18 interviewed some month later on the 7th, that he's never
19 called the cops in Vegas? He's just been scammed out of a
20 hundred-grand, you don't call the cops? You take and you
21 borrow money from some of your friends, lose it to a con
22 man, I bet you would call the cops.

23 Why doesn't he call the cops? Why is it
24 that Jack has to give Detective Thowsen his number so
25 Detective Thowsen can track him down, and as soon as

1 Detective Thowsen talks to him, what does he say? I'm
2 going to Japan next week.

3 Detective, did you find out when he bought
4 the tickets? No. Before or after he talked to you? I
5 don't know. Did you ever talk to Mr. Toe, the other
6 person who lost the hundred-grand? He didn't.

7 Then Mr. Kato was kind enough to mail this
8 thing, and somehow it baffles me that if you're Detective
9 Thowsen, you take the stand and you almost get weepy-eyed
10 about the dog that's left overnight in the place on 11/17
11 when Jack doesn't come back, that somehow it is
12 consciousness of guilt that Jack writes, "Find a home for
13 Jake." How do you get it both ways?

14 You can't have it both ways, folks. It
15 shouldn't matter who calls witnesses, it shouldn't matter
16 who puts up more witnesses. What matters is, you apply
17 the same logic to everybody. That's what being a juror
18 means.

19 We don't know when Mr. Limanni's phone was
20 turned off, I've established that. We do know that
21 Mr. Thowsen, Detective Thowsen doesn't talk to Mr. Toe,
22 talks to Mr. Kato, only on the phone, doesn't get
23 fingerprints. But he's been back to the business because
24 he is able to send the detective that list that now
25 they're going to use against Jack.

1 Jack's phone number is left on Hamilton, now
2 he's sending back a list they're going to use against him.
3 When did he come back and get it? I submit to you it's
4 the week before Eric Hamilton's body is found, and I
5 submit to you that two guns were used to kill these two
6 men.

7 One person does not carry two guns and kill
8 one person with one gun, and one person with another gun.
9 It doesn't happen. Mr. Kato and Mr. Toe were out money.
10 They owed it to people back in a Japan. They came to town
11 looking for Mr. Limanni after the five-day notice was
12 found, and they found him. They shot him and killed him.

13 Mr. Hamilton was, in all likelihood an
14 innocent bystander and happened to be in his homeless and
15 empathetic life in that neighborhood, looking probably for
16 drugs, as evidenced by the stuff in his front pocket; the
17 scouring pad and the hanger that is used as drug
18 paraphernalia.

19 He didn't dive through the bottom of that
20 door like Mr. Fattig suggested this morning. He was shot
21 in the leg, the bullet went through and through his leg,
22 went through that window and broke it. He fell to the
23 ground. Those two men drug him into 1929 and shot him to
24 death, and the four bullets were there to prove it.

25 Those two men had access to 1933. Those two

1 men went into 1933, and they got Mr. Limanni. Jack hadn't
2 been staying there. He had been living with his friend in
3 Spanish Trails. They put Mr. Limanni in the back of the
4 van.

5 And there is no evidence to support
6 Mr. Limanni being killed in 1933. It's not there.
7 There's no blood. Even if you believe Mr. Welch, who I'm
8 going to show you doesn't deserve any believability, but
9 if you believe him, there's no blood inside of 1933 of
10 Peter Limanni.

11 They took him out in the desert and they put
12 it to him with a vengeance, because they had a motive to.
13 They shot him twice through the heart, and then put eight
14 more rounds in his head between 6:00 and 8:00.

15 Is that something a friend does to another
16 friend who never had one second of violence? Or is that
17 something two guys that lost people in Japan's money and
18 are thinking the guy is trying to scam them out of some
19 more, is that what they do when they come back to get
20 their belongings, and try to gather their stuff?

21 And the State has made a big deal about
22 Mr. Limanni's shoes, that his shoes were there on the 5th,
23 Jennifer says. Remember the boots, the hi-tech boots that
24 she says they bought together that he really liked?

25 Remember when I asked Mr. McPhail: Did you

1 process any black hi-tech boots out of 1933? No. Where
2 are the boots? Now, all of a sudden he's got shoes and
3 he's wearing boots. Doesn't fly. Does a friend strip
4 another friend down to nothing? I don't see it.

5 I'm almost finished. I know it's long, I
6 appreciate your patience.

7 I talked to Detective Thowsen about proof,
8 about what you need for probable cause. And he told me
9 that Dave Wall, Chief Deputy District Attorney, the
10 gentleman that prosecuted the Binion case, the tall skinny
11 one, he told him: You don't have enough evidence, get the
12 forensics. They didn't have enough to make this, to make
13 an arrest.

14 They wait until the end of February, they've
15 got their forensics. Now they think they have enough,
16 they submit it. Preliminary hearing is had, the case is
17 bound over. That's slight or marginal evidence.

18 Preponderance of the evidence is the
19 standard in civil court. Clear and convincing is the
20 standard in some motion work in both criminal and civil.
21 Beyond a reasonable doubt is the highest standard we have
22 in our system.

23 It's not absolute proof. Absolute proof is
24 impossible. Mr. Kane, as good a DA as he is, in any case
25 he could never meet that. It's beyond a reasonable doubt.

1 And that's defined in this jury instruction, No. 33;

2 "A reasonable doubt is one based on reason,
3 not mere possible doubt, but such doubt as would govern or
4 control a person in the weighty affairs of life. If in
5 the minds of the jury, after an entire comparison and
6 consideration of all the evidence are in such a condition
7 that they can say they feel an abiding conviction of the
8 truth of the charge."

9 That's the question. Can you folks
10 unanimously say you feel an abiding conviction of the
11 truth of the charges in here? An abiding conviction is
12 what would in your life be a weighty affair. Everybody
13 has to understand what's a weighty affair in their own
14 life.

15 I can't tell you, we're not allowed to
16 quantify it. If a weighty affair in your life is choosing
17 a kid's teacher, or buying a home. You've got to make
18 that decision, each of you for yourselves, and decide that
19 you have an abiding conviction that the State got beyond
20 where Dave Wall told them they weren't November the 17th
21 to get to beyond a reasonable doubt.

22 It's like a ladder. They've got to climb
23 the rungs of a ladder to make a conviction. And all of
24 you said you thought that was a correct way for our system
25 to work, and if somebody you knew was sitting next to me,

1 you would want the State to meet the burden.

2 So let's talk about the forensics. We have
3 got 27 years for Mr. Boyd. He told me he was not a
4 jack-of-all-trades and a master of none, he sticks with
5 what he does, and he does one thing. He's got Jack's
6 prints on the boards, Limanni's prints on the boards, and
7 identifiable principles that are never found.

8 Now, even if you don't believe that Kato had
9 access to the inside of that business, here's the boards
10 on the outside of the business, Defense Exhibit T, the
11 exhibit boards, cedar and pine, that were found on top of
12 Mr. Hamilton outside in the back by the dumpster.

13 He's got Jack's prints on the Toyota, I
14 already talked to you about that. He's got the Toyota
15 tire consistent with the Hamilton scene, no problem.
16 Then 72 hours later, between 72 and 48 hours later,
17 depending if you believe one way or the other the
18 extremes, Jack is driving the Toyota, and his fingerprints
19 are on the inside.

20 Now, Mr. Boyd and Detective Thowsen had a
21 different idea as to who was supposed to run stuff through
22 AFIS. You remember the AFIS computer system that checks
23 fingerprints? Mr. Boyd said: Detective Thowsen has to
24 tell me to do it. Detective Thowsen said: We do it if we
25 have AFIS quality prints.

1 And I asked him: Did you have AFIS quality
2 prints on the Becks bottle, Defense Exhibit Y? And he
3 said: Yes, we did. And he didn't have a reason why he
4 didn't run it through AFIS. That was found around
5 Mr. Hamilton's body.

6 Forget about DNA. Use your head for a
7 second. Jack smokes, and in all the pictures I made him
8 show me, he smokes Marlboro reds with white filters.
9 Around the body of Mr. Hamilton is a white cigarette
10 filter, not a Marlboro red, not what Jack smokes.

11 And yet throughout Detective Thowsen's
12 report, he calls it a Marlboro butt. Is that somebody
13 that's looking for the truth, or somebody that's deciding?
14 You tell me. Common sense, no DNA, no magic, no nothing.

15 Mr. Johnson, Torrey Johnson, he helps the
16 Defense. He says there's two guns. And, again, one
17 person, does he have one gun in one hand, and one gun in
18 the another? What theory are they going to espouse to you
19 today, that these people were killed different days, same
20 days? Because they don't know. And if they don't know,
21 they haven't met their burden.

22 Now, let's talk about Welch, and I'll be
23 quick. Welch tried to explain DNA to you people, and he
24 told you it's the PCR, and that's the type of DNA used
25 that excludes people. It doesn't include people, it

1 excludes people.

2 Mr. Fattig did it again this morning, and it
3 is not Mr. Fattig's fault. He's been explained stuff by a
4 guy that says he's an expert, a guy who is an expert in
5 nine different fields. And by his own counterpart in
6 Metro by Mr. Boyd, tells me he would never do all those
7 different things, because you become a jack-of-all-trades,
8 and a master of none.

9 Mr. Welch, who never testified at the time
10 he did this test about this test, never was qualified to
11 come into court and tell you folks that he is an expert.
12 He did in this courtroom for stuff he did two years ago,
13 and he didn't know what he was doing then, and he doesn't
14 know what he testified to here last week.

15 Just look at it to begin with, he's got the
16 handwriting and stuff -- I mean, this is a capital murder
17 case. They're trying to kill that man, and he's got to
18 hand write some crap in on a chart?

19 Now take a look for a second. Mr. Fattig
20 this morning told you -- and this is what his expert
21 testified to, so I'm not criticising Mr. Fattig, he did a
22 very good job this morning. Here's how you do PCR, it's
23 exclusion.

24 You look over here and say, Eric Hamilton,
25 and we know he's an African American male. So we look in

1 this part here, and that's the number, 1.2 in 2.8 million.
2 That's nonsense. This is exclusion, folks, exclusion.

3 How does he know who the other person is?
4 You're supposed to decide in all three races if there is
5 another person, what is the chance that this person gave
6 this type of DNA at these cites, or these loci, as he
7 called them?

8 He doesn't know who the other person is or
9 what color the other guys is, right? It's exclusion. He
10 was looking at it and saying because Eric Hamilton is
11 black, that means the only person that could have given
12 this DNA is black.

13 That's nonsense, that's tunnel vision crap.
14 That's not the way it works. If that works, why in the
15 world does he have white people on there and Hispanic
16 people? If he doesn't understand that basic concept, can
17 you people hang your hat on it in this case?

18 The other thing I point out to you about
19 Mr. Welch, is that Mr. McPhail, the crime scene analyst,
20 the gentleman who did all the crime scenes, he was on the
21 stand for quite a while the other day, big guy, he said he
22 would never use up an entire sample, because I think he
23 said that would be fundamentally unfair.

24 And yet on all the samples that puts the
25 victim's blood in the back of the Toyota, or in the back

1 of the van, the samples were used up in their entirety.
2 So no matter who I get, Michael Baden or whoever else,
3 whatever expert, the most Nobel Prize Lauriet, they can't
4 come in here and look and retest that.

5 In a capital case, is that fundamentally
6 unfair? Should we have an opportunity to look at it?
7 Because we didn't because he used it up. And people that
8 work with him say that's the wrong way to do it. And on
9 cross he had to say: We don't do it that way anymore.

10 Finally, has the State climbed their wrung?
11 Mr. Kane promised you in opening statements that they
12 would show that Jack got scared and he tried to discard
13 Mr. Limanni's stuff, and they would prove that through
14 Officers Kroll and Nogues.

15 As you sit here today, did Officers Kroll
16 and Nogues prove that? Or did Officer Kroll tell me: We
17 didn't leave until homicide got there, Mr. Christiansen,
18 we stayed. If that's the case, there's cops everywhere
19 the whole time and Jack could never do what they say he
20 did, and what they pin the whole case on.

21 If there are cops there, he can't be running
22 around. You heard Detective Thowsen tell you what they do
23 when they process a scene. They won't even let anybody
24 back in. So he's not running around burning stuff,
25 throwing things in dumpsters, unless the cops were just

1 completely lost, and I don't think they were.

2 That's what Mr. Kroll told us. He told us
3 he went out back, he never looked in the dumpster, he
4 doesn't know what was in the dumpster. And Mr. Ferguson,
5 the gentleman I called back yesterday, the older gentleman
6 from the trophy store, he agreed. He said: I had no
7 conversation with police officers about that dumpster
8 being empty.

9 Now, that contradicts on paper Officer
10 Nogues. And can you blame these poor young officers, they
11 get called back to a scene by homicide. Homicide grabs
12 them by the ear, walks them back to the back and said:
13 Did you morons look in here? What are you going to say?
14 Yeah, we did. It wasn't in here when we looked in it.

15 And they're so sure of that that they would
16 go back and do a report, right? No. They didn't do
17 reports. They didn't do reports until Tommy Thowsen
18 called them again and snatched them by the ear December
19 5th and said: Do a report, morons.

20 And in their reports Mr. Kroll stays clear
21 of it. He doesn't say anything about it. And Mr. Nogues
22 says, Officer Nogues says: I looked and there was nothing
23 in there, and Mr. Ferguson told me that it had just been
24 emptied the night before.

25 Well, we know that's not true, because

1 Mr. Ferguson told us it's not true. At the prelim he was
2 called to testify, and now not only has Mr. Ferguson told
3 them to look in it, but now there's the guy, remember, who
4 drew the X's in the back to memorialize the yard in the
5 back? There is this unknown individual who tells him of
6 the parties that are going on in 1933, and all these other
7 people, and that guy told him too it was empty.

8 Am I condemning Officer Nogues? Not really.
9 Is it understandable? Does he want to get reprimanded?
10 Did he screw up and go to lunch? Yes. Did he wait until
11 homicide is sent in? I bet he did.

12 Look at the incident recall, because it
13 shows there's a 30-minute gap between when the officers
14 clear and homicide gets there. But, remember, the
15 homicide guys all the told you: We don't carry radios,
16 and when we call in is when they mark us as being in.

17 Buzcek or Hefner, I think it was Hefner who
18 was the first guy on the scene, and he was there for a
19 while before he called in. And you know how we know
20 without any doubt is the thing that they say makes Jack
21 looks so guilty, is that he got rid of a rifle bullet.
22 And that also points to homicide being there before the
23 cops left.

24 How did the cops, how does homicide know
25 about the rifle bullet? Remember, the two-and-a-half inch

1 bullet that disappears? How do they know if they're not
2 there, and they don't have an exchange with those officers
3 about the bullet being in there? And that's why they
4 handcuffed Jack.

5 Because they call him back and they say:
6 Where is the bullet? And they have a conversation. They
7 had to know beforehand. There was no period of time for
8 Jack to hide things, for Jack to do all this stuff. And
9 it makes no sense that he would do this.

10 How come nobody smells the smoke from the
11 fire? And why is he burning shirts that there's no
12 gunshot wounds in? It makes no sense. Use your common
13 sense.

14 Mr. Kane is going to have the opportunity to
15 speak to you next. He is a very experienced litigator.
16 He is a very good advocate. Make him answer the tough
17 questions.

18 It has often been said, or I've seen at
19 times where in rebuttal argument the Prosecutors say:
20 Sometimes I think the Defense is putting the police on
21 trial here. And I'll tell you what, I am. And don't ask
22 me to apologize, because I won't.

23 The State of Nevada is trying to take that
24 man's life. And if you folks don't honor this system and
25 make them get to beyond a reasonable, then we might as

1 well not have juries. We might as well just let the cops
2 do it all. And if that happens, I don't have a job any
3 more, you folks don't have to waste two weeks of your
4 time, and innocent people get convicted.

5 I won't apologize for making the police do
6 their job, I won't apologize for raising doubts about it.
7 When the State stands up here, make them answer the
8 question, why wasn't Mr. Kato questioned? Why did the
9 investigation stop four hours after Jack drove up,
10 innocent as all give, and start to cooperate?

11 Why was it over? Is that the system that
12 you want to be a part of? Because there is no better way
13 to honor our system, than to tell the State of Nevada when
14 it hasn't met its burden, that man is not guilty. Thank
15 you for your time.

16 THE COURT: Would counsel approach the
17 bench, please.

18 (Whereupon, counsel conferred with the Court.)

19 THE COURT: Mr. Kane, your rebuttal?

20 MR. KANE: Thank you, Your Honor.

21 Oh, man, you're thinking, we've got to
22 listen to another one. As usual, I've got good news and
23 bad news. The good news is, I'm the last, and the rest of
24 the good news is, I'll be the shortest.

25 But the bad news is, I do have to talk to

1 you. I have to talk to you because of that burden of
2 proof that Mr. Christiansen addressed so eloquently. But
3 we do have the burden of proof beyond a reasonable doubt,
4 and because of that we're given two opportunities to argue
5 to you at the end of the trial; one is an introductory
6 argument, and one is a rebuttal closing argument.

7 I'm not going to recap the evidence like
8 Mr. Fattig did, because you heard it twice now. And I'm
9 not going to answer point by point each question that
10 Mr. Christiansen raised, because he doesn't write my
11 arguments, and I don't write his.

12 But there are about four or five different
13 themes that I want to discuss with you, and we'll try to
14 have you out of here just a little after 3:00 o'clock.

15 I do want to talk to you a little bit about
16 the instructions. And the only ones I'm going to be
17 concerned with are the instructions about first degree
18 murder, and the felony murder rule.

19 You will notice that there is a series of
20 instructions, 10, 11, 12, dealing with the definitions of
21 premeditation and deliberation. And while all of those
22 instructions says that it doesn't contemplate any specific
23 time, that it could be instantaneous, some of them sound
24 like you've got to take a long time.

25 The deliberation one, especially, says,

1 "Deliberation is the process of determination upon the
2 course of action to kill as a result of thought, including
3 weighing the reasons for and against the action, and
4 considering the consequences of the action."

5 Now, that sounds like it takes some time.
6 It almost sounds like somebody sitting down and writing
7 out a list, the reasons I should kill Peter Limanni, and
8 the reasons I shouldn't kill Peter Limanni. And then
9 examining all those reasons and then deciding to do it,
10 and that's not what deliberation is.

11 You all deliberate every day of your lives.
12 Within the last 24 hours, each and every one of you has
13 engaged in deliberation. You have done it in a situation
14 where your life is at stake, and it hasn't taken you more
15 than a couple of seconds.

16 You cross the street at a traffic light.
17 What do you do when you get to a corner and you want to
18 cross the street? You look at the light and see if it's
19 for you or against you. Even if it's in your favor, you
20 look up and down the street to see if there are drivers
21 coming who aren't paying attention.

22 You gauge their speeds quickly to arrive at
23 the intersection, and you gauge your walking speed and
24 whether or not you're going to be able to get across the
25 street safely. And after you make that decision, you step

1 off the curb and you cross the street. And if you're
2 wrong, you're going to die.

3 And does that process of deliberation take
4 you a half an hour? Does it take you half of a minute?
5 Does it take you more than two or three seconds? So when
6 you define things in legal terms, they sometimes sounds a
7 lot more complicated than they are.

8 Deliberation simply means weighing your
9 alternatives and deciding on a course of action. And it
10 can take a lot less time than it just took me to explain
11 it to you.

12 When you get to Instruction 13, the
13 instruction on felony murder, you're going to find that it
14 has an effect on all of those other instructions. What I
15 mean by that is, Instruction 13 tells you that in a felony
16 murder, if you're satisfied that either of these murders
17 was committed in the course of a robbery, a killing
18 committed in the perpetration of robbery is deemed to be
19 murder of the first degree.

20 It doesn't matter if the killing was
21 intentional, or even accidental, as long as it happens in
22 the course of a felony. All of those things we've been
23 talking about; willfulness, deliberation, premeditation,
24 they're all presumed. You don't have to go through that
25 mental exercise, if you decide that the murder was

1 committed in the course of a felony.

2 And, finally, Instruction 14 tells you that
3 when you're back there deliberating, although you all have
4 to agree on the verdict, you don't have to agree on the
5 theory.

6 And what that means is, six of you decide
7 this is first degree, premeditated murder, you don't pump
8 nine slugs into a guy into his body, into his head without
9 premeditating it and meaning it. And half of you say:
10 Yeah, but it's a felony murder, and so you don't need all
11 of that stuff.

12 If you don't all agree that it's first
13 degree murder, it doesn't matter that some of you think
14 it's premeditated, and some of you think that it's felony
15 murder. You don't all have to agree on that. It's
16 important you understand that.

17 The Defense raised something that's not in
18 the instructions, and that's self-defense. You won't see
19 a single jury instruction about self-defense, because
20 nobody asked that any be given. But Defense counsel
21 addressed self-defense, so let me just address it back.

22 He told you that you have the right to
23 defend yourself, and I'll agree with that as a general
24 proposition. You don't have the right to shoot somebody,
25 and after they fall back against the wall and they're

1 helpless, keep pumping slugs into their body, and then a
2 few more into the top of their head for good measure.
3 There is no privilege of self-defense that covers, allows,
4 or contemplates that kind of stuff.

5 There's also no theory of self-defense that
6 says it's okay to shoot somebody, disable them, and then
7 pump a more in their back as they're falling through a
8 window. That's not the way self-defense works.

9 Finally, counsel asks where is the evidence
10 of robbery, especially with respect to Eric Hamilton, how
11 can we show you he had any money or anything valuable that
12 was taken from him.

13 Well, the Defense was thoughtful enough to
14 provide you with general records to show just a couple of
15 days before Eric Hamilton was killed, he was let out of
16 jail. And when he was let out of jail he didn't have a
17 penny on him, didn't have any jewelery, didn't have
18 anything.

19 And we know that when his body is found a
20 few days later, he's acquired a diamond ring, so he got
21 money and property from somewhere. We know that at least
22 some of that property was removed from him, even if
23 nothing more than his jacket.

24 Think about that jacket. The jacket was
25 found inside of 1929, and Eric Hamilton is found in a

1 shallow grave outside of town. So the question is, was
2 that jacket taken from him by the application of force or
3 violence?

4 Well, the jacket has bullet holes in it.
5 Eric Hamilton had bullet holes in him. Unless somebody
6 had him take the jacket off, shot him and then put a
7 couple bullet holes in the jacket just for good measure,
8 that jacket was taken from him by the application of force
9 or violence, and that's robbery.

10 And if he's killed in the course of that,
11 that's felony murder, and that's all you need. That's
12 even without the bracelet that could very well have been
13 plucked from his wrist, examined, found to be of no value
14 and tossed to one side, also robbery.

15 But property was removed from Eric Hamilton,
16 and it was done by the use of force or violence, and
17 that's robbery, and that qualifies it for the felony
18 murder rule.

19 I hate to be predictable, but I am going to
20 respond affirmatively to one suggestion that Defense
21 counsel made, and that's to address the issue of putting
22 the Police Department on trial.

23 We lawyers have a saying. We have lots of
24 them, but this one is, if the facts are against you, pound
25 on the law. If the law is against you, pound on the

1 facts. If the facts and the law are both against you,
2 pound on the table, or in this case, pound on everybody
3 else who is a handy target.

4 Who gets put on trial? The Las Vegas
5 Metropolitan Police Department, the Clark County District
6 Attorney's Office, and a couple of Japanese business men.
7 Let's take them one at a time.

8 The Police Department is put on trial.
9 Tommy Thowsen didn't do a good investigation. He
10 subpoenaed a bunch of telephone records, and he subpoenaed
11 one wrong number two years ago, and finds out about it at
12 trial. And that means that his investigation is
13 worthless.

14 The patrol guys who appeared at the scene,
15 Counsel says: I'm not condemning Officer Nogues. He's
16 not? Officer Nogues said on that stand that he took an
17 oath to tell you the truth, and he knew when he did that
18 that this man was on trial for murder facing a possible
19 death sentencing.

20 And in order for you to believe what Defense
21 counsel says about Nogues, who he's not condemning, you
22 have to believe he deliberately committed perjury. He
23 didn't just say: I looked in the dumpster before and it
24 wasn't there, and I came back after lunch and it was
25 there, to stay out of trouble with the homicide

1 detectives.

2 If Defense counsel is to be believed, he
3 perjured himself. He sat up on the stand, put his career
4 on the line, lied under oath with a man's life at stake.
5 You had a chance to see him, to observe his demeanor and
6 his partner's demeanor.

7 Did he look like that to you? Did he look like a
8 boy scout, or did he look like somebody who would come in
9 here and lie with somebody's life at stake because he
10 didn't want homicide detectives to be mad at him?

11 And then, finally, we have David Welch.
12 Welch, master of none. That's kind of funny, huh. You
13 know, you judge a person by their enemies. You attack
14 those whom you fear most. And you know what that master
15 of none is besides a funny line?

16 It's a red line right under Dave Welch's
17 testimony telling you how important the Defense considers
18 it, and how much they feel they have to attack it.
19 Because if you believe it, you can't believe there's a
20 reasonable doubt that Jack Seka is guilty.

21 And how far does the criticism of Dave Welch
22 go? Far enough for counsel to hold this exhibit up to
23 you, Exhibit 34, and say: Look at this, a guy's life is
24 at stake and Dave Welch comes down here and he hand-writes
25 stuff on a court exhibit. That's how casually he treats

1 it.

2 And the reason that's not a proper argument,
3 is because the lawyer who made it was standing right next
4 to Dave Welch and I when Dave Welch did that writing. He
5 knows why Dave Welch did that writing, not because Dave
6 Welch doesn't take his job seriously or because he thinks
7 this is casual, because I made a mistake.

8 When I had our people upstairs make this
9 chart, they listed John Seka twice and forgot to put Eric
10 Hamilton's information on the chart, and I didn't catch
11 it.

12 So when I got down here Dave Welch corrected
13 it. And counsel who says that Dave Welch did something
14 wrong in doing that was standing next to the two of us
15 when it happened. That's how desperate they are to
16 discredit Dave Welch, to have you believe he's not
17 competent, he's not conscientious, he's not worthy to be
18 believed.

19 He used up the entire sample so nobody could
20 retest it. I think you remember his testimony, it's up to
21 you, it's your recollection that controls. He said back
22 in those days: Yeah, we frequently would use up the whole
23 sample, because that's the only technology we had
24 available to us. Nowadays with improvements in
25 technology, some of which he has helped to make, they use

1 better techniques, and make sure part of the sample is
2 retained,

3 So a guy who goes to the trouble of becoming
4 an expert in his fields, and a guy who keeps trying to
5 improve his expertise to be fair to everybody, is accused
6 of coming in here and just being indifferent and sloppy,
7 and not worthy OF belief.

8 You saw him, you heard him. He didn't say
9 that those blood samples identified particular people. He
10 explained very painstakingly what those numbers meant,
11 that if you test a particular sample, what those numbers
12 say is how many other people of a similar race you would
13 have to test to find that DNA again.

14 And they're odds, they're probabilities.
15 You have to decide if one in two million or one in three
16 million is something insignificant, or something that is
17 significant in your making your determination. I suggest
18 to you it is significant, and I suggest to you that the
19 evidence shows Dave Welch is qualified to render those
20 opinions.

21 Clark County District Attorney is put on
22 trial, because when we charge the offense, we charged
23 between this date and that date. If you're charging a
24 murder offense and if a person disappears, and their body
25 is later found, does it not make sense to you that we

1 charged that the murder occurred between the date that
2 they were last seen on the face of the earth alive, and
3 the date when their body was discovered?

4 Now, I'd like to be more definite. I'm
5 sorry that Pete Limanni wasn't buried better, and that
6 most of his internal organs had been eaten by animals by
7 the time they found him, so we can't tell you when he
8 died. If he was here, he probably would be sorry about it
9 too, but that's the way it happened. And we charged based
10 on the information in our possession, and you'll have to
11 decide if we proved that or not.

12 And, finally, Tak Kato and Mr. Toe, a couple
13 of businessmen. I'm surprised it was never brought to your
14 attention they were first questioned on December the 7th.
15 Coincidence or not, you be the judge.

16 They were businessmen. They happen to be
17 Japanese businessmen. That doesn't mean they are Yakuza
18 or hired killers. You saw Tak Kato on the stand. Did he
19 look to you upset enough to kill somebody? He invested
20 money in a business, it went bad.

21 He later filed bankruptcy to clear the debt.
22 But as a personal obligation, he felt he should keep
23 trying to repay it, and he continues to do that. But
24 counsel says, no, that's not how it happened. He was so
25 mad that he brought his partner here to Las Vegas, they

1 hunted Pete Limanni down, and they killed him. Why?

2 Assuming that they gave Pete Limanni a whole
3 bunch of money and he misspent it, and then he put them on
4 the hook for some leases and other financial obligations,
5 so that the minute before Peter Limanni died, they were in
6 the hole for X amount of dollars.

7 The minute after Peter Limanni died, exactly
8 how were they any better off? Did they owe any less
9 money, or did they owe the same amount of money? All that
10 happened was, Pete Limanni wasn't around, so they couldn't
11 depend on him to pay even ten cents on the dollar of what
12 was owed.

13 So their motive for killing Pete Limanni was
14 because he had lost them some money, and they wanted to
15 make sure that he would be dead so that they have to pay
16 all the money, and couldn't look to him to get any of that
17 back. Does that make any rational sense to any member of
18 jury as a motive for murder?

19 The reason that Tak Kato and Mr. Toe weren't
20 further investigated, was because they were simply
21 investors who lost money with Pete Limanni. Nothing to
22 indicate they were involved in his death, no reason to
23 investigate them further. Nothing sinister, nothing
24 negligent at work.

25 Coincidence was mentioned a time or two in

1 both arguments; that is, Mr. Fattig's and
2 Mr. Christiansen's. A far better lawyer than me once
3 explained coincidence, and I stole the explanation from
4 him because I liked it, and I've used it ever since, and
5 I'm going to share it with you.

6 You can only accept only so many
7 coincidences before something becomes a certainty. And
8 the way I heard this lawyer explain it was, if you're
9 driving down the street in your pickup truck and you look
10 up to the side of the road and you see a hub cap from a
11 '55 Chevy. You jump out and you throw it in the back of
12 your truck because it might come in handy some time, it's
13 just a fortuitous habit.

14 You drive another few yards and you find
15 another hub cap and you get out and look and it's to a '55
16 Chevy too, and you throw that in the back of your truck.
17 That may be a coincidence.

18 If you keep driving and you find a third and
19 a fourth hub cap, and you keep driving down the road and
20 you find a distributor cap and a carburetor and some
21 sparks plugs, and when you get to the end of the road you
22 go in the back of your pickup truck and you put all the
23 pieces together, and it's a '55 Chevy that you can drive
24 away, that's not a coincidence anymore.

25 And that's what this case is about. There

1 isn't one single piece of evidence that you just take a
2 look at and say: Boy, that clears it all up for us, he's
3 guilty and we can all go home. You have to look at all
4 the pieces of evidence, and you have to ask yourself, is
5 it reasonable that these are all coincidences?

6 Is it a coincidence that Pete Limanni is
7 killed with a .32, that Eric Hamilton is killed with a
8 357, and that both of those kinds of ammunition, some of
9 them with very peculiar markings, are found inside of 1933
10 Western?

11 Is it a coincidence that Eric Hamilton's
12 blood, or blood that establishes to odds of one in a few
13 million, is found in the back of 1998 Toyota pickup truck
14 that the defendant is driving the day after his body is
15 found?

16 Is it a coincidence that the defendant's
17 prints are found on the lumber that cover the body that
18 found Eric Hamilton? Is it a coincidence that the
19 defendant's name and phone number are found in his pocket?
20 And now I hear the theory that that was part of the
21 Japanese businessman frame-up that they planted that.

22 Have any of you emptied your pockets and
23 thought you had everything out, and there's a little slip
24 of paper or a coin down in the pocket that you missed?
25 Try doing it with a corpse when you're in a hurry some

1 time and see if you might not miss it. It's more
2 reasonable that that happened, than that somebody planted
3 it on his body.

4 And, finally, is it a coincidence that Eric
5 Hamilton's fingerprints and the defendant's fingerprints
6 are both found on beer bottles in a waste basket inside of
7 1933 Western, at a time when the defendant says: Yeah,
8 there was a black guy who used to come around here, but a
9 month or six weeks ago.

10 Remember, at that time Eric Hamilton was
11 living in California and hadn't even come to Las Vegas
12 yet, so we know that's not true. But is it a coincidence
13 that Eric Hamilton's fingerprints and Jack Seka's
14 fingerprints are found on beer bottles, both in the same
15 waste basket inside of 1933 Western?

16 And can you take all those coincidences and
17 say: Yeah, they're all just coincidences, they don't add
18 to up to anything?

19 And then you turn to Pete Limanni, and it's
20 a coincidence that the dumpster appears to be empty when
21 the police first get there, and then by the middle of the
22 afternoon it's full of most of Pete Limanni's financial
23 records and half-burned clothing.

24 And it's a coincidence that when the
25 defendant wants to leave at night, there are two vans

1 there to take, and he tries to take the one that is later
2 found to have Peter Limanni's blood in the back, and Pete
3 Limanni's blood-stained business cards in the side pocket
4 of one of the doors.

5 And it's a coincidence that Pete Limanni's
6 ID is found up in the ceiling of 1933 Western. And it's a
7 coincidence that Tom Creamer, and I'll talk about him a
8 little later, is right about both the method of killing,
9 that it was done by gun, and that Pete Limanni was killed
10 by multiple gunshot wounds.

11 Are all of these coincidences? No. There
12 are things that fit in, because Jack Seka killed Pete
13 Limanni, Jack Seka killed Eric Hamilton, Jack Seka tried
14 to dispose of the evidence tying him to both of those
15 crimes, and was unsuccessful in doing so. And there's
16 nothing coincidental about this. It's all part of a
17 logical series of events.

18 You did get an instruction on flight, and
19 the flight instruction says that when a person leaves
20 after the commission of a crime, or during some
21 significant event in the investigation, not after he's
22 been charged, but just when he knows there's an
23 investigation, you may consider that as evidence of guilt.
24 That's up to you.

25 You have to decide if the circumstances

1 indicate that that's a guilty person, or somebody who just
2 happens coincidentally to be taking a trip. And in order
3 to do that, you have to look at the circumstances
4 surrounding his leaving.

5 And the circumstances are, he knows that the
6 police want to arrest him. He tries to take away the
7 truck that's got the damning evidence as to Peter Limanni;
8 the blood stains in the back and the business cards, and
9 he is unsuccessful.

10 And now he says: I'll be back right after
11 dinner. He never comes back. He called Jennifer Harrison
12 later and said: I want to borrow your car because I'd
13 like to go back to the business and get some stuff, and I
14 can't go back in the van because the cops are watching for
15 it.

16 And then he calls her later and says he is
17 in Arizona and he's underground, and then he goes to
18 Pennsylvania. And then he's arrested, not at the address
19 he gave to Tom Thowsen, but at a friends's house, an
20 address of which Tom Thowsen and law enforcement in
21 general were blissfully unaware.

22 And you have to look at all of that, and you
23 have to determine if Jack Seka ran away because he knew he
24 had done something wrong and wanted to avoid further
25 contact with the police, or because in one of these

1 fantastic coincidences, he just happened to have a
2 pleasurable trip planned around that time.

3 Tom Creamer. Should you believe his
4 statements or not? Well, let's take a look at what we
5 know. We know primarily from the witnesses who were
6 called by the Defense that Tom Creamer and Jack Seka are
7 long, long-time friends, best friends for years and years.
8 They know everything about each other that you would
9 expect best friends to know about each other.

10 When Jack Seka is questioned by the police,
11 he tells them he doesn't own a gun, he's never even fired
12 a gun, that guns make him nervous, and he doesn't even
13 like to be around them. Now, Tom Creamer is his best
14 friend, and it's reasonable to assume that he would know
15 that, having known him for a number of years.

16 If you accept the Defense's contention that
17 Tom Creamer wants to make up a story to get Jack Seka in
18 trouble because he's mad at him, how would he make up a
19 story involving a gun? Jack Seka is not a gun guy. He
20 doesn't own, he doesn't fire them, he doesn't know
21 anything about them.

22 You might say he stabbed somebody or he
23 shoved somebody down a flight of stairs, or he punched
24 somebody, but why would he say he shot somebody, unless he
25 told you he shot somebody. And why would you say he shot

1 the guy several times, that the guy is gurgling?

2 And that's what happened to Pete Limanni.
3 He's shot several times. He's got chest wounds, he's got
4 gut shots. How does Tom Creamer know that? There's only
5 one way in the world that he knows that, because he is
6 told that by the person who inflicted that.

7 And finally, let me answer one last question
8 that was raised by Mr. Christiansen, why do you kill your
9 friend? I'll tell you why you kill your friend; betrayal,
10 the oldest motivation known to man, because your friend
11 let you down at a time when you just couldn't be let down
12 anymore.

13 And let me explain what I mean by that. In
14 November 1998, Jack Seka is about rock bottom. He's
15 broke, he's pawning equipment just to have money to get by
16 another day or two. He's just come back east for what was
17 supposed to be a happy visit of a reunion with the mother
18 of his child.

19 And while back there, he finds his
20 girlfriend in bed with another guy. And he comes back
21 here, and the one thing he's got left is this business
22 that he's been in with Pete Limanni. And they start out
23 with an air conditioning business, and it's doing pretty
24 good but it turns sour.

25 But they're going to turn it around.

1 They're going to make a smoke shop. They're going to
2 build a humidor, and they're both going to get well and
3 have money again, and everything is going to be okay.
4 Except, now he finds out that Pete Limanni is running out
5 on him.

6 Peter Limanni, a guy who he thought was his
7 friend, and who was going to be his financial salvation at
8 a time when his girl has betrayed him, at a time when he's
9 got no money, he finds out that Pete is planning to clean
10 him out.

11 He's going to leave, he's going to leave
12 Jack holding the bag with all the business problems, or
13 just leave him to twist in the breeze with no money, no
14 job, no prospects, thousands of miles from his home that
15 he left to start up this business with Peter Limanni.

16 And he snaps and he kills him. And the one
17 thing that I agree with Mr. Christiansen on, is Eric
18 Hamilton probably was an innocent bystander, maybe not to
19 innocent. He may have walked in in the middle of the
20 altercation that resulted in Pete Limanni's death.

21 He may have helped dispose of the body, and
22 then just become one of those lose ends that needed to be
23 cleaned up. But he certainly was around and involved to
24 the extent that that formed a motive for his murder.

25 But the last thing I want to say to you

1 about Pete Limanni is, why do you kill your friend?
2 Betrayal. Because he's betrayed you and you hate him.
3 And when you kill somebody for a reason like that, and not
4 because they just lost you some money, but because they've
5 ruined your life, that's the person that you kill by
6 shooting them over, and over, on over again, shooting him
7 in the chest, shooting him in the head. That's the person
8 that you strip and you take out to a desert grave and you
9 leave there for animals to eat. And that's why you do it,
10 and that's why he did it.

11 Now, our work is finished and yours is just
12 starting. You've got to go back to the jury room and
13 you've got to do the hardest thing you've ever done. Just
14 make sure it's the right thing.

15 Look at the evidence, look at the law. and
16 then come back here and tell Jack Seka what he already
17 knows, that based on the evidence he is guilty of the
18 murder and robbery of Peter Limanni, and the murder and
19 robbery of Eric Hamilton. Thank you.

20 THE COURT: Thank you, counsel,

21 Mr. Bailiff, would you come forward and be
22 sworn to take charge of the jury, please.

23 (Whereupon, the clerk swore the bailiff.)

24 / / /

25 / / /

1 / / /

2 THE COURT: Very good. Ladies and
3 gentlemen, the bailiff will now escort you to the jury
4 room to begin your deliberations. Court's in recess.

5
6
7 ATTEST: Full, true and accurate transcript of
8 proceedings.

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11 
12 MAUREEN SCHORN, CCR NO. 496, RPR

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FILED IN OPEN COURT
MAR 01 2001 11:40 AMDISTRICT COURT
CLARK COUNTY, NEVADA

SHIRLEY B. PARRAGUIRRE, CLERK

BY Jody Norman

JODY NORMAN DEPUTY

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 JOHN JOSEPH SEKA

9

10 Defendant.

11

12

VERDICT13 We, the jury in the above entitled case, find the defendant JOHN JOSEPH SEKA, as
14 follows:15 *(please check the appropriate box, select only one for each count)*

16 AS TO COUNT I (ERIC HAMILTON) -

- 17 ☒ Guilty of Murder of the First Degree with Use of a Deadly Weapon
 18 ☐ Guilty of Murder of the First Degree
 19 ☐ Guilty of Murder of the Second Degree with Use of a Deadly Weapon
 20 ☐ Guilty of Murder of the Second Degree
 21 ☐ Guilty of Voluntary Manslaughter with Use of a Deadly Weapon
 22 ☐ Guilty of Voluntary Manslaughter
 23 ☐ Not Guilty

24 AS TO COUNT II (PETER LIMANNI) -

- 25 ☐ Guilty of Murder of the First Degree with Use of a Deadly Weapon
 26 ☐ Guilty of Murder of the First Degree
 27 ☒ Guilty of Murder of the Second Degree with Use of a Deadly Weapon
 28 ☐ Guilty of Murder of the Second Degree

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DISTRICT COURT
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SHIRLEY B. PARRAGUIRRE, CLERK

BY *Judy Norman*

JUDY NORMAN DEPUTY

STATE OF NEVADA,

Plaintiff,

vs.

JOHN JOSEPH SEKA,

Defendant.

Case No. C159915
Dept. XIV

**REPORTER'S TRANSCRIPT
OF
VERDICT**

BEFORE THE HONORABLE DONALD M. MOSLEY

DISTRICT JUDGE

Taken on Thursday, March 1, 2001

At 11:00 a.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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COUNTY CLERK

ICE

MAUREEN SCHORN, CCR NO. 496, RPR

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1 LAS VEGAS, NEVADA. THURSDAY, MARCH 1, 2001, 11:00 A.M.

2 * * * *

3

4 THE COURT: The continuation of
5 C159915, State of Nevada versus John Joseph Seka. The
6 record will reflect the presence of the defendant; his
7 counsel, Mr. Christiansen and Mr. Kennedy; Mr. Kane and
8 Mr. Fattig for the State.

9 Ms. Clerk, would you call the roll of the
10 jury, please.

11 THE CLERK: Paul Kanala?

12 JUROR KANALA: Here.

13 THE CLERK: June Craig?

14 JUROR CRAIG: Here.

15 THE CLERK: Antonina Clark?

16 JUROR CLARK: Here.

17 THE CLERK: Jamila Pierson?

18 JUROR PIERSON: Here.

19 THE CLERK: Timothy Thomas?

20 JUROR THOMAS: Here.

21 THE CLERK: Laura Williams?

22 JUROR WILLIAMS: Here.

23 THE CLERK: Daniel Brown?

24 JUROR BROWN: Here.

25 THE CLERK: Shari Custard?

1 JUROR CUSTARD: Here.

2 THE CLERK: Trudy Reeves?

3 JUROR REEVES: Here.

4 THE CLERK: Scott Saunders?

5 JUROR SAUNDERS: Here.

6 THE CLERK: Monta Hafen?

7 JUROR HAFEN: Here.

8 THE CLERK: Barbara Kwiatkoski?

9 JUROR KWIATKOSKI: Here.

10 THE CLERK: Your Honor, the panel is

11 present.

12 THE COURT: Very good. Miss Clark, are

13 you the foreman of the jury?

14 FOREMAN CLARK: Yes.

15 THE COURT: Has the jury reached a

16 verdict in this matter?

17 FOREMAN CLARK: Yes, it has.

18 (Whereupon, the bailiff handed the

19 verdict form to the Court.)

20 THE COURT: Ms. Clerk, would you read

21 aloud the verdicts and inquire of the jury if, in fact, it

22 is their verdict.

23 THE CLERK: "District Court, Clark

24 County, Nevada, the State of Nevada versus John Joseph

25 Seka, Case No. C159915, Department No. XIV.

1 "Verdict: We, the jury in the
2 above-entitled case, find the defendant John Joseph Seka
3 as follows:

4 "As to Count I, Eric Hamilton, guilty of
5 murder of the first degree with use of a deadly weapon.

6 "As to Count II, Peter Limanni, guilty of
7 murder of the second degree with use of a deadly weapon.

8 "As to Count III, Eric Hamilton, guilty of
9 robbery.

10 "As to Count IV, Peter Limanni, guilty of
11 robbery. Dated this 1st day of March, Antonina Clark,
12 Foreperson."

13 Ladies and gentlemen of the jury, are these
14 your verdicts as read, so say you one, so say you all?

15 JURY PANEL: Yes.

16 THE COURT: Very good. Does counsel
17 wish to have the verdicts declared?

18 MR. CHRISTIANSEN: Yes, Your Honor.

19 THE COURT: Ms. Clerk, would you poll
20 the jury, please.

21 THE CLERK: Paul Kanala, are those your
22 verdicts as read?

23 JUROR KANALA: Yes.

24 THE CLERK: June Craig, are those your
25 verdicts as read?

1 JUROR CRAIG: Yes,

2 THE CLERK: Antonina Clark, are those
3 your verdicts as read?

4 FOREMAN CLARK: Yes.

5 THE CLERK: Jamila Pierson, are those
6 your verdicts as read?

7 JUROR PIERSON: Yes.

8 THE CLERK: Timothy Thomas, are those
9 your verdicts as read?

10 JUROR THOMAS: Yes.

11 THE CLERK: Laura Williams, are those
12 your verdicts as read?

13 JUROR WILLIAMS: Yes.

14 THE CLERK: Daniel Brown, are those
15 your verdicts as read?

16 JUROR BROWN: Yes.

17 THE CLERK: Shari Custard, are those
18 your verdicts as read?

19 JUROR CUSTARD: Yes.

20 THE CLERK: Trudy Reeves, are those
21 your verdicts as read?

22 JUROR REEVES: Yes.

23 THE CLERK: Scott Saunders, are those
24 your verdicts as read?

25 JUROR SAUNDERS: Yes.

1 THE CLERK: Monta Hafen, are those your
2 verdicts as read?

3 JUROR HAFEN: Yes.

4 THE CLERK: Barbara Kwiatkoski, are
5 those your verdicts as read?

6 JUROR KWIATKOSKI: Yes.

7 THE CLERK: Your Honor, the panel has
8 answered in the affirmative.

9 THE COURT: The verdicts will be
10 recorded in the minutes of the Court.

11 Ladies and gentlemen, thank you for your
12 efforts thus far. As you are aware, there is an
13 additional task to be performed, that is the sentencing as
14 to Count I.

15 I would like to schedule the penalty phase
16 to begin tomorrow morning, if that's agreeable. Does
17 anyone have a particular schedule? My calendar is such
18 that I have a very small calendar, a couple of matters
19 actually in the morning beginning at 9:00, so by 10:00
20 o'clock we should be able to proceed.

21 If that's agreed, that's what we'll do.
22 Counsel, we discussed this, did we not, earlier?

23 MR. KANE: Yes, Your Honor.

24 MR. CHRISTIANSEN: Yes, sir.

25 THE COURT: Let me read to you the

1 admonition as it would apply from this point on.

2 "It is your duty not to discuss among
3 yourselves, or with anyone else, any subject connected
4 with the trial; or read, watch or listen to any report of,
5 or commentary on the trial or any person connected with
6 the trial by any medium of information, including without
7 limitation, newspapers, television and radio; or form or
8 express any opinion on any subject connected with the
9 trial until the cause is finally submitted to you."

10 And just for your edification, ladies and
11 gentlemen, what is known as a penalty phase is much
12 shorter than a trial, so don't think you're going to be in
13 a three or four-day situation. I'm told what is
14 contemplated probably be accomplished tomorrow, so just to
15 give you some idea of the scheduling situation.

16 Please keep in mind the admonition. It
17 would be a shame to go this far and then have a problem
18 with the qualifications. Thank you, again. See you back
19 here 10:00 o'clock tomorrow morning. Court is adjourned.

20

21 ATTEST: Full, true and accurate transcript of
22 proceedings.

23

24

25


MAUREEN SCHORN, CCR NO. 496, RPR

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DISTRICT COURT

ORIGINAL

CLARK COUNTY, NEVADA

* * * *

FILED IN OPEN COURT

MAR 05 2001

19

SHIRLEY B. PARRAGUIRRE, CLERK

BY *Judy Norman*
JUDY NORMAN DEPUTY

STATE OF NEVADA,

Plaintiff,

vs.

JOHN JOSEPH SEKA,

Defendant.

Case No. C159915
Dept. XIV

REPORTER'S TRANSCRIPT
OF
PENALTY HEARING

BEFORE THE HONORABLE DONALD M. MOSLEY

DISTRICT JUDGE

Taken on Friday, March 2, 2001

At 10:00 a.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

RECEIVED

MAR 05 2001

CLERK OF COURT

CE

MAUREEN SCHORN, CCR NO. 496, RPR

AA 001370

I N D E XWITNESSES ON BEHALF OF THE DEFENSE:PAGE**MARYANN HARKINS**

Direct Examination by Mr. Kennedy

10

MARGARET DALY

Direct Examination by Mr. Kennedy

17

CHRISTINE CATERINO

Direct Examination by Mr. Christiansen

23

SPEAKER ON BEHALF OF THE STATE:**DIANE LIMANNI TOMASEVICH**

Sworn Statement

61

E X H I B I T SSTATE'SDESCRIPTIONMARKEDADMITTED

86-90

Judgements of Convictions

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1 LAS VEGAS, NEVADA. FRIDAY, MARCH 2, 2001, 10:00 A.M.

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THE COURT: The continuation of
C159915, State of Nevada versus John Joseph Seka. The
record will reflect the presence of the defendant; his
counsel, Mr. Christiansen and Mr. Kennedy; Mr. Kane and
Mr. Fattig present for the State. The absence of the jury
is noted.

Mr. Kane and Mr. Fattig, you are aware, are
you not, of the jury instructions the Court has indicated
to read 1 through 23?

MR. KANE: Yes, Your Honor.

MR. FATTIG: Yes.

THE COURT: Have you any objection to
any one of those?

MR. KANE: No, Your Honor.

THE COURT: Do you have additional
instructions to offer?

MR. KANE: No, Your Honor.

THE COURT: Mr. Christiansen and
Mr. Kennedy, you are aware, are you not, of the
instructions the Court has indicated to read 1 through 23?

MR. CHRISTIANSEN: Yes, Judge.

MR. KENNEDY: Yes, Judge.

1 THE COURT: Do you have any objections
2 to any one of those?

3 MR. CHRISTIANSEN: No, sir.

4 MR. KENNEDY: No.

5 THE COURT: Do you have any additional
6 instructions to offer?

7 MR. CHRISTIANSEN: No, sir.

8 MR. KENNEDY: No.

9 THE COURT: Would counsel stipulate
10 that the jury instructions have been settled in open
11 court?

12 MR. KANE: Yes, Your Honor.

13 MR. CHRISTIANSEN: Yes, sir.

14 MR. KENNEDY: Yes.

15 THE COURT: Are you desirous of having
16 the instructions read prior to closing argument?

17 MR. KANE: Yes, Your Honor.

18 MR. KENNEDY: Yes.

19 THE COURT: And, counsel, there is
20 another matter to resolve outside the presence of the
21 jury?

22 MR. KANE: Yes, Your Honor. The State
23 has only one witness that it proposes to present at the
24 penalty hearing and that is Diane Limanni, the sister of
25 Peter Limanni, the victim of the offense in which the jury

1 returned a finding of guilt on second degree murder.

2 I acknowledge that it is Nevada law that
3 victim impact evidence concerning a prior homicide may not
4 be offered at the penalty phase of an unrelated later
5 first degree murder conviction.

6 However, here we think that there is a
7 difference in circumstances, in that these two murders
8 occurred contemporaneously, and at least by fair inference
9 are related to one another.

10 And so we think that the testimony is
11 admissible, and I'll submit it to the Court subject to
12 Mr. Christiansen's presenting the Court with appropriate
13 proposals.

14 THE COURT: Mr. Christiansen?

15 MR. CHRISTIANSEN: Your Honor, as we
16 discussed briefly in chambers, the victim impact testimony
17 which is allowed only pursuant to case law, it's not in
18 our statute, it's allowed under the United States Supreme
19 Court of pain. And I don't have the citation, but pain is
20 very specific. It only allowed victim impact testimony as
21 to the charge that got the defendant to the possibility of
22 the death penalty.

23 In Nevada there is a case called Sherman
24 versus State, it's at 114 Nevada 998, and that is a case
25 Mr. Kane referred to that says it is improper to offer

1 victim impact testimony as to prior murders, because it
2 influences the passions of the jury, and it doesn't go to
3 death eligibility in a particular case.

4 There is an Ohio case, State versus White,
5 that's a 1999 Ohio Supreme Court case that is on all fours
6 with the circumstances we're faced here. That was a
7 double homicide as well. One of the counts came back as a
8 lesser included.

9 The trial Court allowed victim impact as the
10 lesser included. It was actually a second degree murder.
11 The Ohio Supreme Court, based upon pain, reversed the
12 death penalty and sent it back for a new trial.

13 That is the position the Defense would take
14 here, that under our statutory scheme, specifically
15 176.015, victim impact testimony is relevant and
16 admissible to the Court, to you, Judge, at the time of
17 sentencing on the second degree murder charge.

18 It's not admissible for -- this jury is only
19 here to sentence Mr. Seka as to Count I, the count related
20 to Mr. Hamilton where they found first degree murder with
21 use of a deadly weapon. That is the only capital offense
22 that's left. That is the only offense that they could
23 consider victim impact testimony.

24 So I am objecting to Limanni's family
25 testifying in front of the jury. We discussed the

1 possibility of her talking to Your Honor out of the jury's
2 presence so she doesn't have to come back for sentencing.
3 I don't have an objection to that.

4 THE COURT: All right, gentleman, thank
5 you. I think the law would mandate that the victim impact
6 as to Mr. Limanni not be allowed to be heard by the jury.
7 I'm going to preclude that aspect of the evidence being
8 offered.

9 I will attempt to accommodate Ms. Limanni's
10 input in these proceedings to myself pursuant to the
11 charge that applies to her relative. This is her brother?

12 MR. KANE: Yes, Judge.

13 THE COURT: I mentioned in chambers
14 that if that were the eventuality, we will try to
15 accommodate that between 1:00 and 1:30, or thereabouts.

16 MR. KANE: That's fine.

17 THE COURT: Anything else outside the
18 presence of the jury?

19 MR. CHRISTIANSEN: No, sir.

20 (Whereupon, the jury entered the courtroom.)

21 THE COURT: Ms. Clerk, would you call
22 the roll of the jury, please.

23 THE CLERK: Paul Kanala?

24 JUROR KANALA: Here.

25 THE CLERK: June Craig?

1 JUROR CRAIG: Here.
2 THE CLERK: Antonina Clark?
3 FOREMAN CLARK: Here.
4 THE CLERK: Jamila Pierson?
5 JUROR PIERSON: Here.
6 THE CLERK: Timothy Thomas?
7 JUROR THOMAS: Here.
8 THE CLERK: Laura Williams?
9 JUROR WILLIAMS: Here.
10 THE CLERK: Daniel Brown?
11 JUROR BROWN: Here.
12 THE CLERK: Shari Custard?
13 JUROR CUSTARD: Here.
14 THE CLERK: Trudy Reeves?
15 JUROR REEVES: Here.
16 THE CLERK: Scott Saunders?
17 JUROR SAUNDERS: Here.
18 THE CLERK: Monta Hafen?
19 JUROR HAFEN: Here.
20 THE CLERK: Barbara Kwiatkoski?
21 JUROR KWIATKOSKI: Here.
22 THE CLERK: Michelle Pro.
23 ALTERNATE JUROR PRO: Here.
24 THE CLERK: Erick Zuck?
25 ALTERNATE JUROR ZUCK: Here.

1 THE CLERK: Your Honor, the panel is
2 present.

3 THE COURT: Very good. Good morning,
4 ladies and gentlemen. As you know, we are assembled to
5 proceed with what is known as the penalty phase of this
6 matter. Discussing the matter with counsel, I am informed
7 that there will be no open remarks made at this juncture;
8 is that correct?

9 MR. KANE: That is correct, Your Honor.

10 MR. CHRISTIANSEN: Correct, Your Honor.

11 THE COURT: So the State may present
12 the first matter.

13 MR. KANE: Judge, the State has no
14 witnesses to call at this penalty phase; however, we would
15 offer into evidence Prosecution Exhibits 86, 87, 88, 89,
16 and 90, which are certified court records detailing the
17 defendant's convictions on various matters in the State of
18 Pennsylvania.

19 THE COURT: Is there any opposition to
20 those items?

21 MR. KENNEDY: No, sir.

22 THE COURT: Those will be received
23 then.

24 MR. KANE: The State rests.

25 THE COURT: Very good.

1 Defense counsel?

2 MR. KENNEDY: Your Honor, the Defense
3 would call Maryann Harkins.

4
5 Whereupon,

6 MARYANN HARKINS,
7 was called as a witness by the Defense, and having been
8 first duly sworn, was examined and testified as follows:

9
10 DIRECT EXAMINATION

11 BY MR. KENNEDY:

12 Q Ms. Harkins, could you please state and
13 spell your last name for the record for the court
14 reporter.

15 A Maryann Harkins, H-a-r-k-i-n-s.

16 Q Ms. Harkins, are you related in some fashion
17 to Jack Seka?

18 A I'm his sister.

19 Q Are you an older sister or younger sister?

20 A I'm five years older.

21 Q And where do you live?

22 A I live in Ardenheim, Pennsylvania.

23 Q Do your parents live in that area as well?

24 A They live around the corner from me.

25 Q Was Jack -- it's John Seka, we've been

1 calling him Jack throughout the trial. Was Jack a natural
2 born son of your parents?

3 A No. He was adopted.

4 Q Was he adopted when he was a baby?

5 A Yes.

6 Q And are there any other brothers and sisters
7 in your family?

8 A I have a brother six years younger than me,
9 a year younger than Jack.

10 Q Are you aware of why your
11 parents -- obviously they had you, and they decided to
12 adopt Jack. Do you know why your parents adopted Jack?

13 A Yes. My parents tried for 11 years to have
14 me and gave up, thought they couldn't have children. They
15 had me, and had another baby boy a year-and-a-half after
16 me, and he died as an infant. So they tried again to have
17 another baby and couldn't conceive, so they adopted Jack.
18 And right after they adopted Jack, my mother got pregnant
19 with Tommy.

20 Q And did you all grow up in the same
21 household?

22 A Yes.

23 Q Are both your parents, your and Jack's
24 parents still alive?

25 A Yes.

1 Q How old are they?

2 A My mother is 69, and my father is 72.

3 Q Now, your parents are not here today, are
4 they?

5 A No; thank God.

6 Q In fact, we spoke yesterday on the phone; is
7 that right?

8 A Yes.

9 Q And you were in Pennsylvania?

10 A Yes.

11 Q And I asked you to fly out here?

12 A On very short notice, yes.

13 Q Are your parents even aware that Jack has
14 been sitting here in this courtroom for the last two or
15 three weeks?

16 A Neither of my parents are in very good
17 health. My father -- both my parents have heart
18 conditions, my father's is pretty bad. And Jack and I
19 talked a few times on the phone, and we both agreed that
20 there is no reason to put them through this.

21 Q So your parents don't know what's going on?

22 A No.

23 Q So you have about a five year age difference
24 with Jack. When growing up, given that age difference,
25 did you do a lot of things together as children, or how

1 would you describe your relationship growing up?

2 A Early on I guess it was kind of a second
3 mother, right, a little bit bossy. We never had the same
4 friends because five, eight years is a big age difference
5 to have the same friends. We were close, we got along
6 well.

7 Q Did you and Jack go to the same elementary
8 school, though in different grades?

9 A Yes.

10 Q Do you know about Jack as far as how he did
11 in school, in elementary school, grade school?

12 A He did well.

13 Q He did well?

14 A Yes.

15 Q Did well in his grades?

16 A Yes.

17 Q How would you describe Jack growing up as
18 far as listening to your mother and your father?

19 A Listening to them, obeying them all the time
20 you mean?

21 Q Yes.

22 A I would say he was obedient, definitely. He
23 was fun-loving.

24 Q You laugh. Are you referring to there were
25 good times that you remember?

1 A Yes.

2 Q Were there bad times as well?

3 A Some.

4 Q Were some of those bad times when Jack was
5 arrested back in Pennsylvania and charged with some crimes
6 back there?

7 A Yes.

8 Q And that was what probably 10, 12, 13 years
9 ago?

10 A Yeah. I guess it was about then.

11 Q How did the family react then to him getting
12 arrested on some charges back then?

13 A It was devastating. We live in a real small
14 community where everyone grows up the same, so it was
15 embarrassing. They really tried to work with him though
16 through the problems.

17 Q Were they supportive, your parents?

18 A Yes.

19 Q Are you aware that in 1997 Jack had a
20 daughter?

21 A Yes.

22 Q Do you know her name?

23 A Kylie.

24 Q Did you -- shortly after her birth, were
25 there times that you saw Jack with Kylie?

1 A Yes.

2 Q What occasions would that be?

3 A On holidays, and I had them over for dinner.

4 Q He wasn't married to the baby's mother; is
5 that correct?

6 A No.

7 Q Did anything impress you about how Jack was
8 with Kylie?

9 A He was amazing. We all said: Oh, my gosh,
10 he's really a great, attentive father. He was having such
11 a good time with her.

12 Q Was that something that maybe surprised you
13 and your parents, how attentive he was as a father?

14 A Yes and no. Of course, not being married my
15 parents were upset about the situation, but seeing him
16 really helped, it really did. He seemed so good at it.

17 Q Did you ever witness Jack being abused,
18 either physically or verbally by your parents growing up?

19 A No, definitely not.

20 Q Was he involved in other activities as a
21 kid? Baseball? Soccer?

22 A Everything. My father coached everything,
23 so he was involved in everything; soccer, baseball,
24 football in grade school.

25 Q Now, you know why we're here?

1 A Yes.

2 Q And you understand that Jack has been
3 convicted of some very serious crimes?

4 A Yes.

5 Q Do you know anything about those crimes?

6 A Not a whole lot.

7 Q Jack hasn't really told you in depth what he
8 was facing?

9 A He's really trying to spare me the details,
10 I know.

11 Q The jury has a role here today and a
12 function to perform. Is there anything that you would
13 like to say to this jury today concerning your brother?

14 A I just want to say that I guess I'm shocked
15 to be here. I have known Jack my whole life, obviously,
16 and I have never known a violent side to him, ever. And I
17 would just miss him so much knowing that he's not
18 somewhere.

19 Even living apart I've missed him. I mean,
20 I put this outfit on and looked in the mirror, and I used
21 to always ask him if I looked fat all the time, and he
22 used to tell me how thin I looked all the time.

23 Q Do you love your brother?

24 A Yes.

25 MR. KENNEDY: Pass the witness, Your

1 Honor.

2 THE COURT: Cross-examination?

3 MR. KANE: No, Your Honor.

4 THE COURT: Ma'am, thank you. You're
5 excused.

6 THE WITNESS: Thank you.

7 MR. KENNEDY: The Defense calls
8 Margaret Daly.

9 THE COURT: You may do so.

10

11 Whereupon,

12

MARGARET DALY,

13 was called as a witness by the Defense, and having been
14 first duly sworn, was examined and testified as follows:

15

16

DIRECT EXAMINATION

17 BY MR. KENNEDY:

18 Q Could you state and spell your last name for
19 the record?

20 A Margaret Daly, D-a-l-y.

21 Q Ms. Daly, I wanted to ask you some questions
22 about Jack Seka. You were here last week and gave some
23 brief testimony about how you knew him, and if I recall
24 correctly, you said that you first met Jack in 1994; is
25 that correct?

1 A Yes, it is.

2 Q And he was a friend of Mr. Creamer who we
3 saw here; is that correct?

4 A Yes. He was his very best friend.

5 Q In the mid '90s and on up to maybe, say '98,
6 was Jack someone that you saw on a very frequent occasion?

7 A Yes, yes. He was always around. We would
8 come by and we would talk to each other. He was always
9 around.

10 Q If you could speak up a little bit. Thank
11 you. And was Jack someone that you would -- I guess you
12 were seeing Tommy Creamer at the time?

13 A Yes, I was.

14 Q And would you go out socially with Jack?
15 Dinners?

16 A Yes. We would go out to dinner, and we
17 would go and see the horses race, and we would do
18 everything together. He would come over for cheese
19 steaks,

20 Q Philly cheese steaks?

21 A Philly cheese steaks,

22 Q They're probably good back there.

23 A They're very good.

24 Q Now, we know from your testimony last week
25 that there was a whole sequence of events that happened in

1 January '99, January, February, March. I'm really not
2 going to ask you about those events.

3 But you told us, if I'm not mistaken, that
4 during that time in January '99, Jack moved in with your
5 at your home; is that correct?

6 A Yes, he did.

7 Q And what was the reason that he did that?

8 A He was supporting me, as well as Tommy. I
9 was upset because I really cared for Tommy, and he knew
10 that. And he cared about me, as well as Tommy, and he
11 would be my eyes because I couldn't be there.

12 Everyone was suggesting that I stay away
13 from him for a while and get my head on my shoulders. And
14 Jack kept me sane. I was very, very depressed, and he
15 would take me out and say: You've got to take care of
16 yourself before you take care of anybody else.

17 Q So he tried to get you through that
18 difficult time?

19 A Yes, he did. He was very supportive at a
20 time when he needed it most.

21 Q And you told us that your relationship with
22 Jack was not an intimate relationship at all, you said it
23 was a friendly relationship?

24 A No. It was strictly friendly. I consider
25 Jack to be my family.

1 Q And, of course, obviously, you're aware that
2 Jack has a daughter?

3 A Yes.

4 Q Kylie.

5 A For the last two years I've had a picture
6 taken so I can send him something.

7 Q And did you see Jack with Kylie back in
8 Philadelphia back on holidays with him?

9 A Yes. He brought her by every time he came
10 to visit for holidays or her birthday, and I would get her
11 gifts.

12 Q Did you form any impressions of Jack as a
13 father?

14 A Yes.

15 Q What did you think?

16 A He was just in heaven, just loves that
17 little girl to death. He just --

18 Q Did he seem proud of her?

19 A He was very proud of her.

20 Q Did you ever have any concerns from 1994
21 until the present whenever you were with Jack for your own
22 safety?

23 A Never, never. He always made me very, very
24 comfortable. I mean, I think of him as family. It's not
25 blood related, we haven't had any intimate relationships,

1 but he's always been there.

2 Q Never saw him commit an act of violence
3 yourself?

4 A No. He's very mellow, very laid back.

5 Q How would you describe Jack overall as far
6 as his -- you told us he's supportive, caring of his
7 daughter. How would you describe him as a person? Are
8 there any words to describe him as a person?

9 A He's just wonderful. He would do anything
10 for anyone, anything. He is the most giving person I know
11 of, even to this day. I've been in counselling for two
12 years, and any time I have notes I write them and tell
13 him. And he just says to hang on, you're going to be all
14 right.

15 Q Even to this day?

16 A Even to this day he's there for me.

17 Q Do you know, obviously, Jack has been
18 convicted of some very heinous crimes?

19 A Yes.

20 Q Does that in some way change these feelings
21 that you have for him?

22 A Not at all. I really don't believe it. I
23 can't believe it. I came up here. My birthday was this
24 past Saturday, and I told everyone I wanted was to bring
25 him home.

1 Q And, of course, you know that's not
2 happening?

3 A Yes, I do.

4 Q Do you know, for the record, how old Jack
5 is?

6 A I believe he's 32.

7 Q Is there anything you would like to say to
8 this jury before they consider what to do with Jack today?

9 A I don't think that the two victims in this
10 case deserved to die, and I really don't believe that Jack
11 does either. He would give anything to anybody if he had
12 it. He's just that way.

13 He loves his little girl to death, and he's
14 always there for me. If I didn't have him when Tommy lost
15 his head, then I wouldn't be here. I was so depressed and
16 he was the only thing that kept me hanging on. I don't
17 know why this has happened, but he doesn't deserve this.
18 He doesn't deserve this either.

19 MR. KENNEDY: Thank you, Ms. Daly.

20 THE COURT: Anything, counsel?

21 MR. KANE: No, Your Honor.

22 THE COURT: Ma'am, you're excused.

23 Next witness.

24 MR. CHRISTIANSEN: One more witness,
25 Judge. Christine Caterino.

1 Whereupon,

2 **CHRISTINE CATERINO,**

3 was called as a witness by the Defense, and having been
4 first duly sworn, was examined and testified as follows:

5

6 **DIRECT EXAMINATION**

7 BY MR. CHRISTIANSEN:

8 Q Christine, would you state your whole name
9 and spell your last name, please, for the record.

10 A Christine Maryann Caterino, C-a-t-e-r-i-n-o.

11 Q Christine, you testified, I think it was
12 last week, and we've been putting you up for a little bit
13 of time here during this trial; is that right?

14 A Yes.

15 Q You live back east?

16 A Yes.

17 Q In the Philadelphia area?

18 A Uh-huh.

19 Q How do you know -- you have a daughter,
20 Kylie, a little girl that's outside, in common with Jack,
21 right?

22 A Right.

23 Q When did you meet Jack?

24 A Actually, I met him on Halloween about five
25 years ago.

1 Q How old is Kylie now?

2 A She's three.

3 Q And Jack's been here in Las Vegas for the
4 better part of two years, and you told the jury about back
5 in '98 when you came out here with Kylie. What kind of
6 dad was Jack back then when he was able to see his
7 daughter?

8 A He was great. I mean, she hadn't seen him
9 for a couple of months until I could fly out here. And
10 she was only a baby, so I wasn't really sure if she would
11 react because she hadn't seen him for a couple of months.
12 She went right to him, and he was great. They were just
13 like he never left, you know.

14 I mean, it was emotional because he hadn't
15 seen her for a couple of months, but it was a good visit.

16 Q Since May or so of 1999, you know Jack's
17 been here, right?

18 A Right.

19 Q What contact, if any, have you had with him
20 since that point in time?

21 A Phone calls. He calls, he gets ten-minute
22 phone calls. And it gets a little expensive, but he calls
23 every weekend, usually on Sunday. And just the visits
24 that we've had here. He writes letters and he sends
25 cards, and people send gifts and stuff for him.

1 Q Now, I put a couple things in front of you.
2 What are those?

3 A They are -- yesterday after the verdict was
4 read, I got an envelope and he had these flowers made out
5 of tissue, or just roses for me and the baby.

6 Q Now, Kylie is here. Whose decision was it
7 to bring the baby?

8 A Mine.

9 Q Did you have a conversation with Jack about
10 whether or not he wanted you to bring the baby?

11 A He didn't want -- early when he first came
12 out here, he really didn't want any pictures and stuff
13 because it hurt him to see her growing up, and pictures,
14 and he wasn't there. And, you know, he didn't want her to
15 see him like this. He didn't want her to see him.

16 Q So it was your choice to bring her out here?

17 A Yes.

18 Q Why did you do that?

19 A Because all she knows him from is just
20 pictures that I have and telephone conversations, and I
21 wanted her to be able to see who he was. I mean, she
22 loves him so much. She tells everybody she looks like her
23 daddy,

24 Q There's some tissues next to you. Take your
25 time.

1 A Like she told you yesterday, "My daddy is
2 nice." And she doesn't understand why he can't come home.
3 She's going to church every day since we've been here.
4 And she wakes me up every morning and says, "Mom, can I
5 have \$2 so I can go to church and light candle so my daddy
6 will come home."

7 She doesn't know any better. I wanted her
8 to see him.

9 Q Now, you know he's not coming home, right?

10 A Yes.

11 Q When Jack talks to Kylie, does he tell her
12 to stay out of trouble, or is he a good influence?

13 A Yes. He's a good influence. He's not a bad
14 person, he just made bad choices. He's always been a good
15 person.

16 Q Now, you understand, because I explained it
17 to you yesterday why we're here today, and what the jury
18 is being asked to do today, right?

19 A Yes.

20 Q If, in your opinion, if Jack was allowed to
21 keep communicating with Kylie, would he be a good
22 influence on her?

23 A I think so. I think that no matter what
24 kind of trouble he's gotten himself into, he's a good
25 person. And he's, I mean, he's been a good dad to the

1 best of his ability.

2 I mean, just in writing letters and he can't
3 give her, like, all the material things that she needs,
4 and he might not be there in person. But she deserves to
5 be able to talk to him if she needs to. If that's all she
6 can have, she deserves that.

7 I mean, he knew he couldn't send gifts for
8 her birthdays and Christmas, but he has friends and family
9 that sends gifts for her that she knows they're from
10 daddy.

11 Q Has Jack been a good influence on you in
12 your life?

13 A I haven't had the greatest luck with men in
14 my life. Every man that ever came into my life, including
15 my father and my brother, always wound up doing me wrong
16 in some way or another. Like, my family hasn't been the
17 greatest.

18 But when I met Jack, he just loved me just
19 for me. And he was always -- it was always unconditional
20 and he wasn't -- he never judged me. He was always just
21 there, no matter what. And that scared me. Like, it
22 wasn't something that I was used to, that he wasn't going
23 to eventually do something so I ran because I was scared.

24 Q You told me yesterday about Jack helping
25 your brother. Tell the people of the jury, if you would,

1 what he did.

2 A My brother, basically, followed my father's
3 footsteps and became a heroin addict, and he was very sick
4 and in a lot of trouble. And my mom would go to meetings
5 to try and keep our heads about ourselves, because we
6 couldn't deal with it anymore, you know.

7 And that's where I met Jack, and he made
8 phone calls and helped him out and did --

9 Q Got your brother into treatment?

10 A Into the program.

11 Q How is your brother today?

12 A He just celebrated two years sober.

13 Q Is there anything else you'd like to tell
14 the people of the jury before you finish?

15 A No. Just, he's really not a bad person, and
16 he has a little girl that she deserves something. I mean,
17 I know that you just see this guy who is just fighting,
18 he's just here, and he's just this murderer, or whatever
19 you want to call him, or whatever you think of him.

20 But he has family and he has friends and he
21 has a little girl that needs him and loves him and just --

22 MR. CHRISTIANSEN: Thanks, Christine.

23 Nothing further.

24 THE COURT: Questions?

25 MR. KANE: No, Your Honor.

1 THE COURT: Thank you, ma'am. You're
2 excused.

3 MR. CHRISTIANSEN: Nothing further.

4 THE COURT: Counsel approach, please.

5 (Whereupon, counsel conferred with the Court.)

6 THE COURT: Mr. Christiansen, are you
7 ready to proceed?

8 MR. CHRISTIANSEN: We are, Your Honor.

9 THE COURT: Anything further from the
10 State?

11 MR. KANE: No, Your Honor.

12 THE COURT: Ladies and gentlemen, the
13 time has come for me to read to you the jury instructions
14 that pertain to this phase of the proceedings.

15 As I indicated to you in a previous reading
16 of the jury instructions, I will read them slowly. I am
17 not at liberty to repeat or explain the instructions at
18 this juncture, merely to read them the one time. And,
19 again, my throat is not much improved, so if you have
20 difficulty understanding, just speak up and don't
21 hesitate.

22 (Whereupon, the jury instructions
23 were read by the Court.)

24 THE COURT: The Prosecution's closing
25 remarks,

1 MR. KANE: Ladies and gentlemen, I
2 always seem to be the one with the good news and the bad
3 news --

4 THE COURT: Mr. Kane, excuse me, sir.
5 We need to have a brief recess here for one of the juror's
6 convenience. Is that all right?

7 MR. KANE: That's fine, Judge.

8 THE COURT: Let me read to you the
9 admonition.

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

18 Now, let me make mention of something here.
19 We have a number of witnesses present. Jurors are going
20 to be out in the hallway and in the courtroom, so
21 understand, there's to be no discussion, no conversations
22 overheard, anything of this nature.

23 So we're going to have a very brief recess,
24 in ten minutes we will reconvene. And be very careful
25 about what other people might be saying. Court's in

1 recess.

2 (Whereupon, a ten-minute recess was taken.)

3 THE COURT: The continuation of
4 C159915, State versus John Joseph Seka. The record will
5 reflect the presence of the defendant; his counsel,
6 Mr. Christiansen and Mr. Kennedy; Mr. Kane and Mr. Fattig
7 present for the State. The absence of the jury is
8 acknowledged.

9 Mr. Seka, I spoke to your attorney on two
10 occasions this morning while we were essentially in
11 session here in court, privately with counsel here at the
12 bench. He informed me, Mr. Christiansen in particular,
13 that you did not wish to invoke a right that you have to
14 speak to the jury pursuant to their determination of your
15 sentence; is that correct?

16 THE DEFENDANT: That's correct, Your
17 Honor.

18 THE COURT: I'm going to admonish you
19 on the record as to a formal right that you have, just so
20 that you understand it fully. We could allow you to speak
21 yet, but that would be your decision. But I was informed
22 that you didn't want to and so we went ahead and
23 proceeded.

24 Do you understand what I'm saying here?

25 THE DEFENDANT: Yes. I understand.

1 THE COURT: Let me, for the record and
2 for your edification, indicate to you that you have a
3 right to state in an unsworn manner any of the things that
4 you feel would be appropriate or important to discuss with
5 the jury in mitigation of sentence.

6 However, you are instructed that this right
7 of yours to make an unsworn statement is not without
8 bounds. You may not discuss the issue of guilt or
9 innocence, as the jury has already determined guilt.

10 You may not lie with impunity during your
11 unsworn statement. And you are not allowed to voice an
12 expression of remorse which contradicts the evidentiary
13 facts.

14 Should you go beyond the bounds of giving a
15 statement setting forth remorse, apology, chagrin, plans
16 or hopes for the future, the Court may allow comment by
17 the Prosecutor, or may allow a reopening of the case for
18 additional cross-examination, or may itself make comments
19 to the jury regarding your unsworn statement in mitigation
20 of sentence.

21 Again, you are allowed to make remarks of
22 remorse which are not belied by the evidence, apologies or
23 excuses for your acts, pleas of leniency, or your plans or
24 hopes for the future.

25 Do you understand these rights?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you maintain that you do
3 not wish to make such a statement, or have you decided you
4 might want to?

5 THE DEFENDANT: I still maintain that I
6 do not want to make a statement, Your Honor.

7 THE COURT: Very well. Will counsel
8 acknowledge for the record that we did discuss this matter
9 earlier, and it was your determination?

10 MR. CHRISTIANSEN: Yes, Your Honor.
11 And so the record is very clear, I met with Mr. Seka
12 yesterday at the detention center. We discussed at length
13 the statutory rights of the sworn and unsworn elocation.
14 He told me at that point he did not want to give one.

15 And I spoke to him two or three times on the
16 telephone after I saw him in person, and then again this
17 morning. So it's been clear all along he had no intention
18 or no desire to do that.

19 THE COURT: Anything else outside of
20 presence of the jury?

21 MR. KANE: No, Your Honor.

22 THE COURT: Defense counsel?

23 MR. CHRISTIANSEN: No, sir.

24 THE COURT: Mr. Bailiff, please.

25 (Whereupon, the jury entered the courtroom.)

1 THE COURT: Would counsel stipulate
2 that all members of the jury are present and properly
3 seated?

4 MR. KENNEDY: Yes, sir.

5 MR. KANE: Yes, Your Honor.

6 MR. CHRISTIANSEN: Yes, Your Honor.

7 THE COURT: Mr. Kane, your closing
8 remarks.

9 MR. KANE: Ladies and gentlemen, again,
10 I always seem to be the one with the good news and the bad
11 news for you. However, there's nothing remotely amusing
12 about the situation that you're in right now.

13 The good news is that you're close to the
14 end of your public service as jurors. The bad news is,
15 that the toughest part lies ahead of you.

16 You are about to embark on the toughest
17 decision that I believe any of you will ever make during
18 the course of your lifetime. Your deliberations as to
19 guilt or innocence in this case, as gruelling and as
20 lengthy as they were, quite frankly, may come to seem like
21 a cake walk compared to the decision that you're about to
22 go and make.

23 I'm not sure how much of the legal
24 instructions that you're given and the arguments of
25 counsel can help you in a situation like this. I think we

1 can best serve you by making sure that you have all the
2 facts that you need to make your decision. But,
3 ultimately, as pointed out in the instructions, that
4 decision rests, and has to, only with you.

5 I am going to leave to other counsel the
6 discussion of those jury instructions and the technical
7 elements that you need to consider, and I just want to
8 briefly touch on two subjects with you.

9 One is the evidence that was presented in
10 mitigation by the Defense. And one is the defendant's
11 prior record, since those records of conviction that we
12 admitted are the only evidence that you haven't seen yet,
13 and I want to talk to you little bit about what's in
14 there, and what we believe that they show that will assist
15 you in making that decision.

16 First of all, as to the evidence in
17 mitigation, it would have taken someone with a heart of
18 stone to not be affected by what you heard from that
19 witness stand, and I'm sure all of you were so affected.

20 You may have noticed that none of those
21 witnesses were cross-examined, not with a single question.
22 The purpose of cross-examination is to test whether or not
23 a witness is telling the truth. There was no need to
24 cross-examine any of those three women. It was obvious to
25 everyone in the room that they were telling the absolute

1 and complete truth.

2 They are going through hell. But in
3 considering whether or not that mitigates the charges
4 against the defendant, ask yourself a question: Who put
5 them in hell? Who is responsible for their agony? Who is
6 to blame for what they're going through? You? Me? His
7 Honor?

8 You know very well there's only one person
9 to blame for the suffering that these three women are
10 going through, the same person who chose to remove Eric
11 Hamilton from the face of the earth, the Defendant Jack
12 Seka.

13 When a crime is committed a lot of people
14 suffer. The victim of the crime naturally suffers the
15 immediate consequences of it. The victim's family suffers
16 longer range consequences. And if we're fortunate enough
17 to apprehend and punish the defendant, the defendant's
18 family and friends and loved ones all suffer the
19 consequences of that activity.

20 But that's not anyone's fault, but the
21 person who causes it all. So when you get back there in
22 the jury room, I know that you know that these three women
23 are suffering, and that they're honest about it.

24 You just ask yourself whose fault that is,
25 and then ask yourself if that's something that should be

1 counted in the plus column in Jack Seka's favor, or in the
2 minus column as more damage that he's done to more people
3 by his conduct?

4 Now, let me talk to you a little bit about
5 his conduct. The evidence that the State introduced at
6 this penalty phase consisted of certified copies of
7 criminal convictions from the State of Pennsylvania
8 involving the defendant.

9 I urge you to take some time to read those,
10 because they are not just dry court records, charging
11 documents, although those are included in there. There
12 are affidavits detailing the specific circumstances of the
13 crimes that he committed. There are transcripts of when
14 he pleads guilty and when he is sentenced by the Court,
15 what he says to the Court, and what the Court says to him.

16 And if you take the time to go through those
17 and to go beneath the surface and look at what was
18 involved in these convictions, it may make your job in
19 determining what an appropriate penalty is somewhat
20 easier.

21 What they show is, that back in 1988 and
22 1989, the defendant was engaged in quite a little crime
23 spree. He had picked up a number of charges, and wound up
24 in June of 1989 pleading guilty to robbery, to two counts
25 of burglary, to one count of auto theft, and to one count

1 of attempt auto theft.

2 Now, the robbery conviction and the records
3 of that are State's Exhibit 86, and that is the conviction
4 that really can be used by you for two purposes. It is
5 one of the specific aggravators that we allege that the
6 defendant is eligible for consideration of the death
7 penalty, because he has a prior conviction for robbery.
8 So you can look at that conviction for that reason.

9 You can also look at it in general to
10 determine his character and other issues that you may
11 think appropriate in determining an appropriate
12 punishment.

13 But when you look at that robbery charge,
14 you will find out that although the defendant's sister
15 never noticed a violent side to him, and that Margaret
16 Daly never saw him commit an act of violence, that robbery
17 charge was a purse snatching in which he stole a woman's
18 purse and shoved her to the ground with sufficient force
19 to put her in the hospital with two broken ribs.

20 Now, after pleading guilty to all of these
21 offenses; robbery, two counts of burglary, a count of auto
22 theft, and a count of attempt theft, on May the 29th of
23 1990, a judge sentenced him to two seven-year probations,
24 and three ten-year probations. In other words, he put in
25 right back out on the street.

1 And if you look at Exhibit 86 at the end of
2 that transcript of May the 29th of 1990, you will see that
3 the judge said this to Jack Seka:

4 He said, "Let me tell you, seven years is a
5 very long time, in my estimation. It is something that
6 through my experience through the years, not too many
7 people have been able to weather. However, you not only
8 have two seven-year probations, you also have three
9 ten-year. So a word to the wise is sufficient. You'd
10 better walk a very straight line for the rest of your
11 life, or you will be back in front of me and then you will
12 be sorry."

13 I don't know if the judge is sorry. I'm
14 sure that Eric Hamilton and his family, who are going
15 through hell as well, are sorry.

16 But it didn't stop there. The defendant
17 then started his seven and ten-year probations, and he
18 managed to last to August of 1996, when he was back in
19 court in Pennsylvania having picked up yet another theft
20 charge.

21 And he went back to court again and he pled
22 guilty to the new theft charge. And the judge revoked all
23 of his probations on all of those charges that I've
24 already read to you, and he gave him a little bit of time,
25 sentences of 9 to 23 months, but he ran them all

1 concurrently, and directed that the defendant then be
2 released on parole after having served somewhere between 9
3 and 23 months.

4 And at the end of that transcript, which is
5 August the 7th of 1996, after announcing the sentence,
6 just about the last thing that the judge said to Jack Seka
7 was, "You've got a massive break. Don't try me again."

8 So when you're considering your sentence, if
9 you're not considering a death penalty, but if you're
10 arguing about life with or without the possibility of
11 parole, recognize that you have in your hands some
12 materials that tell you what kind of risk you're taking if
13 you vote to allow Jack Seka the possibility of parole
14 ever.

15 You don't have to wonder how he would do.
16 You don't have to speculate as to how he would behave once
17 released on parole or probation. You know. And you know
18 how he behaved twice after a judge told him: I had better
19 never see you again for the rest of your life. You got a
20 huge break, and you'd better straighten out. Well, he
21 didn't straighten out. What he did was he kept committing
22 crimes.

23 Ms. Caterino said to you the defendant is
24 not a bad person, he just made bad choices. We all make
25 choices, we make them every day of our lives. And if

1 we're lucky enough at some point, we realize that choices
2 have consequences. When you make a choice, and especially
3 when that choice causes damage, you've got to be ready to
4 pay the price for it.

5 This man, not any of those woman who took
6 the stand and cried their honest tears for you, but this
7 man has made choices. He has chosen to steal. He has
8 chosen to rob. He has chosen to injure. And, finally, he
9 has chosen to kill, not once, but twice. There's a price
10 to be paid for choices like that. You fix the price.

11 THE COURT: Thank you.

12 Defense counsel?

13 MR. KENNEDY: Mr. Kane speaks the truth
14 when he says this is about choices and consequences;
15 choices that you will make, and consequences of those
16 choices.

17 A woman once said, and I quote: "An evil
18 deed is not redeemed by an evil deed of retaliation.
19 Justice is never advanced by the taking of a human life.
20 Morality is never upheld by a legalized murder." So said
21 by the widow of Martin Luther King.

22 The death of Jack Seka only perpetuates a
23 cycle of grief in this case. There is absolutely no doubt
24 that the family of Eric Hamilton is grieving, and has
25 grieved, and will continue to grieve over the loss of

1 their son and brother.

2 The question though before you and your
3 choice and consequence is, do we continue this cycle of
4 grief? Do we now have Jack Seka killed by the State of
5 Nevada, and pass this grief on to his family, his daughter
6 and his friends?

7 An argument that is always true that's
8 advanced by the State is that: Well, Eric Hamilton will
9 never breath again, and he's gone. He's been gone for two
10 years now, and he'll never spend Christmas with his
11 family, and Thanksgiving and birthdays, and perhaps raise
12 a family of his own. That is just so obvious, and it's so
13 painfully true.

14 But if we were to call ourselves a civilized
15 society, would it not be the greatest act of compassion,
16 of leniency for you to show that to Jack Seka? You cannot
17 forgive Jack Seka for the crimes that you've convicted him
18 of. That is something that perhaps the Almighty will at
19 some point.

20 But we can show him and us that murder in
21 any form, whether murder of one's fellow man, or murder
22 that's legalized by the State, is unacceptable. If we are
23 to lead by example, then Jack Seka's life should be
24 spared, and he should be allowed to ponder the rest of his
25 life the events of November of 1998 in Nevada State

1 Prison.

2 And, remember, that even if you give the
3 most lenient sentence in this case, he would spend a
4 minimum, minimum of 40 years in Nevada State Prison before
5 he's eligible for parole. He will be 72 years old, 72
6 before he even would go in front of a Parole Board. And
7 you can be assured he will do every day of that time.

8 If you determine that Jack Seka should
9 forfeit his life by lethal injection for what he's done,
10 we as citizens and all of us as an American society are no
11 better than those countries that still allow this heinous
12 state-sanctioned act; China, Iraq, Iran, the former Soviet
13 Union. We share the same bed with countries like that
14 when we take the life of someone charged with a crime of
15 this type.

16 I'm asking you today to stand up as a
17 citizen of this great country of ours, and stand up above
18 the rhetoric, to stand up and say that in this country an
19 eye for an eye is a barbaric practice, it's an archaic
20 practice, and one which we in this 21st Century should not
21 condone.

22 I'm asking to you show your character, and
23 to show what I believe each and every one of you have, a
24 capacity of hope, whether it's hope for Jack Seka, or hope
25 for mankind in general by sparing his life.

1 You found my client guilty of murder, and
2 it's very tough, I've known him for two years now. I only
3 ask that you end the cycle of death in this case, and I
4 ask that you spare my client.

5 Nothing further. Thank you.

6 THE COURT: Thank you.

7 Mr. Christiansen?

8 MR. CHRISTIANSEN: Good morning.

9 Once again, you folks are placed in a
10 position, as Mr. Kane told you, of having to do a
11 difficult job. And while I can respectfully disagree with
12 the decision you already made, my job is to now talk to
13 you about the jury instructions and how they work, and
14 there's a big thick packet of them.

15 In the trial phase I had them all blown up,
16 and I've shown them to you, and I've done that as well
17 here today. I think I'm going to save you some time and
18 probably some headache from going through all of them, and
19 try to summarize them. You guys can read them when you go
20 back.

21 In order for you to consider the death
22 penalty, you have to sort of surpass a number of hurdles.
23 You have to find that one of the enumerated aggravators
24 was proven. And the aggravators are listed. The
25 aggravators are that Jack Seka was previously convicted of

1 a robbery. You know he was, that was the purse snatching
2 back east.

3 Another aggravator is that these crimes were
4 done in the perpetuation or commission of a robbery.
5 Whether your verdict speaks that you believe that, that
6 these people were robbed or killed in the perpetuation of
7 a robbery, or whether you folks decided that they were
8 robbed after they were killed. And that's why the use of
9 a deadly weapon wasn't found, that's for you folks to
10 decide as to whether that aggravator has been met.

11 The third is that the defendant was going
12 receive money. Your verdict speaks as to that. And the
13 fourth aggravator is whether the defendant has been
14 previously convicted of another murder, and the second
15 degree murder conviction that you folks found as to
16 Mr. Limanni speaks to that.

17 So you have to find unanimously and beyond a
18 reasonable doubt that one, at least, of those aggravators
19 exist. I think I would be sort of silly to stand up and
20 say I don't think any of them exist. You have given us
21 your decisions, your verdict, and I'm not going to act as
22 if I don't understand what decision you came to.

23 So the State has met its burden, at least
24 according to your verdict, of establishing one, at least,
25 of the aggravators unanimously and beyond a reasonable

1 doubt. That doesn't stop your consideration. Even though
2 you found that, you can't even talk about the death
3 penalty. You can't talk about it until you decide and
4 discuss mitigating circumstances.

5 And our legislature lists them and they give
6 us seven or eight. And the last one is any other
7 mitigating circumstance. And while I won't show you all
8 the blow-ups, I will put one up here. This is Instruction
9 No. 12 in your packet that Judge Mosley will give you.

10 It says mitigating circumstances which I,
11 the judge has read, are just examples of the factors you
12 can take into consideration for not deciding to impose the
13 death penalty -- I'm summarizing it, I'm not reading
14 it -- any aspect of Mr. Seka's character, and that could
15 be from what you folks saw today.

16 You watched him cry with his sister and the
17 mother of his child. That could be a consideration, any
18 aspect of his character, his record, or any of the
19 circumstances of the offense. And this is the part I'd
20 like you to think about, "including any desire you may
21 have to extend mercy to the defendant."

22 That is a proper mitigating circumstance,
23 and that is for all of you. So this is mental gymnastics,
24 I know but, again, you have to go back and decide has the
25 State proven beyond a reasonable doubt unanimously to all

1 of you that an aggravator exists. Your verdict, I think,
2 has spoken to that.

3 Then you have to decide are there mitigating
4 circumstances. And your verdict forms list these out
5 pretty specifically, and you can check off, yes, there are
6 mitigating circumstances; or, no, there are not mitigating
7 circumstances.

8 Once you make that decision -- and so you're
9 clear, mitigating circumstances you all don't have to
10 agree. One of you can say: Yeah, I want to extend mercy,
11 that's a mitigator to me. Another one of you could say
12 one of the statutorily enumerated mitigators apply in this
13 case, and that's a mitigator to me.

14 Mitigators don't have to be unanimous. It's
15 not like the trial portion where you had to find
16 unanimously beyond a reasonable doubt, and it's not like
17 the aggravators in this case.

18 So if there are mitigators, you then take
19 those two, aggravators and mitigators, and you weigh them,
20 and you decide in your head, do the mitigators outweigh
21 the aggravators? If they do, you can't consider the death
22 penalty. You can't.

23 If they don't and the State has established
24 aggravators which are not outweighed by any of the
25 mitigating circumstances, that's the only time you folks

1 can even talk about the death penalty as an option. And
2 the instructions tell you that in a long lawyer-like way.
3 And you've had experience with instructions.

4 So that is how the parameters by which you
5 folks need to decide penalty in this case. If you can't
6 get to unanimously there's an aggravator and unanimously
7 the mitigator, which some of you can believe is one thing,
8 some of you can believe is another, does not outweigh the
9 aggravator, then you can talk about the death penalty. If
10 the mitigator outweighs, or mitigators outweigh the
11 aggravators, you only have two options; life with, and
12 life without,

13 And they mean what they say. It's not
14 probably before 1995 in Nevada, if the sentence was 20
15 years, it didn't mean 20 years. It meant that you did
16 three, and you got credit for good time, and blood time,
17 and work time, and all kinds of crazy stuff. That was
18 changed by our legislature.

19 If you folks give Jack Seka life with the
20 possibility of parole, he will do 40 years, period. No
21 credit, no nothing. He will do 40 years, 365 days a year
22 of those 40 years until before he hits the board or is
23 eligible to go to a Parole Board.

24 If you tell him life without, he will die in
25 prison of natural consequences. If you tell him the death

1 penalty, the instructions tell you he will be killed. You
2 must assume he will be killed.

3 In the old days when they had firing squads,
4 ten or so guys would line up to shoot somebody who had
5 been convicted and sentenced to death. Always, and this
6 is true in every state, one of those individuals would be
7 given a blank. And the purpose of that was so that every
8 one of those people that fired a shot would have a smidgen
9 of doubt as to whether they did the killing, and that's a
10 true story.

11 Don't be confused. In this case, none of
12 you folks have got blanks. Because if you vote for death,
13 in a day not too far in the future they will take that man
14 right there and walk him down a hallway, they'll strap him
15 to a table, they'll strap his head against a board, and
16 stick a needle in his arm and end his life. And nobody
17 has a blank in his box. If you vote for death, then he
18 will die.

19 The mitigating circumstance I would like to
20 talk to you about is pretty simple, and it's family. It
21 is Jack's resolve to not involve his folks, to try to keep
22 his daughter out of it, to not bring his brother and
23 sister -- his other brother out here.

24 And through only our insistence, mine and
25 Mr. Kennedy's, got his sister out here. You heard her get

1 up and tell you how we had to get her here, because her
2 brother wouldn't ask her to come. And in the realm of
3 doing these things that is a quality that amounts to a
4 mitigating circumstance. To spare your elderly parents
5 the heartache, is an admirable trait.

6 You've heard no testimony that Jack is
7 anything but a good father. You can't be a good father,
8 some would say, in jail. You can still have an input on
9 somebody's life, you can write letters, you can make
10 flowers, you can steer them clear of some of the mishaps
11 or bumps in the road that you have encountered. And a
12 vote of something less than death ensures that Kylie Seka
13 will have that influence.

14 It's No. 13 is the mitigating instruction,
15 and there's a verdict form that deals with if you found
16 mitigating instruction, and it's the third one, I believe.
17 There are a whole bunch of them. The defendant has no
18 significant criminal history, and then just what our
19 legislature sets out.

20 And the last one is any other. Any other,
21 as I sit here today, seems to be his family and your
22 ability to extend mercy to the defendant. And in this
23 case, if you end his life, you ensure that his parents
24 will find out, that his family will know.

25 And while Mr. Kane is right, that people

1 make choices and there are consequences of their choices,
2 your vote determines whether the people who didn't do
3 anything wrong; his daughter, his friends, his sister,
4 will have to live the remainder of their life wondering:
5 Could I have done better? Could I have said something
6 else to that jury so they didn't kill my brother?

7 That's what you folks get to determine.
8 It's not an enviable position that you're in. I agree
9 with Mr. Kane, it's the hardest we have in our judicial
10 system. I hope you will take the time to read the
11 instructions, to go through the mental gymnastics that I
12 have in short form explained to you, and to return a
13 verdict of something other than death.

14 In this case, death is not the appropriate
15 verdict. Death will help nobody, and death will harm more
16 people. Thank you for your time.

17 THE COURT: Thank you,
18 Mr. Christiansen.

19 Mr. Fattig?

20 MR. FATTIG: Mr. Christiansen is right,
21 the decision you have is monumental and it's extremely
22 difficult. Everyone knows that, everyone understands it.

23 Although this may be an extremely difficult
24 decision, I'm sure each one of you at some point in your
25 life has faced a situation where you have different

1 options, and it's an extremely difficult position you're
2 in, in terms of choosing which option to go with.

3 But oftentimes, just because an option is
4 easier, doesn't mean that it's right. Sometimes you are
5 put in a position where the most difficult decision you
6 have is the correct decision. And even though it's
7 difficult, you know it's the right thing to do.

8 In voir dire in this case way back over two
9 weeks ago now, each one of you was asked whether or not
10 you could fairly consider the death penalty, and each one
11 of you indicated that you would. And the State of Nevada
12 at this point is asking that do you that, that you fairly
13 consider the death penalty in this case.

14 And when you do that, ask yourself an
15 important question. Ask yourself whether or not Jack Seka
16 deserves a better fate than Eric Hamilton and Peter
17 Limanni. When you go through the instructions,
18 Instruction No. 7 is, basically, the instruction that lays
19 out what you have to do, and Mr. Christiansen talked about
20 the three steps.

21 And, initially, the first step you need to
22 do is, look at Instruction No. 9 which lays out the four
23 aggravators. And as you heard from Mr. Christiansen, I
24 would submit to you that those four aggravators have been
25 met. And you need to find beyond a reasonable doubt

1 unanimously as to any one of those. If you find even one
2 of them, you can move on to the next step.

3 In this particular case, the four
4 aggravators, I would submit to you, three of them you have
5 already found by your verdicts during the guilt phase of
6 this trial. You've already found that they existed beyond
7 a reasonable doubt.

8 The fourth one is the prior conviction for a
9 violent crime, and you heard that evidence in this case
10 submitted to you via Certified Judgement of Conviction
11 from Pennsylvania, that the defendant was involved in a
12 violent robbery of a victim in which the victim fell to
13 the ground and she broke a couple of ribs. And, again, I
14 urge you to read through those documents carefully.

15 So all four, I would submit to you, have
16 been found beyond a reasonable doubt. That, of course,
17 just begins the analysis. Instruction No. 13 is the
18 mitigating circumstances. And it's important for to you
19 look at the list on there.

20 And if any single juror decides that there's
21 a mitigating circumstance, then that's good enough in the
22 single juror's mind in terms of weighing out the
23 aggravators versus the mitigators. I would submit to you
24 to look at that list carefully and decide whether or not
25 any of those fit.

1 Now, Mr. Christiansen is right, that No. 7
2 on that list is any other mitigating circumstance that you
3 decide exists in this case. But look at those. And I
4 can't tell you what may exist and what may not exist,
5 whether or not the pain that Mr. Seka's family is going
6 through is a mitigating circumstance or not. That's for
7 to you decide.

8 I would submit to you that those other six
9 on that list, that if you go through them, no significant
10 prior criminal history, whether or not the defendant was
11 under the influence of extreme mental or emotional
12 disturbance, whether or not the victim was a participant
13 in the defendant's criminal conduct, whether or not the
14 defendant was merely an accomplice to the murder and had a
15 relatively minor role, whether or not the defendant was
16 under duress or under the domination of another person,
17 and whether or not the defendant happens to be young at
18 the time of the crime, if you look through those there's
19 not much there in terms of mitigation.

20 Now, once you take the aggravators and you
21 consider what's there in Instruction No. 9, and look
22 through the mitigators in Instruction No. 13, it will be
23 your job to weigh the two. And in weighing the two, if
24 you determine the mitigators do not outweigh the
25 aggravators, then you can move on to the final step.

1 And the final step, the law never mandates
2 that you come back with the death verdict. It does,
3 however, require you to weigh out. And if you find that
4 the mitigators do not outweigh the aggravators, then the
5 final step allows you to exercise the discretion that you
6 have and to determine what the appropriate verdict is in
7 this case.

8 And, again, in doing that, I leave you to
9 ask yourself whether or not the defendant in this case
10 deserves a better fate than Mr. Hamilton and Mr. Limanni.

11 Thank you.

12 THE COURT: Thank you.

13 Mr. Bailiff, will you come forward to be
14 sworn to take charge of the jury, please.

15 (Whereupon, the bailiff was sworn by the clerk.)

16 THE COURT: Very good. Ladies and
17 gentlemen, you will exit to the jury room to begin your
18 deliberations. I would ask you to do so, and my secretary
19 will be making arrangements for lunch. Court's in recess.

20
21 (Whereupon, the jury left the courtroom to begin
22 deliberations, returning at 4:00 p.m.)

23
24 THE COURT: The continuation of
25 C159915, State of Nevada versus John Joseph Seka. The

1 record will reflect the presence of the defendant; his
2 counsel, Mr. Christiansen and Mr. Kennedy; Mr. Kane and
3 Mr. Fattig present for the State.

4 Ms. Clerk, would you call the roll of the
5 jury, please.

6 THE CLERK: Paul Kanala?

7 JUROR KANALA: Here.

8 THE CLERK: June Craig?

9 JUROR CRAIG: Here.

10 THE CLERK: Antonina Clark?

11 FOREMAN CLARK: Here.

12 THE CLERK: Jamila Pierson?

13 JUROR PIERSON: Here.

14 THE CLERK: Timothy Thomas?

15 JUROR THOMAS: Here.

16 THE CLERK: Laura Williams?

17 JUROR WILLIAMS: Here.

18 THE CLERK: Daniel Brown?

19 JUROR BROWN: Here.

20 THE CLERK: Shari Custard?

21 JUROR CUSTARD: Here.

22 THE CLERK: Trudy Reeves?

23 JUROR REEVES: Here.

24 THE CLERK: Scott Saunders?

25 JUROR SAUNDERS: Here.

1 THE CLERK: Monta Hafen?

2 JUROR HAFEN: Here.

3 THE CLERK: Barbara Kwiatkoski?

4 JUROR KWIATKOSKI: Here.

5 THE CLERK: Your Honor, the panel is
6 present.

7 THE COURT: Very good. Ms. Clark, you
8 are the foreman of the jury, are you not?

9 FOREMAN CLARK: Yes.

10 THE COURT: As to the penalty involved
11 in this matter, is the jury able to reach a verdict?

12 FOREMAN CLARK: No, we are not, Your
13 Honor. We have been deadlocked.

14 THE COURT: You have been deliberating
15 in the guilt phase for a number of days.

16 FOREMAN CLARK: Yes.

17 THE COURT: We are now in the extended
18 phase, you know each other well, or reasonably well. Do
19 you think that it would be productive to continue to
20 deliberate with a goal towards reaching an agreement?

21 FOREMAN CLARK: I don't think so, Your
22 Honor.

23 THE COURT: Is it your judgment that
24 you are hopelessly deadlocked?

25 FOREMAN CLARK: I'm afraid we are.

1 THE COURT: Counsel, approach, please.

2 (Whereupon, counsel conferred with the Court.)

3 THE COURT: Ms. Clark, since you began
4 your deliberations on the penalty matter, has there be any
5 improvement or any movement one way or the other as
6 between the various jurors in their determination?

7 FOREMAN CLARK: No, sir.

8 THE COURT: Thank you very much.

9 The Court declares a deadlock in this
10 matter, and we will remand it to a three-judge panel.

11 Let me explain to you, ladies and gentlemen,
12 what this entails. In a circumstance such as this, there
13 is provision for what is known as a three-judge panel,
14 whereby I would preside and I would have two fellow judges
15 of District Court in a district outside of Clark County
16 come and join me.

17 And the penalty hearing that you observed
18 would, essentially, be given over and duplicated, if you
19 will, before the three judges. And the three judges would
20 then have it within their discretion to pass the sentence
21 this in matter.

22 As I think you're probably aware, the second
23 degree murder and the robbery matters are up to my
24 discretion in a sense in any case, so you understand how
25 this all this would operate.

1 The defendant will remain in custody. I
2 will set the matter for status check in approximately a
3 week, or perhaps a little longer. Let's say the 13th. We
4 will remain, and we will discuss the situation concerning
5 the three-judge panel.

6 Court services may take this gentleman.

7 MR. KANE: Judge, can we approach?

8 THE COURT: You may.

9 (Whereupon, counsel conferred with the Court.)

10 THE COURT: Ladies and gentlemen, let
11 me take this opportunity, and I won't be lengthy, to thank
12 you for your service. This has been a difficult matter,
13 certainly. And you are, of course, not seasoned lawyers
14 or jurors or anything of that nature. This is a
15 first-time impression.

16 It is difficult. We understand the burden.
17 We appreciate it very much. You understand that if you
18 weren't willing to serve, we could not have jury trials,
19 and I don't think anyone wants to see that happen.

20 You are at liberty to discuss this matter
21 with anyone that you care to from this point on. Should
22 anybody persist on discussing with you over your
23 objection, I would ask you to see me about that, and I
24 will see that that would cease.

25 And as a case in point, oftentimes counsel

1 is available and the jurors have questions that arise that
2 can't be asked during the trial, as you know. Certainly,
3 it is appropriate if you care to discuss the matters with
4 the attorneys after trial and, in fact, sometimes that is
5 often seen.

6 I would like to take this opportunity to say
7 one other thing that I say when it is warranted, and it is
8 warranted in this case. We had four very good attorneys
9 in this matter, and I don't know if you appreciate the
10 difference. But I can tell you that 20 years sitting here
11 I have seen the difference, and it's appreciated very
12 much.

13 You may exit the courtroom at this time, and
14 we will stand adjourned in this phase of the matter, and
15 we will entertain further matters. Thank you.

16 (Whereupon, the jury exited the courtroom.)

17 THE COURT: For the record, the jury
18 has exited the courtroom. We have Mr. Kane and
19 Mr. Kennedy, counsel remaining. Mr. Christiansen and
20 Mr. Fattig have left as well.

21 And I believe, Mr. Kane, you wanted to
22 present a family member on the sentencing in the remaining
23 matters?

24 MR. KANE: I have, Your Honor, as long
25 as we have the waiver of the defendant's presence.

1 MR. KENNEDY: That's fine. I have no
2 objection.

3 MR. KANE: And I appreciate the
4 courtesy of the Court and counsel.

5 We call Diane Limanni Tomasevich.

6

7 Whereupon,

8 DIANE LIMANNI TOMASEVICH,
9 was called as a speaker by the State, and having been
10 first duly sworn, testified as follows:

11

12 THE COURT: State your name, please.

13 THE WITNESS: Diane Tomasevich.

14 THE COURT: How do you spell your last
15 name?

16 THE WITNESS: T-o-m-a-s-e-v-i-c-h.

17 THE COURT: All right. Ms. Tomasevich,
18 I'd like you to begin by just telling us in your own words
19 what you would have us know in this matter.

20 THE WITNESS: Well, I know that almost
21 two-and-a-half years ago that we received a phone call,
22 and it was on an answering machine, that we were to call
23 Metro Homicide. And that's all we had on the answering
24 machine.

25 THE COURT: Where were you living at

1 the time?

2 THE WITNESS: New Jersey. We knew
3 something was wrong because we knew Pete was out there.
4 When we called my brother talked to them, and they said
5 that my brother was missing and they presumed that he was
6 dead because of all the evidence, whatever they had found,
7 but they had no body.

8 So we had to get my sister, my brother and
9 I, and my brother had called him back again and talked to
10 one of the detectives. And he had asked him: What should
11 I do about my mom? What do I tell my mom? And they told
12 him: You might as well tell them that Pete's passed away.
13 There was some kind of foul play.

14 And so one day we met outside of her house
15 and the three of us had to walk in there. And my mom was
16 at the table, and when we went in she just saw all three
17 of us together, seeing our faces. And she just said,
18 "What? What? What's wrong?" And she started crying.
19 And we had to tell her her youngest son, Pete, was
20 murdered, but they didn't have his body.

21 And she was hysterical. And my mom has
22 Polio and she really can't get around, she has a brace up
23 to here. And Pete was like her life. He would call her
24 three times a week, and Sunday was football season then,
25 and he usually talked about the football, and then it was

1 Christmas.

2 And we got a phone call on Christmas Eve and
3 they said they had found my brother's body, and that it
4 had been in the desert and eaten by animals. And that was
5 on Christmas eve. So, again, my mom is saying she won't
6 go out, she is crying. We didn't tell her that night.

7 Then a few nights later I was at the table
8 with her, and she's sobbing and just hysterical. She
9 wouldn't know -- if only she knew that Pete was dead, or
10 they had his body. And I talked with my sister and I was
11 still sitting, and came back down and sat at the table and
12 she said, "If only I knew where is Pete."

13 And, finally, I said, "Do you really want to
14 know?" And she says, "Yes. I would feel so much better
15 if I knew where my son was." And I had to tell her that
16 they found his body.

17 And to this day you can't tell her, and she
18 knows we're hiding things, and we can't tell her all the
19 details. She's just given up, the will is gone because
20 everything. She knows a little bit, but she doesn't know
21 all these details.

22 Then we know that his body was really bad,
23 and I sort of don't believe in cremation, so we had to get
24 the money together to get him cremated because they
25 couldn't send him home.

1 And one day I got -- somebody knocked at the
2 door and it was UPS. I received brown box about that big
3 had the remains of Peter Paul Limanni. So I had to take
4 that with my brother and sister over again, and we had to
5 deal with that.

6 So we did have a funeral for him and we
7 bought him a stone, a flat stone. He's buried in my
8 mother's grave where she will be buried some day. And
9 then his remains are where her head stone is at. He has a
10 flat stone. It doesn't even have a date, it just says
11 November 1998.

12 And my mom goes and sits there every day and
13 has a cup of coffee out there. She goes to McDonald's and
14 gets a cup of coffee and sits out there and cries, and
15 it's just really bad.

16 And we have to sit and listen to this and I
17 understand their side too, but I understand my side too.
18 There's my side too, and my brother and my mother. My
19 brother was 32 years old too, and we'll never see him
20 again. We'll never have him again. And to be murdered
21 like that.

22 Then you read those papers and you hear that
23 he was gurgling. He was shot in the back and he was just
24 laying there and gurgling. And it said in the autopsy
25 report he died in minutes. And what happened in those

1 minutes? Did he know? He was gurgling, so it probably
2 meant his lungs were filling with blood. Did he know he
3 was dying?

4 We have all these questions. And I have my
5 sister who is -- she's only three years older than him,
6 and she is still hysterical over this, comes over and
7 cries. And it just keeps going on and on. As soon as you
8 try to put it to rest, something else comes up, then this
9 case comes up. Now it started all over again. We just
10 don't get closure.

11 Then we listen to all these things about
12 Pete, and it just hurts. It's just how much more hurt can
13 we take? But we'll never have him again. My kids will
14 never know their uncle. There's just no -- it's just,
15 he's not here anymore, and he'll never be here, so we
16 won't have him either.

17 And it just feels like we don't get our
18 chance to say to the jury or anyone on behalf of Pete how
19 we feel.

20 THE COURT: All right. Anything else,
21 ma'am?

22 THE WITNESS: No. That's about it.

23 THE COURT: Mr. Kane, do you have any
24 questions?

25 MR. KANE: No, Your Honor.

1 THE COURT: Mr. Kennedy, do you have
2 questions?

3 MR. KENNEDY: No. Thank you, ma'am.

4 THE COURT: Gentlemen, anything
5 further?

6 MR. KENNEDY: No, sir.

7 MR. KANE: No, Your Honor. Thank you.

8 THE COURT: I want to thank all present
9 for being here. Court is adjourned.

10

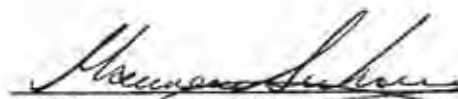
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12 ATTEST: Full, true and accurate transcript of
13 proceedings.

14

15

16


MAUREEN SCHORN, CCR NO. 496, RPR

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ORIGINAL

1 STIP
2 STEWART L. BELL
3 DISTRICT ATTORNEY
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7 (702) 435-4711
8 Attorney for Plaintiff

FILED IN OPEN COURT
MAR 13 2001 19

SHIRLEY B. PARRAGUIRRE, CLERK
BY Linda Skinner
LINDA SKINNER, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff

10 vs

11 JOHN JOSEPH SEKA,
12 Defendant

Case No. C159915
Dept. No. XIV

STIPULATION AND AGREEMENT TO WAIVE
SENTENCING BY THREE-JUDGE PANEL

16 IT IS HEREBY STIPULATED, by and between the parties hereto, as evidenced by their
17 signatures affixed below, that, the penalty phase of the Defendant's trial having ended with a
18 deadlocked jury, the defendant hereby waives sentencing by a three-judge panel, and consents,
19 pursuant to NRS §175.552(2) that the sentence on the Defendant's conviction for Murder of the
20 First Degree with Use of a Deadly Weapon (Count 1), may be imposed by the trial judge.

21 IT IS FURTHER STIPULATED, pursuant to NRS §174.065(2), that the sentence for
22 Count 1 shall be life imprisonment without the possibility of parole, with an equal and
23 consecutive term for the use of a deadly weapon.

24 IT IS FURTHER STIPULATED that each party shall retain the unrestricted right to argue
25 at sentencing, including without limitation, whether the other counts should run concurrent with
26 or consecutive to Count 1.

27 / / / /

28 / / / /

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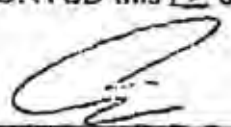
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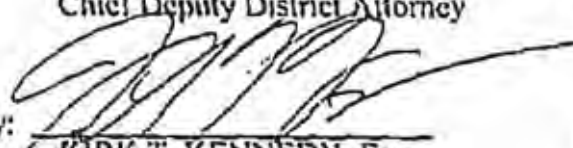
AA 001436

1 IT IS FURTHER STIPULATED that no party waives any of its appeal rights by entering
2 into this stipulation.

3 DATED this 13 day of March, 2001.

4
5 By: 
6 EDWARD R.J. KANE
Chief Deputy District Attorney

By: 
TIM FATTIG
Deputy District Attorney

7
8 By: 
9 KIRK T. KENNEDY, Esq.
Counsel for Defendant

By: 
PETER S. CHRISTIANSEN, Esq.
Counsel for Defendant

10
11 By: 
12 JOHN JOSEPH SEKA
Defendant

90

ORIGINAL

DISTRICT COURT

FILED IN OPEN COURT

APR 27 2001

19

CLARK COUNTY, NEVADA

ARLEY D. FARMACIUS, CLERK

BY *Linda Skinner*

LINDA SKINNER, REPUT

STATE OF NEVADA,

Plaintiff,

vs.

JOHN JOSEPH SEKA,

Defendant.

Case No. C159915

Dept. XIV

REPORTER'S TRANSCRIPT
OF
SENTENCING

BEFORE THE HONORABLE DONALD M. MOSLEY

DISTRICT JUDGE

Taken on Thursday, April 26, 2001

At 9:00 a.m.

APPEARANCES:

For the State:

EDWARD KANE, ESQ.
Deputy District Attorney

For the Defendant:

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

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

S2

MAUREEN SCHORN, CCR NO. 496, RPR

CE

1 LAS VEGAS, NEVADA. THURSDAY, APRIL 26, 2001, 9:00 A.M.

2 * * * *

3
4 THE COURT: C159915, State versus John
5 Joseph Seka. The record will reflect the presence of
6 Mr. Seka in custody; his counsel, Mr. Christiansen. We
7 have Mr. Kane for the State; Mr. Michael for the
8 Department of Parole and Probation. The matter is set for
9 sentencing.

10 Mr. Christiansen, are you prepared to
11 proceed?

12 MR. CHRISTIANSEN: Judge, I was
13 prepared to proceed. I got a message yesterday from my
14 client saying that he had filed some type of proper person
15 motion. I received a copy of that this morning.

16 It essentially goes to the issue of the
17 State having jurisdiction over one of the murder counts,
18 that being the Limanni murder, which the body was found in
19 California. I know Your Honor remembers we had the trial.

20 I haven't had a chance to even look through
21 it. I know Mr. Seka would like me to look over this.

22 THE COURT: That's an appeal issue. We
23 already resolved that in this court.

24 MR. CHRISTIANSEN: You ruled on it
25 twice, Judge; once on a writ I did out of Justice Court.

1 and then I filed a motion to dismiss. One of bases being
2 this very issue prior to trial, and you denied it then as
3 well.

4 THE COURT: So what do you want me to
5 do here? Deny it again before you go to appeal, or what?

6 MR. CHRISTIANSEN: I think he just
7 doesn't understand how it works in order, that you have to
8 do your direct appeal first, and then if you want to do
9 postconviction stuff you proceed in that matter.

10 THE COURT: Well, Mr. Seka, there's a
11 couple of problems. One is, you do not file pro per
12 motions while you are represented by an attorney.

13 Number two, this issue has been resolved, I
14 believe, twice in this court, and it is something that you
15 would want to include in any appeal that might be filed.
16 Bringing it up a third time in this court is
17 counterproductive.

18 Beyond that, are you ready to go forward,
19 Mr. Christiansen?

20 MR. CHRISTIANSEN: Yes, Judge.

21 THE COURT: Mr. Seka, do you have any
22 legal cause or reason why judgement should not be
23 pronounced against you at this time, other than your
24 appellate issue?

25 MR. CHRISTIANSEN: No, Your Honor.

1 We're ready.

2 THE COURT: By virtue of the jury's
3 findings, you are adjudged guilty of Counts I, II, III and
4 IV; Counts I and II being murder of the first degree with
5 use of a deadly weapon; Counts III and IV, robbery, all
6 counts felonies.

7 Mr. Michaels, is there anything to add to
8 the report?

9 OFFICER MICHAELS: No, Your Honor.

10 THE COURT: Mr. Kane?

11 MR. KANE: Judge, we have one speaker,
12 Michelle Hamilton.

13 THE COURT: Have a seat, Mr Seka.

14 Ms. Hamilton, come forward, please.

15

16 Whereupon,

17 MICHELLE HAMILTON,
18 was called as a speaker by the State, and having been
19 first duly sworn, testified as follows:

20

21 THE COURT: State your full name,
22 please.

23 THE SPEAKER: Michelle Alexis Hamilton.

24 THE COURT: And you are related to one
25 of the victims?

1 THE SPEAKER: He was my brother.

2 THE COURT: Please tell us in your own
3 words what you would have us know.

4 THE WITNESS: Okay. I miss my brother.
5 My mother and I have suffered a great loss. My father
6 died in November, and every Thanksgiving is such a
7 horrible holiday for us, and Eric was murdered.

8 When I found out that my brother had passed
9 away, the sheriffs came to my house on the day of my
10 daughter's birthday. I was preparing for her birthday
11 party, and it was such devastating news for me that I
12 couldn't even go on with the birthday party. So now every
13 year when it comes around for her birthday, I think of the
14 horrible news that I received on that day.

15 My mother, she's a widow and she says
16 there's no loss greater than losing your child. And I
17 thought that, you know, losing anyone is a horrible loss,
18 but to lose a child is horrible. So my mother is just
19 grieving still, and I am grieving still. He was my
20 favorite brother.

21 THE COURT: I thought you said he was
22 your only brother.

23 THE WITNESS: Yes, right. But I have a
24 stepbrother, an adopted brother, but he's not really in
25 the family. Eric was my favorite. He would sing to me.

1 He could sing like a bird. He would sing to me. He was
2 so good to my daughters.

3 I begged him not to come to Vegas, my mother
4 as well. I begged him until I cried. I begged him not to
5 come here.

6 THE COURT: Where do you live, ma'am?

7 THE SPEAKER: In Carson, California. I
8 begged him not to come here and he went anyway. And when
9 he called me he told me who he had met, and I knew whoever
10 he was with they were doing drugs, and drug activity was
11 involved.

12 And I begged him to come back and to stay
13 away from people that he does not know, strangers in
14 another town out of state. Don't be with those type of
15 people, come back home. And before he could, you know, I
16 received the news that he was dead.

17 It was so devastating, songs that I hear
18 remind me of him. I can't listen to them, I start crying.
19 I look at his pictures. It's hard for me. At his funeral
20 I couldn't even go up to the casket. I just couldn't even
21 look at him like that.

22 It's so horrible for me and my family to
23 suffer that loss, for his life to be snuffed out, to be
24 taken.

25 THE COURT: Anything further?

1 THE WITNESS: I would like for the
2 Court to give the maximum sentence for this terrible crime
3 that was committed against my brother and the other man.

4 THE COURT: Any questions, Mr. Kane?

5 MR. KANE: No, Your Honor.

6 THE COURT: Mr. Christiansen?

7 MR. CHRISTIANSEN: No, sir.

8 THE COURT: Is there anything further?

9 THE WITNESS: No.

10 THE COURT: You may step down.

11 Mr. Kane?

12 MR. KANE: Judge, if you recall at the
13 conclusion of the trial the jury deadlocked on the penalty
14 issue. At the time this was a capital case. There was to
15 be a three-judge panel, and Mr. Seka waived that panel
16 with the stipulation that the sentence on Count I, the
17 first degree murder count, would be life in the Nevada
18 State Prison without the possibility of parole.

19 So what we're here today to argue about,
20 essentially, is what the sentence should be on the other
21 counts, and whether they should run concurrently or
22 consecutively.

23 The department's recommendation is for the
24 maximum sentence on each count, and each count to run
25 consecutive to every other count. The State thinks that

1 that is appropriate, and I'm urging you to follow the
2 recommendation for three main reasons.

3 One is a practical reason. This case will
4 be appealed. Although it may seem silly to argue about
5 consecutive sentences to a life sentence without the
6 possibility of parole, we all know that things happen on
7 appeal, and it's possible this case could be back before
8 the Court at some date. I don't wish the Court to have
9 given away any of its discretion by running any of these
10 counts concurrent.

11 Secondly, the character of the defendant.
12 You see the defendant's prior convictions. I read
13 portions of the sentencing transcripts to the jury during
14 the trial, and I won't read them again.

15 But I want to remind the Court that when the
16 defendant was first placed on probation following an
17 incredible crime spree of drug and theft-related offenses,
18 he was told by the judge at that time that he was getting
19 the break of his life, and he had better not be back
20 before the Court.

21 Five or six years later he was back before
22 the Court doing the exact the same thing. And,
23 incredibly, the judge put him in a treatment program and
24 put him back on probation, telling him again that he was
25 getting the break of his life and he had better never set

1 foot in a courtroom again.

2 While he was serving that second undeserved
3 probation, he killed the two people that landed up in this
4 court.

5 Finally, the nature of the crime. I suppose
6 there could be circumstances under which concurrent
7 sentences for two separate murders could be warranted. I
8 have trouble imagining them, but I imagine there could be
9 a case. This isn't it.

10 You heard the evidence at the trial. These
11 two people weren't killed at the same time. They may not
12 even have been killed at the same location. Peter
13 Limanni, the defendant's business partner, was murdered.
14 Eric Hamilton, apparently, saw something he shouldn't have
15 seen, or maybe was involved in that homicide, but was
16 killed later in order to close his mouth.

17 These are two separate crimes with two
18 separate victims, deserving of two separate consecutive
19 sentences. Peter Limanni and Eric Hamilton were
20 individual human beings. Each one had his own individual
21 right to life, the right that was taken away by this
22 defendant. They don't deserve to be lumped together in
23 death and treated as a single entity, just because that's
24 a little more convenient for the defendant.

25 Please follow the recommendation of the

1 Department of Parole and Probation. It's well reasoned,
2 and it's appropriate. Thank you.

3 THE COURT: Thank you, counsel. We
4 have Mr. Kennedy here along with Mr. Christiansen at this
5 juncture.

6 Mr. Seka, would you stand, please. Before
7 your attorney speaks, is there anything you would care to
8 say?

9 THE DEFENDANT: Just that I will appeal
10 this conviction, Your Honor. Other than that, I have
11 nothing to say.

12 THE COURT: Mr. Kennedy,
13 Mr. Christiansen?

14 MR. CHRISTIANSEN: Judge, the jury
15 already heard through a stipulation he's going to do life
16 without. I'm not going to belabor whether you run it
17 consecutive or concurrent.

18 The only thing I will point out is,
19 throughout the course of the trial the State had no theory
20 as to how any of this happened. It wasn't until the
21 closing arguments, and then now that the State somehow
22 thinks that Mr. Hamilton was killed in retaliation or to
23 cover up or keep his mouth shut, or whatever, and that
24 belies credibility inasmuch as they didn't think that when
25 we started the trial.

1 So I'm not going to argue back and forth.
2 Whatever you give him will be addressed on appeal, and if
3 the conviction is affirmed he's going to spend the rest of
4 his life in the Nevada State Prison. If it's not, we'll
5 be back down revisiting everything.

6 THE COURT: But as to Mr. Hamilton, as
7 I recall, maybe my memory is faulty in this regard, but
8 during the trial there was a theory espoused that this
9 Mr. Hamilton was maybe just a passer-by, or someone that
10 just happened to be in the area, or something of that
11 nature.

12 MR. CHRISTIANSEN: That was one theory.
13 Another theory was that he somehow was involved in the
14 murder of Mr. Limanni, and that he was shot to keep his
15 mouth quiet about the murder of Mr. Limanni. That's the
16 only thing I would point out to the Court.

17 THE COURT: So this isn't something
18 that Mr. Kane just hatched up here for sentencing, did he?

19 MR. CHRISTIANSEN: That's what -- it
20 was my perspective that's one of the hashed up, so to
21 speak, theories that was presented at the close of
22 evidence to give the jury a reason which they didn't have.
23 But the jury has spoken, and I'm not going to belabor it,
24 Judge.

25 THE COURT: Well, I guess in reality

1 it's largely immaterial.

2 Mr. Kennedy, anything you want to say?

3 MR. KENNEDY: No, sir.

4 THE COURT: Well, as Mr. Kane alludes,
5 I sat through the trial, I heard all the particulars. And
6 I agree wholeheartedly that there is no rational reason
7 why two murder cases should run concurrently when the
8 facts are as they are in this case. The recommendation
9 will be followed.

10 According to the law of the State of Nevada,
11 Mr. Seka, in Count I you are sentenced to life in prison
12 without the possibility of parole; an identical term, life
13 in prison without the possibility of parole by virtue of
14 the use of the weapon. By law this is mandated to run
15 consecutively. Restitution in the amount of \$2825.

16 Count II, life in prison without the
17 possibility of parole; and an identical term of life in
18 prison without the possibility of parole. Again, by
19 virtue of the use of the weapon this must run
20 consecutively. And these will be consecutive to one
21 another, Counts I and II.

22 Count III, 156 months in prison, 35 months
23 before eligibility of parole to run consecutively.

24 And Count IV, 156 months in prison, 35
25 months before eligibility of parole to run consecutively.

1 And just so there's no confusion, all counts
2 are contemplated to run consecutively to one another and,
3 of course, the enhancement is to run consecutively as
4 mandated by law.

5 Is there credit for time served here,
6 Mr. Michaels?

7 OFFICER MICHAELS: Yes, Your Honor, 720
8 days.

9 THE COURT: 720 days is afforded.

10 MR. CHRISTIANSEN: And, Your Honor, as
11 a housekeeping matter, I was appointed at the District
12 Court level. Mr. Seka requests, and I would request, that
13 Your Honor appoint me to do his appeal as well.

14 THE SPEAKER: Die. I want you to die,
15 you murderer.

16 THE COURT: You may leave now.
17 (Whereupon, the speaker was escorted from the courtroom.)

18 THE COURT: Well, Mr. Christiansen, as
19 you know, the Supreme Court mandated you file an appeal
20 which is beyond my control. And whether or not you will
21 remain on the case is up to the Supreme Court.

22 MR. CHRISTIANSEN: I think Your Honor
23 needs to appoint me here to do the appeal, and the Supreme
24 Court will continue that appointment. That's just my
25 understanding of the housekeeping.

1 MR. KENNEDY: Your Honor, I do think
2 that is the procedure. I was actually retained for the
3 case, and I'm not retained for the appeal.

4 THE COURT: You are or are not?

5 MR. KENNEDY: Not retained for the
6 appeal. But I do think the District Court would need to
7 actually at least appoint Mr. Christiansen to do the
8 appeal so that transcripts and things of that type can be
9 ordered and paid for through the appointment process.

10 THE COURT: Well, are we talking about
11 the fast track appeal, or the entire matter?

12 MR. KENNEDY: This will not be a fast
13 track appeal because it involves a life sentence. So it
14 would be the normal course of getting the briefs filed.
15 It will not be a fast track.

16 THE COURT: It's, as you say, a
17 housekeeping matter because whether or not you're
18 appointed by the Supreme Court or this Court, I know
19 you're going to appeal and you're going to be involved in
20 it. I guess under these particular circumstances, an
21 appointment at this juncture is appropriate.

22 MR. KANE: The State has no objection
23 to such an appointment, Judge, if the Supreme Court wants
24 to ratify it or modify it.

25 THE COURT: Now, there's no need for

1 two attorneys doing the appeal, is there?

2 MR. KENNEDY: No, sir. You don't need
3 to appoint me, Judge.

4 THE COURT: So you are opting to take
5 the responsibility?

6 MR. CHRISTIANSEN: Yes, sir.

7 THE COURT: With that said, you are
8 appointed for the purpose of appeal.

9 MR. KANE: Judge, as a final
10 housekeeping matter, Count II was the second degree murder
11 charge, and I may have misheard, I thought the
12 announcement of the sentence was life without, and it
13 should be life with for the second-degree charge.

14 THE COURT: I have the note "with," and
15 I think I might have said without. So I stand corrected,
16 it is with. Thank you very much.

17 MR. KANE: Thank you.

18 MR. CHRISTIANSEN: Thank you, Judge.

19

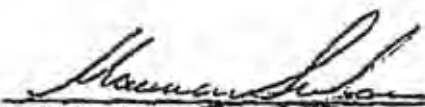
20 ATTEST: Full, true and accurate transcript of
21 proceedings.

22

23

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25


MAUREEN SCHORN, CCR NO. 496, RPR

JOC
STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff

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CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

JOHN JOSEPH SEKA,
#1525324

Defendant.

Case No. C159915
Dept. No. XIV

JUDGMENT OF CONVICTION (JURY TRIAL)

The Defendant previously entered plea(s) of not guilty to the crime(s) of COUNTS I & II - MURDER WITH USE OF A DEADLY WEAPON (Felony); and COUNTS III & IV - ROBBERY WITH USE OF A DEADLY WEAPON (Felony), in violation of NRS 200.010, 200.030, 193.165, 200.380, 193.165, and the matter having been tried before a jury, and the Defendant being represented by counsel and having been found guilty of the crime(s) of COUNT I - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Felony); COUNT II - SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (Felony); and COUNTS III & IV - ROBBERY (Felony); and thereafter on the 26th day of April, 2001, the Defendant was present in Court for sentencing with his counsel, PETER S. CHRISTIANSEN, ESQ., and KIRK T. KENNEDY, ESQ.; and good cause appearing therefor,

THE DEFENDANT HEREBY ADJUDGED guilty of the crime(s) as set forth in the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee and \$250.00 DNA

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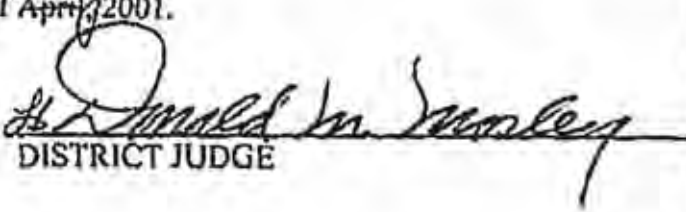
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1 Analysis Fee, the Defendant is sentenced to the Nevada Department of Prisons as follows:
2 COUNT I - LIFE WITHOUT THE POSSIBILITY OF PAROLE for FIRST DEGREE
3 MURDER plus an equal and consecutive LIFE WITHOUT THE POSSIBILITY OF PAROLE
4 for USE OF A DEADLY WEAPON and pay \$2,825 restitution;
5 COUNT II - LIFE WITH THE POSSIBILITY OF PAROLE for SECOND DEGREE MURDER,
6 plus an equal and consecutive LIFE WITH THE POSSIBILITY OF PAROLE for USE OF A
7 DEADLY WEAPON and pay \$2,500 Restitution, Count II to run CONSECUTIVE to Count I;
8 COUNT III - a MAXIMUM term of ONE HUNDRED FIFTY-SIX (156) MONTHS with a
9 MINIMUM parole eligibility of THIRTY-FIVE (35) MONTHS for ROBBERY, Count III to run
10 CONSECUTIVE to Count II;
11 COUNT IV - a MAXIMUM term of ONE HUNDRED FIFTY-SIX (156) MONTHS with a
12 MINIMUM parole eligibility of THIRTY-FIVE (35) MONTHS for ROBBERY, Count IV to
13 run CONSECUTIVE to Count III.

14 Credit for time served is 720 days.

15 DATED this 3RD day of ^{May} April 2001.

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18 DISTRICT JUDGE
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PETER S. CHRISTIANSEN, ESQ.
Nevada Bar No. 005254
KAJIOKA CHRISTIANSEN & TOTI
810 South Casino Center Blvd.
Las Vegas, Nevada 89101
(702) 366-1528

Attorney for Defendant
JOHN JOSEPH SEKA

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JOHN JOSEPH SEKA,
#1525324,

Defendant.

CASE NO.: C 159915
DEPT NO.: XIV
DCKT NO.: T

NOTICE OF APPEAL

TO: THE HONORABLE DONALD M. MOSLEY, JUDGE OF THE EIGHTH JUDICIAL
DISTRICT COURT, COUNTY OF CLARK, STATE OF NEVADA:

TO: DISTRICT ATTORNEY FOR THE COUNTY OF CLARK, STATE OF NEVADA:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that JOHN JOSEPH
SEKA, the Defendant in the above-entitled action, intends to appeal, and that Defendant, JOHN
JOSEPH SEKA, does hereby appeal to the Supreme Court of the State of Nevada, from judgment
and sentencing of the above-entitled Court finding the Defendant guilty of violating offenses, to
wit: FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON, SECOND DEGREE
MURDER WITH USE OF A DEADLY WEAPON, and ROBBERY, and from the judgment and
sentencing of the above-entitled Court made and entered on May 9, 2001 under which it was
ORDERED, ADJUDGED AND DECREED that as to Count I - FIRST DEGREE MURDER,
the Defendant shall be sentenced to life without the possibility of parole plus an equal and
consecutive term of life without the possibility of parole for USE OF A DEADLY WEAPON, and

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1 pay \$2,825.00 restitution. As to Count II - SECOND DEGREE MURDER the Defendant shall
2 be sentenced to life with the possibility of parole plus and equal and consecutive term of life with
3 the possibility of parole for USE OF A DEADLY WEAPON, and pay \$2,500.00 restitution,
4 Count II to run consecutive to Count I. As to Count III - ROBBERY the Defendant shall be
5 sentenced to a maximum term of one hundred fifty-six (156) months with a minimum parole
6 eligibility of thirty-five (35) months, Count III to run consecutive to Count II. As to Count IV -
7 ROBBERY the Defendant shall be sentenced to a maximum term of one hundred fifty-six (156)
8 months with a minimum parole eligibility of thirty-five (35) months, Count IV to run consecutive
9 to Count III. Credit for time served is seven hundred twenty (720) days.

10 This appeal is taken from the whole of the judgment and every part thereof.

11 This appeal is taken from questions of both law and fact.

12 DATED this 14 day of May, 2001.

13 KAJIOKA CHRISTIANSEN & TOTI

14
15 By 
16 PETER S. CHRISTIANSEN, ESQ.
17 Nevada Bar No. 005254
18 810 South Casino Center Blvd.
19 Las Vegas, Nevada 89101
20 Attorney for Defendant
21 JOHN JOSEPH SEKA
22
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 14 day of May, 2001, I mailed a true and correct copy of the foregoing Notice of Appeal, in an envelope, postage fully paid, addressed as follows:

John Joseph Seka
ID# 1525324
330 South Casino Center Blvd.
Las Vegas, Nevada 89101

DISTRICT ATTORNEY
200 South Third Street
Las Vegas, Nevada 89115


An employee of L. J. CHRISTIANSEN & TOTT

106
IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

2003 MAY -9 PM 3: 26

JOHN JOSEPH SEKA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 37907

District Court Case No. C15991 SLERK

Shirley J. Dominguez

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 8th day of April, 2003.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 6th day of May, 2003.

Janette M. Bloom, Supreme Court Clerk

By:

J. Richards
Chief Deputy Clerk

AA 001458

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN JOSEPH SEKA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37907

FILED

APR 08 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury trial, for first-degree murder with use of a deadly weapon, second-degree murder with use of a deadly weapon, and two counts of robbery. After finding the defendant, John Joseph Seka guilty of the above charges, the jury was unable to reach a decision as to sentence on the first-degree murder charge during the penalty phase of the trial. Therefore the district court requested the establishment of a three-judge panel pursuant to statute. Prior to the convening of the panel, Seka and the State stipulated to a sentence on Count I of life without the possibility of parole for first-degree murder, plus an equal and consecutive sentence for use of a deadly weapon.

Seka was also sentenced as follows: Count II: life with the possibility of parole for second-degree murder plus an equal and consecutive sentence for use of a deadly weapon to run consecutive with Count I; Count III: a maximum of one hundred fifty-six months with a minimum parole eligibility of thirty-five months to run consecutive to Count II; Count IV: a maximum of one hundred fifty-six months with a minimum parole eligibility of thirty-six months to run consecutive to Count III; \$5,325.00 in restitution and 720 days credit for time already served.

FACTUAL BACKGROUND

John Joseph Seka ("Seka"), also known as "Jack", was convicted of the murder and robbery of two individuals, Peter Limanni ("Limanni") and Eric Hamilton ("Hamilton"). Seka was a friend of Limmani and an employee for Limanni's heating and air conditioning business, Cinergi HVAC, Inc., located at 1933 Western Avenue, Las Vegas, Nevada. Seka and Limanni were in the process of setting up a cigar business out of the same location. Seka and Limanni also resided at 1933 Western Avenue.

Hamilton, an African American gentleman, appeared at Cinergi around the latter part of 1998. He had only recently come to Las Vegas from California and had in his possession approximately \$3,000 (three thousand dollars). Limanni hired Hamilton to do some casual labor (clean-up work) for Cinergi.

On November 16, 1998, pursuant to a report, the police discovered a body that was later identified as Hamilton, with three gun shot wounds. The body was covered with wood, lying face down near a set of tire tracks. Hamilton had a piece of paper in his front pocket with the name Jack written on it and a phone number. Police determined the number was to Jack's (Seka's) cell phone for Cinergi.

The following day, police responded to a call for a possible break-in at a vacant business, located at 1929 Western Avenue, the business next door to Cinergi's office. At the scene, officers Nogess and Kroll observed that glass was broken out of the front of the business and blood was visible on the sidewalk, on the glass and inside the business. Inside, the officers found several items, among which were three spent

bullets, a jacket, a hat and a bracelet. The jacket had three bullet marks in it.

While police were investigating the premises of 1929, Seka arrived at 1933 Western in a small brown pickup. Seka granted the police permission to look inside the business at 1933. While there, police saw what appeared to be a .357 cartridge, which subsequently disappeared.

Later that same day, the premises of 1933 Western were searched a second time pursuant to written consent, after it was decided that the bullets, blood and jacket recovered at 1929 could be related to the homicide of Hamilton, whose body was discovered the day before. During the second search at 1933 Western, the police discovered new lumber that was being used to build a walk-in humidor. This wood was similar to the wood found on top of Hamilton. Police later determined that the wood on top of Hamilton bore latent fingerprints matched to Seka and Limanni. The police noted several locations with droplets of apparent blood. Also, police recovered a bullet from a piece of drywall directly behind a couch with a hole and a .32 cartridge from the inside of the toilet. In the false ceiling, the police also found .357 ammunition, a couple of .32 cartridges and a wallet containing a Nevada driver's license, a social security card, a birth certificate and some credit cards bearing the name Peter Limanni. In a dumpster located out back, which was empty earlier in the day, police located burnt clothing and a checkbook with Limanni's name on them.

As a result of their search and believing the evidence might be relevant to Hamilton's homicide, police asked Seka to come to the detective bureau for questioning. Seka consented, was Mirandized and police conducted a taped interview. During the interview, Seka explained that Limanni owned the business at 1933, but that Seka had not seen

Limanni since November 5, 1998. This was about the time Limanni's landlord had seen Limanni with \$2,000 to \$3,000 (two to three thousand dollars) cash in his possession. Seka also informed police that a black male named Seymour (Hamilton) had done some odd jobs at 1933 Western, but that he had last seen Seymour about a month before. He further explained to police that Cinergi had two white Dodge vans and a brown Toyota pickup that they utilized.

After questioning, police explained to Seka that while he was a suspect in the killing of Hamilton, they would not arrest him because they had to wait for the return of all the forensic evidence. The police drove Seka back to 1933 Western. Seka claimed he had a dinner appointment, but he would return to the premises later. Police allowed Seka to leave in one of the white vans belonging to Cinergi, but impounded the brown truck and the remaining white van after they discovered blood in both vehicles. Seka never returned to the premises.

That evening, Seka spoke with Limanni's girlfriend, Jennifer Harrison ("Harrison"), and told her that some black guy had been killed and he had to get out of town. He wanted to borrow Harrison's car because he was being followed; she declined, and he left. Several weeks later, Seka called Harrison and indicated that he was "going underground".

In the meantime, on December 23, 1998, police found Limanni's decomposing body, partially buried and partially uncovered. The body was discovered in California, approximately five miles from the California-Nevada state boundary, roughly a forty-five minute drive from Las Vegas and a several hour drive from any city in California. The San Bernadino County Coroner's Office ruled that Limanni died from gunshot

wounds; 10 (ten) in all. They also estimated that Limanni had been dead for several weeks.

Thereafter, Seka was charged with: (1) one count of murder with use of a deadly weapon, alleging the murder of Hamilton; (2) one count of murder with use of a deadly weapon, alleging the murder of Limanni and (3) two counts of robbery with use of a Deadly Weapon, alleging Hamilton and Limanni were robbed as part of each murder. In March of 1999, Seka was arrested in Pennsylvania and stood trial on these charges.

At trial, the prosecution presented testimony supporting the above-referenced facts. The prosecution also presented the results of the forensic analysis conducted on the items of evidence, as follows:

1. DNA testing conducted on the blood recovered from glass fragments at 1929 Western revealed that Hamilton could not be excluded as the source;
2. The bullet holes in the jacket found at 1929 Western were consistent with the gunshot wounds in Hamilton's body;
3. DNA testing on the blood from the white Cinergi van revealed that Limanni could not be excluded as the source;
4. DNA testing on the blood from the brown Toyota pickup revealed that Hamilton could not be excluded as the source;
5. The tire marks found at the location of Hamilton's body were consistent with the type of tire on the brown Toyota pickup;

6. A .32 caliber weapon was used to kill Limanni, and the .32 bullets recovered from Limanni's body matched some found at 1933 Western; and

7. A .357 magnum was used to kill Hamilton, and a bullet fragment from 1933 Western matched the bullet recovered from Hamilton's body.

Additionally, the prosecution offered testimony from a friend of Seka's, Thomas Cramer ("Cramer"), which indicated Seka's responsibility for Limanni's murder. Cramer testified that, on January 23, 1999, during a fight with Seka, Seka asked Cramer, "Do you want me to do to you what I did to Pete Limanni?" Cramer also testified that Seka had told him that Limanni came at him with a gun over missing money and that he wrestled the gun from Limanni and shot him several times. As a result of his wounds, Limanni began to gurgle blood out of his mouth, at which point Seka continued to shoot.

After hearing this evidence, the jury returned a verdict on March 1, 2001, finding Seka guilty of: (1) count one - first degree murder with use of a deadly weapon; (2) count two - second degree murder with use of a deadly weapon; and (3) counts three and four - robbery.

DISCUSSION

Seka first contends that the district court improperly admitted evidence that Seka left Nevada for Pennsylvania in order to avoid criminal prosecution. We disagree. Evidence of flight may be admissible to demonstrate consciousness of guilt.¹ This court has reviewed flight

¹See Walker v. State, 113 Nev. 853, 870-71, 944 P.2d 762, 773 (1997) (quoting Miles v. State, 97 Nev. 82, 85, 624 P.2d 494, 496 (1981)).

instructions to ensure that the record supported the conclusion that the defendant's leaving the scene was with a consciousness of guilt and for the purpose of avoiding arrest.²

In the present case, the record supports the inference that Seka's flight to Pennsylvania was related to his criminal involvement in the murders of Limanni and Hamilton. Seka's conversation with LVMPD demonstrates that he was on notice that he was a target of a pending criminal investigation into the disappearance and murders of Limanni and Hamilton. Also, Seka's request to borrow Harrison's car because he was wanted for murder and his subsequent call to her a few weeks later informing her of his plans to go "underground" clearly indicate an intent to evade the police. Thus, we conclude that the district court properly admitted evidence of Seka's flight from the police.³

Next Seka argues that the district court lacked jurisdiction to prosecute him for Limanni's murder, because the State did not prove that Limanni was murdered in California, not Nevada. We disagree. Pursuant to NRS 171.020, any person who commits a crime within Nevada may be

²See id.

³Additionally, we conclude that Seka's position that his case is factually inapposite to that in Santillanes v. State, 104 Nev. 699, 700, 765 P.2d 1147, 1148 (1988), is without merit. In Santillanes, we concluded that flight evidence was properly admitted where the defendant twice consented to meet with authorities and after failing to appear for both meetings, fled the jurisdiction. Here, Seka expressly promised the police that he would return to the scene of the crime after attending a dinner appointment. Seka subsequently disappeared before reemerging in Pennsylvania a year later. Thus, we find Seka's situation analogous to that in Santillanes and evidence pertaining to his flight properly admitted.

punished for that crime in Nevada.⁴ Notwithstanding a lack of direct evidence, we conclude that there was sufficient circumstantial evidence admitted at trial to support the conclusion that Limanni was killed in Las Vegas, his body loaded into a Cinergi Dodge van, and then dumped over the border in California.

DNA testing revealed that Limanni's blood was found inside the Dodge van located at 1933 Western Avenue. Several expended bullets matching those found in Limanni's body were located at 1933 Western Avenue. Limanni's body was discovered in a remote area only five miles from the Nevada state line. The location where his body was found was approximately forty-five minutes away from Las Vegas. Lastly, Limanni's body was situated a great distance away from any California city. Thus, we conclude that there is sufficient evidence to support a finding that the murder of Limanni was committed in Nevada and the district court's exercise of jurisdiction on the Limanni murder was proper.

Seka's next assertion of error involves the joinder of the Limanni and Hamilton charges. Seka argues that the charges against him for the robbery and murders of Limanni and Hamilton were improperly joined by the district court. We disagree. NRS 173.115 defines

⁴NRS 171.020 states:

Whenever a person, with intent to commit a crime, does any act within this state in execution or part execution of such intent, which culminates in the commission of a crime, either within or without this state, such person is punishable for such crime in this state in the same manner as if the same had been committed entirely within this state.

when joinder of charges is appropriate.⁵ Decisions to sever charges "are within the sound discretion of the trial court and will not be reversed absent an abuse of discretion."⁶ We review alleged errors by the district court under a harmless error analysis.⁷

However, even if joinder is permissible under NRS 173.115, it may still be inappropriate if joinder would have unfairly prejudiced the defendant.⁸ To establish that joinder was prejudicial "requires more than

⁵NRS 173.115 states:

Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are:

1. Based on the same act or transaction; or
2. Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

⁶Robins v. State, 106 Nev. 611, 619, 798 P.2d 558, 563 (1990) (citing Lovell v. Sate, 92 Nev. 128, 132, 546 P.2d 1301, 1303 (1976)).

⁷See Robins, 106 Nev. at 619, 798 P.2d at 563 (citing Mitchell v. State, 105 Nev. 735, 738, 782 P.2d 1340, 1342-43 (1989)).

⁸See NRS 174.165(1), which provides in pertinent part:

If it appears that a defendant or the State of Nevada is prejudiced by a joinder of offenses or of defendants in an indictment or information, or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

See also Middleton v. State, 114 Nev. 1089, 1107, 968 P.2d 296, 309 (1998).

a mere showing that severance might have made acquittal more likely."⁹ Reversal for misjoinder is required only if the error "has a substantial and injurious effect on the jury's verdict."¹⁰

In the present case, we conclude that the district court did not err in finding that there was sufficient evidence to support a conclusion that the murders of Limanni and Hamilton were conducted and concealed by Seka in roughly the same manner as part of a common scheme or plan for financial gain. Both individuals disappeared in November of 1998. Both bodies were transported in Cinergi vehicles and were discovered partially concealed by dirt or wood in shallow graves. An intensive amount of forensic evidence was introduced at trial, including bullets, fingerprint evidence, and DNA evidence indicating that both men were murdered at the businesses owned by Limanni at 1929 and 1933 Western Avenue. Also, both victims died as a result of gunshot wounds. Lastly, witnesses testified that both victims had large amounts of cash in their possession shortly before they were missing and no such cash was found on their bodies or amongst their personal possessions. Finally the State presented evidence linking Seka to the victims, Cinergi and the Western Avenue locations.

We also conclude that the district court's decision to join charges was appropriate because evidence of Limanni's murder would have been cross-admissible in a separate trial for Hamilton's murder.

⁹Floyd v. State, 118 Nev. ___, ___, 42 P.3d 249, 255 (2002) (quoting United States v. Wilson, 715 F.2d 1164, 1171 (7th Cir. 1983)).

¹⁰Middleton, 114 Nev. at 1108, 968 P.2d at 309 (citing Mitchell, 105 Nev. at 739, 782 P.2d at 1343).

This court has held that, "if . . . evidence of one charge would be cross-admissible in evidence at a separate trial on another charge, then both charges may be tried together and need not be severed."¹¹ Evidence of Limanni's murder would have been admissible in a separate trial for Hamilton's murder to prove the identity of his killer, pursuant to NRS 48.045(2).¹² Both victims were robbed, shot, stripped naked, and left covered by dirt or wood in shallow graves and there is evidence from which a reasonable trier of fact could conclude that the murders took place at the same time and place. Thus, we conclude that the district court did not abuse its discretion in joining charges against Seka for the murders of Hamilton and Limanni.

Next Seka contends that he was prejudiced because the State exhausted the blood samples that were identified at trial as belonging to Limanni and Hamilton. We disagree. This court has held that the State's failure to preserve evidence does not warrant dismissal unless the defendant can either show: (1) bad faith by the government or (2) prejudice from the loss of the evidence.¹³

¹¹Tillema v. State, 112 Nev. 266, 268, 914 P.2d 605, 606 (1996) (quoting Mitchell, 105 Nev. at 738, 782 P.2d at 1342.)

¹²NRS 48.045(2) states:

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

¹³See Williams v. State, 118 Nev. ___, ___, 50 P.3d 1116, 1126 (2002) cert denied ___, U.S. ___, 123 S. Ct. 569 (U.S. 2002); Leonard v. State, 117
continued on next page . . .

Seka does not show that the State acted in bad faith. Dr. Welch, a forensic chemist with LVMPD, testified that at the time the DNA samples were tested, the department's testing system required a large amount of a sample. Also, Dr. Welch testified that at the time the samples were tested there was no formal or informal procedure in place to alert the district attorney's office before using the entire sample. Currently, according to Dr. Welch, the department tries to preserve at least half the sample for the defense. Therefore, we conclude that the record demonstrates that the State did not destroy the DNA samples in bad faith.

Also, Seka does not show that he was prejudiced by the loss of the evidence. Other blood samples were available from the various crime scenes that contained DNA of both Limanni and Hamilton, which Seka could have re-tested. In addition, Seka does not point to any evidence that demonstrates that the first tests done on the DNA samples that matched Seka's DNA were flawed. Thus, we conclude the destruction of these samples, which clearly identify both Seka's and the victims' DNA, did not prejudice his case.

Finally Seka asserts that the record contains insufficient evidence to support the jury's verdicts. We disagree. "We review a claim of sufficiency of evidence by looking at the facts in the light most favorable

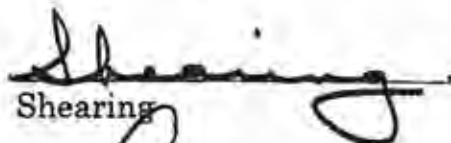
... continued

Nev. 53, 68, 17 P.3d 397, 407 (2001); see also Arizona v. Youngblood, 488 U.S. 51, 57-58 (1988).

to the State."¹⁴ In addition, this court has specifically stated that "[c]ircumstantial evidence alone may sustain a conviction."¹⁵

The jury convicted Seka of all four counts after considering the evidence presented by the parties. After examining the facts in the light most favorable to the State, we conclude that sufficient evidence exists for the jury to have convicted Seka of the robbery and murder of Limanni and Hamilton.

Accordingly, we ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Kajioka, Christiansen & Toti
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁴Grant v. State, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001) (citing Koza v. State, 100 Nev. 245, 250-51, 681 P.2d 44, 47 (1984)).

¹⁵McNair v. State, 108 Nev. 53, 61, 825 P.2d 571, 576 (1992) (citing Deveroux v. State, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980); Crawford v. State, 92 Nev. 456, 457, 522 P.2d 1378, 1379 (1976)).

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN JOSEPH SEKA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 37907

District Court Case No. C159915

REMITTITUR

TO: Shirley Parraguirre, Clark County Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: May 6, 2003

Janette M. Bloom, Clerk of Court

By: J. Richards
Chief Deputy Clerk

cc: Hon. Donald M. Mosley, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Kajoka, Christiansen & Toti

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on 5-9-03.

NORRETA CALDWELL

DEPUTY County Clerk

03-06252

AA 001472

Case No. 2159915

Dept. No. XIV

FILED

2004 FEB 13 P 2: 02

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

John Joseph Seka,

Petitioner,

v.

Elk McDaniel Warden,

Elk State Prison, et alia,
Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

INSTRUCTIONS:

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence.

COUNTY CLERK

FEB 12 2004

RECEIVED

S4

AA 001473

1 Failure to raise all grounds in this petition may preclude you
2 from filing future petitions challenging your conviction and
sentence.

3 (6) You must allege specific facts supporting the claims
4 in the petition you file seeking relief from any conviction or
sentence. Failure to allege specific facts rather than just
5 conclusions may cause your petition to be dismissed. If your
petition contains a claim of ineffective assistance of counsel,
6 that claim will operate to waive the attorney-client privilege
for the proceeding in which you claim your counsel was
ineffective.

7
8 (7) If your petition challenges the validity of your
conviction or sentence, the original and one copy must be filed
9 with the clerk of the district court for the county in which
the conviction occurred. Petitions raising any other claims
10 must be filed with the clerk of the district court for the
county in which you are incarcerated. One copy must be mailed
11 to the respondent, one copy to the attorney general's office,
and one copy to the district attorney of the county in which
12 you were convicted or to the original prosecutor if you are
challenging your original conviction or sentence. Copies must
13 conform in all particulars to the original submitted for
filing.

14 PETITION

15 1. Name of institution and county in which you are
16 presently imprisoned or where and how you are presently
17 restrained of your liberty:

18 Elly State Prison, White Pine County Nevada

19 2. Name and location of court which entered the judgment
20 of conviction under attack: Eight Judicial District

21 Cosmets, Las Vegas Nevada (Dept. No XIV)

22 3. Date of judgment of conviction: May 9, 2001

23 4. Case number: 0159915

24 5. (a) Length of sentence: Two life without parole, two life
25 with parole, two 36 to 156 month
sentences all consecutive.

26 (b) If sentence is death, state any date upon which
execution is scheduled: N/A

27 6. Are you presently serving a sentence for a conviction
28 other than the conviction under attack in this motion:

1 Yes _____ No X. If "yes," list crime, case number and
2 sentence being served at this time: N/A

3 N/A

4 N/A

5 7. Nature of offense involved in conviction being
6 challenged: one first degree murder with use, one second
7 degree murder with use, two robberies

8 8. What was your plea? (check one)

9 (a) Not guilty X

10 (b) Guilty _____

11 (c) Nolo contendere _____

12 9. If you entered a guilty plea to one count of an
13 indictment or information, and a not guilty plea to another
14 count of an indictment or information, or if a guilty plea was
15 negotiated, give details: N/A

16 N/A

17 N/A

18 10. If you were found guilty after a plea of not guilty,
19 was the finding made by: (check one)

20 (a) Jury X

21 (b) Judge without a jury: _____

22 11. Did you testify at the trial? Yes _____ No X

23 12. Did you appeal from the judgment of conviction?

24 Yes X No _____

25 13. If you did appeal, answer the following:

26 (a) Name of court: Nevada Supreme Court

27 (b) Case number or citation: Appeal No 37907

1 (c) Result: Conviction Affirmed

2 (d) Date of Result: April 8, 2003 Order of Affirmance

3 (Attach copy of order or decision, if available).

4 14. If you did not appeal, explain briefly why you did

5 not: N/A

6 N/A

7 15. Other than a direct appeal from the judgment of
8 conviction and sentence, have you previously filed any
9 petitions, applications or motions with respect to this
10 judgment in any court, state or federal? Yes X No

11 16. If your answer to No. 15 was "yes," give the
12 following information:

13 (a) (1) Name of Court: Nevada Supreme Court

14 (2) Nature of proceeding: Appeal of proper person
15 petition for writ of habeas corpus

16
17 (3) Grounds raised: Trial Courts lack of
18 jurisdiction over the charges relating
19 to Mr. Limann

20 (4) Did you receive an evidentiary hearing on
21 your petition, application or motion? Yes No X

22 (5) Result: Appeal was dismissed

23 (6) Date of Result: November 20, 2001

24 (7) If known, citations of any written opinion or
25 date of orders entered pursuant to each result: Nevada
26 Supreme Court orders see exhibit

(b) As to any second petition, application or motion, give the same information:

(1) Name of Court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No X

(5) Result: N/A

(6) Date of Result: N/A

(7) If known, citations or any written opinion or date of orders entered pursuant to each result: N/A

N/A

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion?

Yes No X

Citation or date of decision: N/A

(2) Second petition, application or motion?

Yes No X

Citation or date of decision: N/A

(3) Third or subsequent petitions, applications or motions? Yes No X

Citation or date of decision: N/A

e. If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

First petition dismissed so that Direct Appeal could proceed.

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion or application or any other post-conviction proceeding? ^{NO} If so, identify: identify:

a. Which of the grounds is the same: N/A

N/A

b. The proceedings in which these grounds were raised:

N/A

c. Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

All grounds are fresh and new. This is the first true petition.

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate

1 specific facts in response to this question. Your response may
2 be included on paper which is 8 1/2 by 11 inches attached to
3 the petition. Your response may not exceed five handwritten or
4 typewritten pages in length.) Issues and claims not
5 previously presented due to ineffective assistance of counsel
before and during trial and on Direct Appeal.

6 19. Are you filing this petition more than 1 year
7 following the filing of the judgment of conviction or the
8 filing of a decision on direct appeal? If so, state briefly
9 the reasons for the delay. (You must relate specific facts in
10 response to this question. Your response may be included on
11 paper which is 8 1/2 x 11 inches attached to the petition.
12 Your response may not exceed five handwritten or typewritten
13 pages in length.)

14 Remittitur issued May 14, 2003. This petition is timely.

15 20. Do you have any petition or appeal now pending in any
16 court, either state or federal, as to the judgment under
17 attack? Yes _____ No X.

18 If yes, state what court and the case number: _____

19 N/A

20 21. Give the name of each attorney who represented you in
21 the proceeding resulting in your conviction and on direct
22 appeal: Trial attorneys: Kirk Kennedy and Peter
23 Christiansen. Direct Appeal attorney: Peter Christiansen

24 22. Do you have any future sentences to serve after you
25 complete the sentence imposed by the judgment under attack?

26 Yes _____ No X. If yes, specify where and
27 when it is to be served, if you know: N/A

28 N/A

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground one: Denial of Sixth and Fourteenth Amendments to effective assistance of counsel before trial, due process and a fair trial.

Supporting FACTS (Tell your story briefly without citing cases or law): Supporting facts page 8A

(b) Ground two: Denial of Sixth and Fourteenth Amendment rights to effective of counsel at trial, due process and fundamental fairness

Supporting FACTS (Tell your story briefly without citing cases or law): Supporting facts page 8F

(c) Ground three: Denial of Sixth and Fourteenth Amendments to effective assistance of counsel on Direct Appeal and due process

Supporting FACTS (Tell your story briefly without citing cases or law): Supporting facts page 8I

(d) Ground four: Denial of Fifth Sixth and Fourteenth Amendments to equal protection, due process and a fair trial by DA's failure to disclose Brady material on Mr. Thomas Creamer.

Supporting FACTS (Tell your story briefly without citing cases or law): Supporting facts page 8K

WHEREFORE, Petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

Ground One

Petitioner was denied his rights under the Sixth and Fourteenth Amendments to the U.S. Constitution to effective assistance of counsel, due process and a fair trial by his attorneys failures to investigate material witnesses and facts prior to trial and failure to enlist experts for the defense prior to trial.

WHEREAS, Petitioner hereby swears and alleges he was deprived of effective assistance of counsel, due process and a fair trial by his trial attorneys failures to investigate material witnesses and facts prior to trial and failure to enlist experts for the defense prior to trial. These failures actually caused the jury to convict John Seka (hereafter Seka)

1.) That Seka suffered prejudicial ineffective assistance of counsel before trial and therefore during trial which resulted in his illegal and erroneous convictions in this case. Each instance of alleged ineffective assistance contained within this ground for relief are each presented, and should be considered, as independent and separate acts, events and conduct entitling Seka to relief from conviction as well as together contained herein.

2.) That Seka alleges and asserts that his trial attorneys were ineffective due to their failures to conduct adequate investigations and interviews. Specifically Mr. Thomas Creamer, Mr. Creamer's long
8A...

psychological and drug history were not investigated or documented. This failure left unknown many possible and probable adjustments and changes in his testimony beneficial to the defense.

3.) That Mr. Creamer's testimony was given while he was under the influence of Remeron, Tranxene, Ritalin and Xanax. Proper cross-examination without pre-trial investigation of Mr. Creamer's medical and drug history was impossible and shows the lack of preparation for this crucial prosecution witness.

4.) That this criminal case was very close and relied virtually entirely on circumstantial evidence is evident from the jury's four plus days of deliberation. Mr. Creamer was a very important prosecution witness and claimed that Seka confessed to him was the only non-circumstantial evidence that pointed at Seka's guilt in this case.

5.) That lack of investigation before trial and therefore inadequate cross-examination for the defense was damning ineffective assistance of counsel which most probably caused the illegal convictions. Based upon this the convictions must be VACATED.

6.) That Seka's trial attorneys failed to adequately investigate, contact or personally interview former Linerg. H.V.A.C. Inc (hereafter Linerg.) employees, friends and other business associates of Seka and Mr. Limanni.

7.) That during the trial the prosecutor elicited

testimony from Miss Harrison, the three month girlfriend of Mr. Limanni. Miss Harrison's impressions of the relationship between Seka and Mr. Limanni were the only ones presented to the jury.

8) That defense counsel could have and should have interviewed Justin Nguyen, Marilyn Mignone, Amir Mohomid Ken Bates and others that could have been found by obtaining Cinerg's banking and business records. These interviews would have given defense counsel multiple other accounts of the relationship between Seka and Mr. Limanni.

9) That this conduct by defense counsel was clearly ineffective as pre-trial interviews of these people would have provided information and or testimony that, had they been called at trial by defense counsel would have resulted in Seka's acquittal.

10) That due to the ineffective pre-trial performance of Seka's attorneys, Seka was grossly prejudiced at trial and his defense to the Mr. Limanni killing suffered severely. Based upon the alleged failure to investigate, interview and utilize these witnesses, Seka's defense was devastated resulting in his illegal convictions. This now requires the convictions VALIDATED

11) That trial counsel again provided ineffective assistance of counsel by the failure to enlist the services of experts in the fields of DNA evidence forensic pathology, for time of death and a

psychologist regarding the evidence and testimony presented by prosecution experts in a capital case.

12.) That the prosecution neglected to give pre-trial notice that their DNA expert would be testifying at trial was no excuse for defense counsel not to enlist a DNA expert before trial. Especially when the DNA evidence in this case was circumstantial and not overwhelming.

13.) That in the original Criminal Complaint (March 4, 1990) and all superseding Informations Seka was charged with two separate open murders where the State failed to specify an exact time of death. Count I "on or between November 10, 1998 and November 16, 1998", Count II "on or between November 5, 1998 and December 23, 1998". Yet the prosecution offered and relied on the theories that the death in Count I occurred on November 15, 1998 and the death in Count II occurred on November 5, 1998. Defense counsel's failure to obtain expert testimony regarding times of death in this case was clearly ineffective assistance of counsel.

14.) That the prosecution's most important witness had serious mental, emotional and substance abuse problems should have and could have been explained to the jury through expert testimony from a psychologist.

15.) That the failure of defense counsel to procure such expert testimony before trial was grossly

prejudicial to Seka and complete ineffective assistance of counsel. The failure of Seka's trial attorneys to obtain experts prior to trial and utilize them at trial resulted in the jury's complete reliance upon the expert witnesses that the prosecution presented. This complete ineffectiveness demands that Seka's convictions be VACATED.

16.) That trial counsel also preformed ineffective pre-trial investigations and research by failing to obtain Cimergi's bank and phone records along with Mr. Limanni's correct cell phone records. Documents that could have contained exculpatory evidence and impeachment evidence for cross-examination.

17.) That the State's theory that Mr. Limanni disappeared and was killed on November 5, 1998 would have been questionable if his cell phone records showed use after November 5, 1998. Without these records defense attorneys were unable to effectively defend against the prosecution's theory of Mr. Limanni's time of death.

18.) That the State obtained someone else's cell phone records and never obtained the correct records for Mr. Limanni's are no excuse for defense attorneys not obtaining the correct cell phone records for Mr. Limanni.

19.) That defense counsel was totally unprepared for this Capital Murder Trial after nearly two years of continuances and left the jury with many

unanswered questions is clearly shown by the four plus days the jury deliberated and the confused verdict they returned. A verdict that was completely inconsistent with the State's theory. This pre-trial ineffectiveness as well as those previously asserted doomed Seka's chances at trial and led to his illegal convictions. This now requires the illegal convictions RECALLED

Ground Two

Petitioner was denied his rights under the Sixth and Fourteenth Amendments to the U.S. Constitution to effective assistance of counsel, due process and of fundamental fairness at trial by trial attorney's failure to meaningfully challenge the State's case with expert testimony and adequate cross-examination and impeachment of prosecution witnesses.

WHEREAS, Petitioner swears and alleges that he suffers the deprivation of effective assistance of counsel and a fair trial by the failures of his trial attorneys to meaningfully challenge the State's case.

WHEREFORE, Petitioner hereby incorporates all relevant facts contained within the other grounds, above and below, as though the same were fully set forth herein, in support of this claim, AND

20.) That trial counsel failed to adequately subject the State's case to meaningful adversarial testing in regards to the evidence and cross-examination and impeachment of the State's witnesses.

21.) That the incorporated facts show that trial counsel failed to consult and present any expert witnesses to challenge the State's case illustrates complete ineffective assistance of counsel

22.) That consistent with the above, trial counsel should have at a minimum presented at trial:

(a) ~~trial~~ expert (b) Forensic pathologist (c) Psychologist Lack of these experts for the defense left the jury to rely exclusively on the prosecution's experts. This ineffective assistance of counsel caused Seka's illegal convictions. This now requires the conviction:

VACATED

23.) That trial counsel's failure to investigate and obtain Mr. Creamer's psychiatric and substance abuse history and records results in his complete failure to adequately cross-examine this vital State witness. Mr. Creamer's long mental history should have been explained to the jury by a psychologist

24.) That had Seka's trial attorneys effectively impeached Mr. Creamer by revealing his extensive mental and drug history the trial result would have been different and Seka would not have been convicted erroneously. This now requires the convictions VACATED

25.) That the State presented Dr. Green M.D., coroner for Clark County, Nevada in the death of Eric Hamilton. Dr. Trenkle M.D., coroner for San Bernardino, California in the death of Peter Limanni. Both of these prosecution witnesses tried to support the State's theories on the times of death.

26.) That defense counsel was ineffective in the cross examinations of both doctors is shown by the record. Dr. Green was cross-examined for eight pages of testimony, Dr. Trenkle was cross-examined for four pages of testimony.

27.) That defense counsel presented no experts in the field of forensic pathology along with nominal cross-examination of prosecution experts was blatant ineffective assistance of counsel in a capital murder trial leaving the jury to again rely solely on the prosecution's experts resulting in severe prejudice to Seka, causing Seka's illegal convictions. Therefore based upon this ineffective assistance of counsel Seka's convictions must be VACATED.

28.) That the State, without pre-trial notice, presented DNA expert David Welch, an employee of the Las Vegas Metropolitan Police Department, who had only testified three or four times as an expert on the type of DNA testing done in this case. Furthermore Mr. Welch exhausted five of the twelve samples presented to him for testing in this case.

29.) That given the above it was complete ineffective

assistance of counsel for Seka's defense attorneys not to present a DNA expert at trial. Once again the jury was left to rely only on a prosecution expert during their four plus days of deliberations.

30) That due to the ineffective assistance of Seka's trial attorneys, here as asserted above, Seka was grossly prejudiced at trial and his defense suffered severely. Based upon the alleged failures of trial counsel, Seka's defense was devastated resulting in his illegal convictions. This now requires the convictions VACATED.

Ground Three

Petitioner was denied his rights under the Sixth and Fourteenth Amendments to the U.S. Constitution to effective assistance of counsel and due process on Direct Appeal by his direct appeal attorney's failure to identify and raise meritorious claims and issues within petitioners only Direct Appeal of Constitutional right to a criminal defendant and while under a conflict of interest.

WHEREAS, Petitioner swears and alleges that he suffered the deprivation of effective assistance of counsel on his direct appeal, his only appeal of constitutional right to a criminal defendant by direct

appeal attorney Peter Christiansen due to his failure to review the trial record and raise meritorious issues, and due to his conflict of interest on appeal in the case.

WHEREFORE, Petitioner Seka hereby incorporates all relevant facts and allegations contained within the other grounds for relief, above and below, as though the same were fully set forth herein and in support hereof, AND:

31.) That attorney Peter Christiansen was both trial counsel and also counsel on direct appeal for Seka on Appeal number 37907 to the Nevada Supreme Court.

32.) That due to Mr. Christiansen's role as trial counsel, he labored under a conflict of interest later while preparing the direct appeal in this case. The result of Mr. Christiansen being both trial and appellate counsel, as the courts are starting to acknowledge, is that such attorney's ability to objectively analyze, discover and raise issues of error and ineffective counsel conduct is precluded. This is because, obviously, acting as appellate counsel would require the lawyer to lodge claimed issues and errors against himself, wherein the conflicting interests manifest.

33.) That the conflicting interests of competently representing Seka on direct appeal and raising challenges against his own trial representation deprived Seka of effective assistance of counsel

On his direct appeal. The multiple issues presented, above and below in this petition could, and should have been litigated in Seka's Direct Appeal. In the State of Nevada, the Direct Appeal is the only review of a criminal conviction wherein a person possesses the Constitutional right to counsel.

34.) That the deprivation of effective assistance of counsel on Seka's only Direct Appeal as of right prejudiced Seka as the many issues of Constitutional error raised herein, above and below, were not located, presented and reviewed on Direct Appeal which would have resulted in reversal of Seka's illegal convictions. This failure now requires Seka's convictions VACATED.

Ground Four

Petitioner's convictions and Sentence are invalid and unconstitutional in violation of the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution to due process, a fundamentally fair trial and equal protection due to the State's failure to disclose material exculpatory and impeachment evidence on Mr. Thomas Creamer.

WHEREAS, Petitioner hereby swears and alleges that he was deprived of due process AA001494

fundamentally fair trial and equal protection by the State's failure to produce, before trial, Mr. Thomas Creamer's psychiatric, substance abuse and recent criminal histories to the defense. This failure caused the jury to convict Seka.

WHEREFORE, Petitioner hereby incorporates all relevant facts and allegations contained within the other grounds for relief, above and below, as though the same were fully set forth herein, in support hereof AND:

35) That before trial the State knew that its most important witness, Mr. Creamer, had a long psychiatric and substance abuse history as well as a recent criminal history. This information with documentation is Brady material.

36) That Mr. Creamer testified at trial while under the influence of Remeron, Tranxene, Ritalin and Xanax. And under the care of one or more physicians for alcohol addiction and depression.

37) That at trial Mr. Creamer testified that Seka allegedly confessed to him, on one occasion while Mr. Creamer was in a mental institution that Seka had him committed to against Mr. Creamer's will.

38) That Mr. Creamer's testimony was
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important to the State's case against Seka as he was the only witness who made direct assertion of Seka's guilt. This makes the Brady material even more important to the defense.

39.) That Mr. Creamer's psychiatric, substance abuse and recent criminal histories are important impeachment and exculpatory Brady materials that must be given to the defense as part of discovery.

40.) That the suppression of this Brady material directly affecting the credibility of the State's most important witness violated Seka's constitutional rights to due process, fundamental fairness and equal protection and caused Seka's convictions.

41.) That without this Brady material Seka's defense attorneys were unable to meaningfully cross-examine Mr. Creamer, or subpoena one or more of Mr. Creamer's mental health physicians to testify, leaving the jury with many unanswered questions during their four plus days of deliberation. This now demands that Seka's convictions be VACATED.

Ground Five

Petitioner is in custody in violation of his rights to due process and a fair trial as guaranteed by the Fifth and Fourteenth Amendment to the U.S. Constitution due to the trial court's erroneous instructions on lesser included offences.

WHEREAS, Petitioner hereby swears and alleges that he was deprived of due process and a fair trial by the erroneous instructions on lesser included offences.

WHEREFORE, Petitioner hereby incorporates all relevant facts and allegations contained within the other grounds for relief, above and below, as though the same were fully set forth herein, in support hereof AND:

42.) That petitioner's trial was a Capitol Murder Trial where a death qualified jury was seated and the State sought first degree murder convictions and the death penalty from their opening statements.

43.) That the State sought first degree convictions on two separate counts of murder with use of a deadly weapon and two counts of robbery with use of a deadly weapon, alleging the respective victims were robbed as part of each murder.

44.) That the State used the felony murder rule as part of its reasoning to seek the death penalty using the theory that each of the

victims was robbed as part of each murder making the alleged murders first degree by law.
45.) That from opening statements through the trial and in closing arguments the State sought only first degree murder convictions and robbery convictions both with use of a deadly weapon.
46.) That after four plus days of deliberation the jury returned a confused verdict unsupported by the evidence or the theory presented by the State during the trial. The jury's verdict shows that they did not understand their instructions. The jury's verdict was: Count I First degree murder with ~~use~~ use of a deadly weapon. Count II Second degree murder with use of a deadly weapon. Count III Robbery. Count IV Robbery. The lack of the with the use of a deadly weapon on the robberies but on the alleged murders also shows the jury's confusion as does the second degree murder conviction on count II.
47.) That the instructions on lesser included offense completely confused the jury is obvious from their verdict. The inclusion of these instructions denied Seka of due process and a fair trial resulting in his illegal convictions. The unreliability of the jury's verdict now requires Seka's convictions VACATED.

Ground Six

Petitioner was denied his rights under the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution to due process, equal protection and a fair trial by the improper jury instruction on Reasonable Doubt which illegally lowered the State's burden.

WHEREAS, Petitioner hereby swears and alleges that he was deprived of due process, equal protection and a fair trial because the jury instruction on Reasonable Doubt raised which a jury must have before acquitting a criminal defendant.

WHEREFORE, Petitioner hereby incorporates all relevant facts and allegations contained within the other grounds for relief, above and below, as though the same were fully set forth herein, in support hereof AND:

48) That jury instruction number thirty-three (33) illegally defines Reasonable Doubt by presuming the State is going to meet the burden of proof placed upon it and raising the level of doubt which a jury must harbor before acquitting Seka, or any criminal defendant. There are three portions of language in charge number 33 which deny due process, equal protection and a fair trial by confusing the legal standard of proof, those parts are:

"The defendant is presumed innocent until the contrary is proved... is such a doubt as would govern or control a person in the more weighty affairs of life. ... (and then) can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt."

Instruction 33 in part

49.) That the words, until; and; is; in the opening sentence of charge number 33 are burden-shifting words. They presume the State will meet the burden placed upon them.

50.) That the standard set forth in charge number 33, calling for a jury not to find doubt until they are governed or controlled illegally sets the scale in violation of the Fourteenth Amendment.

51.) That the language of "feel an abiding conviction of the truth of the charge", first provides improper emotional "feelings" to accumulate in the mind of the jury similar to the offending wording of "to a moral certainty", and secondly this allows for such "feelings" about "the truth of the charge" to sway a juror into allowing a release of the State of its burden to prove each element of the crime through evidence simply because they feel and believe in the truth of the indictment or information which are only

allegations. This allowed Seka's conviction upon insufficient evidence and the deprivation of due process.

52.) That due to the illegal operation of jury instruction number 33 the jury in this case was confused during their four plus days of deliberations and were hoodwinked into illegally rendering a discombobulated conviction unsupported by the State's theory of the case. The resulting impact of instruction number 33 on the jury and the violations of the Fifth, Sixth and Fourteenth Amendments make Seka's convictions illegal and mandates the convictions VACATED.

Ground Seven

Petitioner is in custody in violation of his right to due process of law under the Fifth and Fourteenth Amendments to the U.S. Constitution by the trial court erroneously giving the jury Instruction number Fourteen (14) on a unanimous verdict.

WHEREAS, Petitioner hereby swears and alleges that he was deprived of his rights to due process of law by the trial court's giving jury instruction number 14 on a unanimous verdict.

WHEREFORE, Petitioner hereby incorporates all relevant facts and allegations contained within the other grounds for relief, above and below, as though the same were fully set forth herein, in support hereof AND:

53) That the language in jury instruction number 14 "...you do not have to agree on the theory of guilt..." illegally reduced the burden of proof for the State.

54) That the complicated nature of this case involving two separate incidents of alleged murder and robbery, was effected very critically by this jury instruction.

55) That the unanimous instruction violated Seka's constitutional rights to due process, confused the jury as shown by their four plus days of deliberation, and led to an unreliable confused verdict, inconsistent with the State's theory, the must now be INVALIDATED.

Ground Eight

Petitioner's convictions and sentences are invalid under the Federal Constitutional guarantees of the Fifth and Fourteenth Amendments of the U.S. Constitution to due process, equal protection, and trial before an impartial jury because the Malice Aforethought, Express malice, Deliberation,

and Premeditation jury instructions given at trial improperly lowered the state's burden of proof.

WHEREAS, Petitioner hereby swears and alleges that he was denied due process, equal protection and a trial before an impartial jury by the jury instructions on Malice Aforethought, Express Malice, Deliberation and Premeditation, which lowered the State's burden of proof and confused the jury.

WHEREFORE, Petitioner hereby incorporates all relevant facts and allegations contained within the other grounds for relief, above and below, as though the same were fully set forth herein, in support hereof AND:

56) That jury instructions Six (6), Seven (7), Ten (10) and Eleven (11) presume malice aforethought, Express malice, Deliberation and Premeditation which lowered the state's burden of proof.

57) That by lowering the burden of proof for the State in this confusing, circumstantial case these jury instructions mislead the jury into rendering a confused unreliable verdict.

58) That these jury instructions violated Seka's constitutional rights of due process, equal protection and trial before an impartial jury