

No. 86694

IN THE NEVADA SUPREME COURT

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Elizabeth A. Brown
Clerk of Supreme Court

John Seka,

Petitioner-Appellant,

v.

State of Nevada, et al.

Respondents-Appellees.

Petitioner-Appellant's Appendix
Volume 4 of 15

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Dated October 4, 2023.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Jonathan M. Kirshbaum

Jonathan M. Kirshbaum
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2023, I electronically filed the foregoing with the Clerk of the Nevada Supreme Court by using the appellate electronic filing system.

Participants in the case who are registered users in the appellate electronic filing system will be served by the system and include:
Alexander G. Chen and Aaron D. Ford.

I further certify that some of the participants in the case are not registered appellate electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three calendar days, to the following person:

John Joseph Seka, #69025 High Desert State Prison P.O. Box 650 Indian Springs, NV 89070	
--	--

/s/ Kaitlyn O'Hearn
An Employee of the Federal
Public Defender, District of
Nevada

1 **COPY**

DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 * * * *

4
5 STATE OF NEVADA,)

6 Plaintiff,)

7 vs.)

8 JOHN JOSEPH SEKA,)

9 Defendant.)
10

Case No. C159915

Dept. XIV

11 **VOLUME I**

12 **REPORTER'S TRANSCRIPT**
13 **OF**
14 **JURY TRIAL**

15 **BEFORE THE HONORABLE DONALD M. MOSLEY**

16 **DISTRICT JUDGE**

17 Taken on Friday, February 16, 2001

18 At 10:50 a.m.

19 **APPEARANCES:**

20 For the State:

EDWARD KANE, ESQ.

TIM FATTIG, ESQ.

21 Deputy District Attorneys

22 For the Defendant:

KIRK T. KENNEDY, ESQ.

23 PETER S. CHRISTIANSEN, ESQ.

24
25 Reported by: Maureen Schorn, CCR No. 496, RPR

APP0700

I N D E X

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1 LAS VEGAS, NEVADA. FRIDAY, FEBRUARY 16, 2001, 10:50 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. We
7 have Mr. Christiansen and Mr. Kennedy as Defense counsel;
8 Mr. Kane and Mr. Fattig present 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: Michelle Pro?

11 ALTERNATE JUROR PRO: Here.

12 THE CLERK: Eric Zuck?

13 ALTERNATE JUROR ZUCK: Here.

14 THE CLERK: Your Honor, the panel the

15 present.

16 THE COURT: Thank you very much. Good

17 morning, ladies and gentlemen. I appreciate you

18 accommodating my schedule yesterday. Unfortunately, plans

19 don't always work out just as we plan.

20 Let's complete the examination of

21 Mr. Ruffino. Would you swear this gentleman for the day,

22 please.

23 / / /

24 / / /

25 / / /

1 Whereupon,

2

DAVID RUFFINO,

3

was called as a witness by the State, and having been

4

first duly sworn, was examined and testified as follows:

5

6

DIRECT EXAMINATION

7

BY MR. KANE:

8

Q Mr. Ruffino, on Wednesday we talked about a

9

number of items that you booked into evidence during your

10

processing of the scene at 1929 Western Avenue on November

11

the 17th, 1998.

12

I want to talk to you now about one of the

13

items that you impounded that you did not bring to court.

14

Do you recall that you and I discussed one specific item

15

and I requested that you not bring it to court with you?

16

A Yes.

17

Q And what was that, sir?

18

A That was glass with apparent blood-like

19

substance on it.

20

Q And do you concur that it was better not to

21

bring that to court?

22

A Yes, I do.

23

Q Why?

24

A First of all, it's a biohazard. Second of

25

all, because glass is sharp just for the safety of the

1 jury, it would just be better not to have that around.

2 Q Now, going back to the procedure that you
3 use when you impound evidence, what is a P number?

4 A Okay. A "P" number is something we're given
5 to identify ourselves when we're hired on the Police
6 Department. Every individual hired on, police officers,
7 civilian is given a P number, and P stands for personnel.
8 And that's a personnel number we are giving when we are
9 hired on and we keep that number until we retire.

10 Q What is your P number?

11 A My P number is 1502.

12 Q So if you impound ten items of evidence at a
13 scene, is your P number part of what you use to identify
14 those?

15 A Yes.

16 Q And how would the sequencing work?

17 A The sequencing would start with the first
18 package and it would be, for example, 1502-1. The second
19 package would be 1502-2, and so on.

20 Q Is the package that I was discussing with
21 you a minute ago containing the glass, was that 1502-4
22 from 1929 Western Avenue?

23 A Yes, it was.

24 Q So that even though that's not here because
25 we don't want anyone cutting themselves on it, if somebody

1 were to come in here and say, "I tested David Ruffino's
2 package, 1502-4, they would be talking about those glass
3 fragments with blood, correct?

4 A That's correct. That's the only No. 4
5 package I have impounded.

6 Q As a final matter, I want to go over latent
7 fingerprints with you. Was part of your processing of
8 1929 Western Avenue an attempt to secure and recover
9 latent fingerprints?

10 A Yes.

11 Q Would you explain to the ladies and
12 gentlemen of the jury, first, what a latent fingerprint
13 is.

14 A Okay. A latent fingerprint is a fingerprint
15 that is unseen. In other words, if I touch this
16 countertop and I take my hand off, chances are I've left
17 latent prints there. You cannot see those, I can't see
18 those.

19 However, if I were to process this
20 particular counter that I just touched, it's possible that
21 I would be able to bring up my fingerprints. Those are
22 called latent prints or unseen until I develop it with,
23 for example, black fingerprint powder.

24 If we do chemical processing, then we use
25 other methods and usually you will not see those prints,

1 but upon processing a particular item, whether it's with
2 chemicals or latent fingerprint powder, it will make them
3 appear visible.

4 Q Now, how do you recover those latents so
5 that somebody can later look at them and compare them to
6 someone's known fingerprints?

7 A Right. General procedure is, if it happens
8 to be processed up with black fingerprint powder on a
9 smooth, hard surface, we'll put our tape over that
10 particular item, latent fingerprint tape, and press it on
11 the surface, photograph its location, lift the tape up and
12 put it on a white latent print card.

13 It's at that time we document exactly where
14 we locate it, put our initials and P number on it and sign
15 it. And then at the end of the day when we return to our
16 office, we put that in our latent print repository which
17 is inside our evidence vault, until such time a latent
18 print examiner were to retrieve that from the locked
19 vault, and then take it into his custody.

20 Q Now, we've seen with other items of evidence
21 that if they're examined by someone, they're resealed and
22 then returned to the evidence vault and you bring them
23 into court; is that correct?

24 A That's correct.

25 Q Does it work differently with fingerprints?

1 A Yes, it does. Once the latent prints are
2 taken into custody by the latent print section of the Las
3 Vegas Metropolitan Police Department, they are responsible
4 for them. They keep them under lock and key, and they are
5 the ones that review them, look at them, compare them, and
6 then, ultimately, bring it into court, unless an exception
7 were to occur that I were to go and sign it out and take
8 responsibility for it. But there's always a record of who
9 has the fingerprints at that time.

10 Q Now, in this case, did you recover latent
11 fingerprints from one or more locations within 1929
12 Western Avenue?

13 A Yes, I did.

14 Q And did you book them in the way you've been
15 talking about; that is, mounting them on a card and
16 writing on the card the specific location where you found
17 them?

18 A Yes.

19 Q So that if a fingerprint examiner did
20 examine them, the normal procedure would be, he would keep
21 those cards and he would be the one to bring them into
22 court here and testify about them?

23 A Yes, sir, that is correct.

24 MR. KANE: Nothing further, Your Honor.

25 Tender the witness.

1 THE COURT: Cross-Examination?

2 MR. KENNEDY: Thank you. May I
3 approach the witness, Your Honor?

4 THE COURT: You may.

5

6 CROSS-EXAMINATION

7 BY MR. KENNEDY:

8 Q Mr. Ruffino, I'm showing you what's
9 previously been admitted as Defendant's C. It's an
10 Instant Recall Sheet. Have you ever seen one of those
11 before?

12 A No, I have not.

13 Q Are you aware that a record is made of every
14 time an officer or analyst comes to a crime scene when
15 they call into dispatch?

16 A Yes.

17 Q I would ask you if you could look down. Do
18 you see a column there that say "time" on the left?

19 A Uh-huh.

20 Q Is that yes?

21 A Yes.

22 Q And if you look down to where it says 11,
23 colon, 33. Do you see that?

24 A Yes.

25 Q And it says LVC1502, and there's initials AR

1 after that?

2 A Yes.

3 Q Is that your code, 1502?

4 A Yes.

5 Q Is that when you arrived at the scene you
6 called dispatch and told them you were there?

7 A Yes.

8 Q Just below that it says at 11:59 there's an
9 LVCS2, and then ER, which we've been previously told is
10 en route. Do you recognize that LVCS2, who that stands
11 for? Is that another crime scene analyst?

12 A Yes. That's actually Allen Cabrales, which
13 he actually was my supervisor at the time, he arrived at
14 that time.

15 Q So he did arrive?

16 A Yes.

17 Q And just looking at that same area, if you
18 go down the very next reference to an officer is 1208
19 LV2C34, and then CL, which we've been told means clear.
20 When you arrived at the scene at 11:33, how many Metro
21 officers were there?

22 A There was two Metro police officers.

23 Q Do you know their names?

24 A Offhand, no.

25 Q But two uniformed officers?

1 A Two uniformed officers, that's correct.

2 Q And, at least according to this exhibit, at
3 12:08, whoever LV2C34, looks like that officer cleared; is
4 that correct?

5 A I'm not familiar with this sheet, but it
6 appears to be, yes.

7 Q And there's another one just below that at
8 12:09, LV2C12, also looks like that person clears as well?

9 A Yes. That's what it appears to be.

10 Q And your supervisor, Mr. Cabrales, if you go
11 down further, looks like he arrives at 12:09 as well; is
12 that correct?

13 A That's correct.

14 Q Now, when you got to the scene at 11:33 that
15 morning, there are two officers there and yourself, but
16 those are the only individuals there from Metro; is that
17 correct?

18 A That's correct.

19 Q Now, you testified yesterday that shortly
20 after you got there, that -- I guess I want to find that
21 out. You said you got there, you saw the glass with the
22 blood on it and you thought: This is not a malicious
23 destruction of property case, this looks like a murder
24 scene. You testified to that the day before yesterday?

25 A Yes, yes. And describing all the bullets

1 and the holes and everything, that's correct.

2 Q And when you arrived at the scene, who took
3 you to the area of 1929? Did one of the officers escort
4 you over there?

5 A Yes, they did; one of the officers.

6 Q So shortly after you got there, just
7 visually, did you immediately think: Hey, this could be a
8 murder scene, given your years of experience?

9 A Given my years of experience, you always
10 thoroughly look through scenes and everything else. Of
11 course, I went inside, I looked around, I started seeing
12 bullets and everything else. So it wasn't until that time
13 that I said this appears to be a murder scene.

14 Q I realize this is over two years ago, but
15 can you recall how long it took you to realize that, hey,
16 maybe this is a murder scene and not a destruction of
17 property-type incident?

18 Was it a matter of just a few minutes?

19 A No. It was probably five or ten minutes in
20 talking to the officer, finding out information from the
21 officer, going in, looking around. You know, as we often
22 do, we don't rush to anything. You don't need to make
23 split-second decisions because it's not a matter of life
24 and death.

25 But I would say five, ten, fifteen minutes

1 or so, and it was at that point when I contacted my
2 supervisor, Allen Cabrales, and I said that this appears
3 to be a murder scene. And it was at that time he called,
4 I believe it was Sergeant Hefner from homicide, and that's
5 how the whole incident got started.

6 Q Did you tell the two uniformed officers
7 there that this looks like a murder scene rather than a
8 destruction of property case?

9 A I believe at some point I did. I don't
10 recall, exactly, but I believe I did.

11 Q Would it have been after you had this belief
12 that it was a murder scene sometime after 10, 15 minutes?

13 A Yes, it would have.

14 Q Do you distinctly remember telling them:
15 Hey, I think this is a murder scene, or something along
16 those lines?

17 A I don't remember exact verbiage, this is two
18 years ago. I don't remember exactly what I told them. I
19 thought that, but we don't always express when we think.

20 Q Do you have an understanding as to whether
21 or not you told them that you thought it was a murder
22 scene before they left at 12:08 and 12:09?

23 A Probably. In talking with my supervisor and
24 by the time he talked to the sergeant, and by the time
25 they were en route and everything else, I might not have.

1 Otherwise, I believe they would have stayed there. So I
2 might not have told them at that particular point in time.

3 Q That's important though. If you thought it
4 was a murder scene, you wouldn't want to be left alone on
5 a murder site; is that fair to say?

6 A Well, yeah, that's fair to say. But I was
7 still observing the scene and looking at it and in
8 communication with my office.

9 Q Is there a policy with Metro that you should
10 not be left alone at a murder scene, that there should be
11 some sort of back-up there, whether it's an officer?

12 A Oh, yes, definitely. When you walk in and
13 there's a body laying there, certainly. We have officers
14 that stand at post at the front. Only people related to
15 the scene such as homicide and ourselves, they let us in,
16 and there is a strict regiment policy in place to take
17 care of that.

18 However, this call was malicious destruction
19 of private property and, slash, suspicious circumstances.
20 So that type of policy doesn't go into place until at some
21 point we determine this is a murder scene and have people
22 en route regarding that.

23 Q According to this incident recall, your
24 supervisor arrived around 12:09, about the same time the
25 two officers left. Do you have a recollection of him

1 arriving at the scene?

2 A Of my supervisor, yes.

3 Q And did you talk with Mr. Cabrales about
4 what you had discovered there?

5 A Yes.

6 Q Did he stay there with you in that area?

7 A Yes. He stayed in that area, and I don't
8 remember if he had further conversation with homicide at
9 that time by telephone, but he stayed. Once he got there,
10 he stayed.

11 Q So at least for some period of time you and
12 Mr. Cabrales were there alone; is that fair to say?

13 A Yes.

14 Q Do you remember when the next Metro officer
15 or detective, or other Metro personnel arrived?

16 A I think I have it stated in my report. I
17 don't remember the exact minute. If you want me to
18 refresh my memory by looking at my report, I can do that.

19 Q If that would help you, yes.

20 A Okay. I have it listed in my report as
21 homicide detectives were contacted and they arrived a
22 short time later. So with Allen Cabrales arriving 12:09
23 or thereabouts, I would say probably within a half hour,
24 approximately, the homicide detective arrived after that.

25 Q Did you go in the back of 1929 at all to

1 take a visual of what was behind there while you were
2 there?

3 A When you say in the back, do you mean behind
4 the east side of the building?

5 Q Yes.

6 A Outside?

7 Q Yes.

8 A Yes.

9 Q Did you do that with Mr. Cabrales, or did
10 you do it on your own?

11 A I think as far as the outside it was done at
12 some point later because the interior rear door was
13 locked, and we were concerned about keeping an eye on that
14 particular scene. So I think we did that at a later time
15 when Randy McPhail came, and then we did more of a
16 thorough search of the outside rear of the premises.

17 Q Okay. And when you're on a site you don't
18 wear a uniform, do you?

19 A No.

20 Q You're in a suit or regular shirt?

21 A Basically, sports shirt and slacks and ID
22 badge. And we carry weapons, so I had my weapon on.

23 Q Do you have a Metro badge that affixes to
24 you?

25 A No. We have what they call an ID card, and

1 you either can clip it on or wear it around your neck.

2 Q The scene itself outside 1929, was there any
3 evidence of blood or blood droplets outside the entrance
4 of 1929?

5 A Yes, there was.

6 Q Was there any pattern from those droplets to
7 inside the building; in other words, a trail of droplets
8 leading into the building?

9 A I wouldn't say there was a trail of
10 droplets, but there was a couple of droplets outside. I
11 don't think I determined direction or anything at that
12 particular time, but there was a couple droplets out on
13 the sidewalk. The majority of the apparent blood was at
14 that point of entry and, of course, inside on the floor.

15 Q There was no blood leading to the back of
16 building where the door was secured; is that correct?

17 A Not that I saw.

18 Q And you looked over the whole area?

19 A Yes.

20 MR. KENNEDY: Pass the witness, Your
21 Honor.

22 THE COURT: Anything further, counsel?

23 MR. KANE: No redirect. Thank you,
24 Your Honor.

25 THE COURT: Thank you, sir. Next

1 witness, please.

2 MR. FATTIG: David Welch.

3
4 Whereupon,

5 DAVID WELCH,
6 was called as a witness by the State, and having been
7 first duly sworn, was examined and testified as follows:

8
9 DIRECT EXAMINATION

10 BY MR. FATTIG:

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

13 A My name is David Welch, W-e-l-c-h.

14 Q Sir, what is your occupation?

15 A I am employed as a criminalist or a forensic
16 chemist with the Las Vegas Metropolitan Police Department.

17 Q For how long?

18 A Approximately 23 years.

19 Q And what are the general duties and
20 responsibilities of your job?

21 A Generally, a criminalist or forensic chemist
22 with the department analyzes a variety of different pieces
23 of evidence, or physical evidence associated with crimes,
24 crime scenes, or things related to that.

25 Q Have you had any special training and/or

1 education in order to get that job?

2 A Yes, I have. I received my Bachelor of
3 Science Degree from the University of Nevada Las Vegas
4 where I majored in biology. I then attended graduate
5 school at Northeastern University in Boston,
6 Massachusetts, where I received a Master of Science
7 Degree in Forensic Chemistry.

8 Over the course of the last 23 years I've
9 attended numerous training classes and courses in forensic
10 science. I've also attended numerous symposiums and
11 meetings related to forensic science.

12 Most recently I've been working in the DNA
13 section of the laboratory. And over the three to four
14 years, I've taken several specific classes related to the
15 analysis of DNA evidence. One of those was a very intense
16 two-week course at the FBI academy.

17 As I mentioned, I have 23 years working
18 experience working in the laboratory as a practicing
19 forensic scientist. I am also certified by the board,
20 American Board of Criminalistics as a Generalist in
21 Forensic Science. And I'm also certified as a Specialist
22 in Molecular Biology.

23 Over the course of my career I've testified
24 in courts in the State of Nevada over 500 times, and the
25 District Courts over 150 times. And, specifically, with

1 regards to DNA analysis, probably about a dozen times.

2 Q And when you've testified with regards to
3 DNA analysis, have you been recognized as an expert in
4 that?

5 A Yes, I have.

6 Q For approximately a dozen times?

7 A Yes.

8 MR. FATTIG: Your Honor, at this time
9 the State would tender Mr. Welch as an expert in the field
10 of DNA analysis.

11 MR. CHRISTIANSEN: May I question, Your
12 Honor?

13 THE COURT: Voir Dire? You may.
14

15 VOIR DIRE EXAMINATION

16 BY MR. CHRISTIANSEN:

17 Q Good morning, Mr. Welch.

18 A Good morning.

19 Q Mr. Welch, you just told the jury you've
20 testified 500 times as an expert, correct?

21 A In various courts, yes.

22 Q You haven't testified anywhere near 500
23 times about DNA, right?

24 A I think I mentioned that I testified 12
25 times on DNA.

1 Q Twelve times on DNA in the last three years
2 that you've been working on DNA?

3 A The last -- actually, I've been working on
4 DNA about four to five years.

5 Q In the four to five years you've been
6 working on DNA, you've attended four classes that the
7 department paid for, for you to go to --

8 A I think there's several classes there
9 listed. I would say there's -- aren't there seven?

10 MR. CHRISTIANSEN: May I approach,
11 Judge? I have his CV. I can't tell which are DNA classes
12 or not.

13 THE COURT: You may.

14 THE WITNESS: This is Perkin Elmer,
15 Advanced FTR, Forensic Statistic, Capillary
16 Electrophoresis, Basic Principles, PM/DQ Alpha; seven
17 classes.

18 Q Seven classes in the last four to five
19 years, correct?

20 A Yes.

21 Q And just so we're clear, these are classes
22 that you sign up for, the department pays for and you go
23 and attend, and then you put them on your CV as
24 qualifications for you to testify as an expert?

25 A I attend the classes to learn something

1 about DNA analysis and what I do for a living.

2 Q Okay. What type of DNA analysis did you
3 perform in this case, the specific tests that you did?

4 MR. FATTIG: Your Honor, I'm going to
5 object at this point. He seems to be getting into
6 cross-examination.

7 MR. CHRISTIANSEN: It is not, Judge.
8 The testing done in this case is not the newest testing.
9 I'd like to know how many times he testified as an expert
10 using this specific type of test that he's going to offer
11 expert testimony today.

12 THE COURT: Ask that question.

13 Q (By Mr. Christiansen) How many times using
14 the type of testing you did in this case back in '98 and
15 '99, have you testified as an expert?

16 A I really can't tell you for sure. I would
17 guess that of the 12 times, perhaps three or four times
18 was on this older technology.

19 Q The older technology you testified three or
20 four times as an expert in the courts in Nevada?

21 A Yes.

22 Q And you're a tech at the lab, a crime
23 analyst?

24 A Forensic chemist.

25 Q And you're supervised by Birch Henry. He's

1 the actual supervisor of your lab, correct?

2 A He's the forensic lab manager.

3 MR. CHRISTIANSEN: Judge, I object to
4 his offering expert testimony three times, I don't think
5 qualifies as an expert. But I'll submit it on that.

6 MR. FATTIG: Your Honor, any objection
7 would go to the weight and not for admissibility.

8 THE COURT: Well, are you asking to
9 have this man qualified as an expert?

10 MR. FATTIG: Yes.

11 THE COURT: I think it's appropriate.
12 I'm going to consider Mr. Welch an expert in his chosen
13 field of analyzing DNA. Proceed, please.

14 MR. FATTIG: Thank you.

15

16 DIRECT EXAMINATION CONTINUED

17 BY MR. FATTIG:

18 Q Sir, could you please tell the jury what DNA
19 is, and explain how it might be relevant to solving a
20 crime?

21 A Okay. If I could, could I use the --

22 MR. FATTIG: Your Honor, may he stand
23 up and use the diagram?

24 THE WITNESS: I think it helps with a
25 little explanation.

1 THE COURT: Do you need a marker?

2 MR. FATTIG: And just for the record, I
3 believe the diagram has been premarked as State's Proposed
4 No. 33 for purposes of identification at this point.

5 THE COURT: All right.

6 THE WITNESS: What I'll try to do very
7 briefly is tell you a little something about DNA, tell you
8 a little something about how to interpret --

9 MR. CHRISTIANSEN: Judge, I'm going to
10 object to a narrative. If there's a question posed, he
11 can answer it.

12 THE COURT: What is the question here?

13 MR. FATTIG: The question was, if he
14 could explain to the jury what DNA is, and how it might be
15 relevant to solving a crime.

16 THE COURT: I'm going to allow that.

17 THE WITNESS: I believe that's what I
18 am trying to do. And to continue with what I was going to
19 say, so you know a little something about what DNA is,
20 there are charts we'll be looking at. I want you to be
21 able to understand what the results of the DNA typing of
22 the charts mean, and also what the statistics mean, the
23 numbers mean. And I'll try to do that in a very brief
24 period of time.

25 First of all, when we talk about DNA, it's a

1 compound that's found in trillions of cells in the human
2 body. Many of the cells in the human body have a shape
3 that sort of looks like this, and there's a center portion
4 of the cells.

5 Some of these cells are found in blood.
6 They are not the red blood cells, but they're the white
7 blood cells. There are cells that we'll be talking about
8 that are called buckle cells. And buckle cells are cells
9 that are just scraped from the inside of your cheek. So
10 when we refer to buckle cells, that's what we're talking
11 about.

12 Blood stain cards contain these type of
13 cells where we are able to get DNA from a person's blood.
14 Other types of cells in the body that contain DNA that we
15 won't be talking about are sperm cells, and there's a
16 variety of other different types of cells.

17 The DNA that we're talking about is actually
18 in the center portion of these cells. If we blow up that
19 center portion of each one of these trillions of cells in
20 your body, what you would see is that within these cells
21 there are 23 pairs. They sort of look like an H like
22 this, 23 pairs of things that we call chromosomes.

23 And the DNA that we're talking about within
24 the nucleus of the cells are actually packaged into those
25 23 pairs of chromosomes.

1 MR. FATTIG: For the record, he's
2 drawing on the second piece of paper at this point.

3 THE COURT: That will be fine.

4 THE WITNESS: What I'm going to do is
5 blow up one of those pairs of chromosomes for you, and
6 when we look at this blown-up chromosome, what we find out
7 is the DNA that we're talking about is actually packaged
8 within the pairs of these chromosomes. The DNA is
9 stranded, double-stranded and is packaged in these
10 chromosomes like so.

11 Every so often it sort of goes in a
12 semi-straight line, and then all of a sudden it tends to
13 ball up a lot. It goes down a little bit further, and
14 then it tends to ball up, goes down a little bit further
15 and tends to ball up.

16 The same thing with this chromosome here.
17 Remember, these are pairs of chromosomes. The reason
18 they're pairs of chromosomes, is because you get one, you
19 inherit one of these chromosome halves from your mother,
20 and one half from your father. So you are a genetic
21 make-up of both your mom and your dad, and you receive
22 half of your genetic information from your mother, and
23 half from your father.

24 Where these DNA tends to sort of ball up, we
25 call those things, those areas of the chromosomes, genes.

1 And in these 23 pairs of DNA, there are approximately a
2 hundred-thousand genes.

3 Now, what we do in DNA, it's called DNA
4 typing. What we're actually doing is, we're looking at
5 specific areas of DNA at different chromosomes, on
6 different chromosomes. And what we're doing is, we're
7 looking for a variation in the DNA that can distinguish
8 one person from another person.

9 Just as an example, it doesn't have anything
10 to do with DNA typing, but we all know when we talk about
11 blood typing, we're probably all familiar with our A-B-O
12 blood type. We know that we're either A, B, A-B or O.
13 We're also familiar with a factor called the RH factor.
14 We also probably know whether we're positive or negative.

15 Again, this is just the way of typing blood
16 to distinguish one person from another person, and
17 identifies you and your particular blood type.

18 In DNA typing that's what we're trying to
19 do, but instead of typing antigens and antibodies which is
20 what is done in the A-B-O system, we're looking at
21 specific sites, specific areas of certain chromosomes
22 where we're looking at that area, and looking at the types
23 of DNA that is present there, and trying to distinguish
24 one person from another person.

25 So the current terminology that we're using

1 today, if I refer to something as a point of examination,
2 this is the site on a chromosome that we're going to
3 examine. If I identify that as D7S8, what the D7 means to
4 me and other people that analyze DNA is, it's Chromosome
5 No. 7, and I'm looking at Site No. 8. So it's just the
6 location on the chromosome.

7 Another example would be D1S80. What does
8 that mean? It means that if I'm talking to other people
9 that do the same kind of work I do, it tells them this is
10 the area I am looking at and examining, D1, Chromosome
11 No. 1, Site No. 80.

12 We referred, or I referred to some of the
13 technology that we'll be talking today as older
14 technologies. In the older technology, sometimes we
15 didn't use this terminology, we just used letter
16 designations instead. It is a little bit more confusing,
17 and that's why we switched over to this.

18 But when I talk about something called DQA1,
19 two people that work with DNA and analyze it, we know that
20 this is a site on Chromosome No. 6. So, again, even
21 though it's a letter designation and it's not as clear as
22 this, keep in mind that it's a site on a chromosome that
23 we're just looking for variations amongst people.

24 LDLR, again, just an older terminology for a
25 site that we're looking at on Chromosome No. 19.

1 MR. FATTIG: For the record, he's going
2 to start drawing on the third piece of paper.

3 THE COURT: Very good.

4 THE WITNESS: Now, if we look at the
5 DNA in a little bit more detail, what we find out is that
6 DNA is composed of only four compounds. I'm just going to
7 write the letter designations. One is called Adenine.
8 One is called Guanine. One is called Thymine, and one is
9 called Cytosine.

10 DNA is composed of these four compounds and
11 they are found in pairs. So an A always matches up with a
12 T; a G with a C; a T with an A; and a C with a G. And we
13 would call one of these matchings one base pair.

14 In humans the length of this series of
15 compounds is three billion base pairs long, because we're
16 very complicated things. The same DNA is found in the
17 bacteria, the same four substances, but it's only 40 base
18 pairs long. So the length of DNA that we're looking at in
19 one set of chromosomes is three billion of these base
20 pairs long.

21 I put this up here to explain when we do DNA
22 typing, there's two types of DNA typing that we do. One
23 is, we are looking for what's called a sequence variation.
24 In other words, at D7S8, Chromosome No. 7, Site No. 8, I'm
25 looking for a variation amongst people that is a sequence

1 variation.

2 And what I mean by that is, at that site,
3 Chromosome 7, Site 8, if I examine that site what I find
4 out -- and this isn't exact, this is just a representation
5 so you understand what's going on -- I am looking for a
6 sequence variation. So let's just say one sequence would
7 be A-G-T-C-A-G-T-C.

8 It's a variation in a sequence of these
9 letters. At that same site I may observe another
10 sequence, and that sequence may be A-A-G-G-T-T-T-T.

11 The point I'm trying to make is, can you see
12 that there's a difference between the sequence here?
13 There may be another sequence that may be G-G-G-G-G-G-G-T.
14 The point is, it's a difference in the sequence. We
15 observe that, and for typing purposes what we do is, we
16 just like to number or letter these things.

17 So sometimes if there's a sequence variation
18 we may call this A, and we might call this one B, or we
19 may call this one C. It's just an easy, shorthand method
20 for describing there's a variation in the sequence, and
21 this is what it is.

22 Instead of using letter designations,
23 sometimes we can use number designations. So we could
24 also call this 1, 2 or 3. It's up to us, or up to the
25 people who discover these differences. Or I could call it

1 another sequence, another number variation, but it might
2 be 4.1, 4.2 or 4.3.

3 In other words, it's just a way, these
4 letters and numbers are just a way to describe that
5 there's a variation and they're similar.

6 The other type of DNA typing we do is, we
7 look at a particular site like D1S80. So on Chromosome
8 No. 1, Site 80 we see differences in the DNA, but it isn't
9 a sequence variation. It's what we call a length
10 variation.

11 On D1S80, what we observe is that there is a
12 series of DNA letters; A-G-T-C that repeat themselves. So
13 instead of seeing a sequence variation, what we see at
14 D1S80 is a repeating of these four bases over and over
15 again. So what we see is, there's A-G-T-C, A-G-T-C,
16 A-G-T-C, and so on and so forth.

17 For example, at D1S80, what we observe is
18 that in humans there is a length variation of these what I
19 call box cars from 14 to 41. So if I type your blood at
20 D1S80, you are going to be a number 14, 15, 16, 17, 18, up
21 to a possible 41.

22 So what I'm saying is, the variances there
23 we call -- you're either a No. 14 through 41. And it's
24 just a way to identify that type. So an example of this
25 type, one person may be a 14, 41. One person may be a 25,

1 28. Another person may be a 14, 36. Think of it, it's
2 just the type. It's just an identification of the DNA at
3 a certain site.

4 MR. FATTIG: For the record, he's
5 moving on to a fourth piece of paper.

6 THE WITNESS: My last piece.

7 Now, the thing I want you to also understand
8 is, remember, we're talking about chromosome pairs. So
9 when we talk about the DNA types, remember, you're getting
10 one of those types from your mom, and one from your dad.

11 So oftentimes when you see the typing
12 results on the DNA chart, you'll see one or two letters or
13 numbers. So if you see something that is a 25, 26 in
14 D1S80, what that means is, that in your mom's half of the
15 chromosome there are 25 repeat units. In your dad's part
16 of the chromosome there were 26 repeat units.

17 On another site you might see numbers like
18 4.1, 4.1. Again, you see two numbers. What that means
19 is, that this is a sequence variation. And what it is, is
20 that in your mom it was a sequence we call 4.2, and in
21 your dad there was sequence called 4.2.

22 It could also could be 4.1, 2. So there's a
23 difference in the variation. On the charts, just for sake
24 of convenience, sometimes you see one letter. And this is
25 what I want to explain to you. You just see A-B. Our

1 thought at the time was, it just made more sense to put B.
2 But what B really represents is B-B.

3 So, in other words, instead of writing B-B,
4 meaning you were a B from your mom and a B from your dad,
5 we just put B. But understand, that's what it means. If
6 you see a B, C, obviously, you inherit one B from your mom
7 and a C from your dad.

8 Now, the numbers, what do the numbers mean?
9 We're going to be looking at some numbers. You know,
10 again, using A-B-O as an example, that in the A-B-O system
11 there's a population breakdown, meaning that approximately
12 45 percent of the population are Type O; 40 percent are
13 Type A; ten percent are Type B; five percent are Type A-B.

14 So when we talk about these numbers what
15 we're doing is, we're breaking down the population and
16 we're coming up with a probability. What is the
17 probability of this person having this DNA type?

18 Now, going back to the A-B-O system, since
19 most people can relate to that, if I were to tell you, if
20 we were to pick a person and we were to type them in the
21 A-B-O system and find out that they were Type B, Type B is
22 about ten percent of the population.

23 What does mean? That means that if you
24 randomly looked at people, one out of ten people you would
25 find would be Type B. That's the probability of finding a

1 Type B person.

2 Let's make it a little bit more specific.
3 Instead, let's do the RH factor and we find out that the
4 person is a B negative. Well, when it comes to the RH
5 factor, 90 percent of the population are positive, ten
6 percent, approximately, are negative.

7 So what is the probability of finding a B
8 negative person if you analyzed their blood? Well, first
9 of all, a B is in ten percent of the population. A
10 negative is ten percent of ten percent. So that means
11 that one percent of the population, or one in a hundred
12 would have B negative blood.

13 So that means if you were to randomly
14 blood-type people one out of a hundred people, it's
15 probable we'll have B negative type blood. So I think
16 that's a pretty sufficient explanation. I hope you
17 understand.

18 Q Can DNA analysis be used to exclude suspects
19 in a criminal case?

20 A Yes. In fact, generally speaking, most of
21 the terminology we use in our laboratory is the exclusion
22 of suspects. Because it's our feeling that our main goal
23 is to analyze the physical evidence, or relay the facts
24 what are the results, but also to exonerate innocent
25 people. We certainly don't want to put innocent people in

1 jail.

2 Q Now, can it also be used to help identify
3 suspects?

4 A Yes. It could also be used to identify
5 suspects

6 Q And in your reports I see the words
7 exclusion or inclusion.

8 A Yes.

9 Q Or included and excluded. Could you explain
10 what that means?

11 A Well, basically, if we type a piece of
12 physical evidence, some physical evidence found at a crime
13 scene like blood, and then the detectives generate a
14 suspect. And the question is, is this blood from the
15 suspect? When we do the DNA typing results, we do DNA
16 typing on the blood from the scene and the standard from
17 the suspect.

18 How we word our reports if there is a match
19 is, we say we can't exclude that person. What we're
20 hoping to do is exclude the person that he doesn't match.
21 But if we cannot exclude him, our terminology is, this
22 person cannot be excluded as a source of the blood.

23 Q In this particular case did you, in fact,
24 receive evidence and conduct DNA analysis upon it?

25 A Yes, I did.

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

3 THE COURT: You may.

4 Q (By Mr. Fattig) Showing you what has been
5 marked as Proposed No. 26, do you recognize that?

6 A Yes, I do.

7 Q And how do you recognize it?

8 A I recognize it because of my seal, evidence
9 seal appears at the bottom of the envelope with my
10 initials, P number, and date I completed the analysis, and
11 my signature appears below the chain of custody with the
12 same date.

13 Q And is this one piece of evidence that you
14 examined in this particular case?

15 A This is one piece of evidence that I
16 examined, that's correct.

17 Q In examining the evidence in this case, I
18 take it you examined several different pieces of evidence?

19 A Yes. From case to case we could examine
20 just a few pieces of evidence, or 40 or 50 pieces of
21 evidence.

22 Q Okay. In this particular case you obtained
23 this from the evidence lab, evidence vault?

24 A We generally obtain it from the evidence
25 vault.

1 Q All of the pieces of evidence that you
2 obtained in this case, were they in a sealed condition
3 when you obtained them?

4 A Yes, they were.

5 Q And did you, in fact, enter them
6 via -- which has been explained earlier -- another point
7 besides the seal that's already on there?

8 A Yes, uh-huh.

9 Q Then you sign it and document that?

10 A Yes.

11 Q And all the pieces of evidence?

12 A Yes.

13 Q In conjunction with the testing that you
14 did, did you, in fact, produce two different reports?

15 A Yes, I did.

16 Q With your findings?

17 A Yes, I did.

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

20 THE COURT: You may.

21 Q (By Mr. Fattig) Sir, showing you what has
22 been marked as Proposed No. 34, do you recognize that?

23 A Yes. That is a copy that's been blown up of
24 parts of my report.

25 Q Parts of your report?

1 A Parts of my report.

2 Q And I see there's some writing on there.
3 Where did that come from?

4 A The writing at the bottom of this particular
5 chart was placed on there by myself prior to my testimony.

6 Q And does that accurately reflect portions of
7 your two reports, the findings?

8 A Yes, it does.

9 Q And how about State's Proposed No. 35, do
10 you recognize this chart?

11 A Yes. This chart is copies of parts of my
12 report.

13 Q And, again, is this an accurate reflection
14 of the findings?

15 A Yes, it is.

16 Q That you reached in this case?

17 A Yes.

18 MR. FATTIG: Move to admit 34 and 35,
19 Your Honor.

20 MR. CHRISTIANSEN: No objection.

21 THE COURT: Are the original reports in
22 evidence?

23 MR. FATTIG: No; just these portions.

24 THE COURT: These items will be
25 received. Thank you.

1 MR. FATTIG: May I have the witness
2 come down from the stand, Your Honor?

3 THE COURT: Yes.

4 Q (By Mr. Fattig) Why don't we look at
5 No. 34 first. What is a reference standard?

6 A A reference standard is a standard that we
7 receive as requested from either the suspects or victims
8 in a particular case.

9 Q And what do we have in this particular case?
10 Did you have reference standards?

11 A Yes. In this particular case we have three
12 reference standards. One of the reference standards is a
13 buckle swab. Again, a swab is taken from the inside of
14 the cheek of a particular person, in this case from John
15 J. Seka.

16 One of the other reference standards was a
17 standard that was a rib bone and muscle tissue taken from
18 a victim, Peter Limanni. So at the autopsy they took a
19 rib and muscle tissue. It's sometimes the case that not
20 enough blood is present to do DNA testing on the blood,
21 and in that case we use a rib or muscle tissue.

22 And the third reference standard is a blood
23 stain from a victim, Eric Hamilton.

24 Q And did you conduct DNA analysis on the DNA
25 kit from Mr. Limanni, blood stained card from

1 Mr. Hamilton, and the buckle swab from Mr. Seka?

2 A Yes, we did.

3 Q And did you reach some results based on
4 that?

5 A Yes.

6 Q Does the chart show that?

7 A This is what the chart shows.

8 Q Could you explain that, the results?

9 A Yes. What I think the Prosecution was
10 trying to do was combine --

11 MR. CHRISTIANSEN: Objection. The
12 witness is speculating what the Prosecution was wanting to
13 do. It's improper.

14 THE COURT: Mr. Fattig, response?

15 MR. FATTIG: No response, Your Honor.

16 THE WITNESS: This is the results of my
17 analysis on reports that I have generated. Per my
18 explanation, I did DNA typing on the reference standard
19 from Seka, Limanni and Hamilton.

20 This is called the DNA chart. This is a
21 summary of the results with probabilities. And what you
22 can see here is that Mr. Seka's blood in DNA terminology,
23 L-D-R-L-R. Again, it's a site on a particular chromosome.
24 At that chromosome site he was found to be what we call a
25 Type B. And, again, the single B actually refers to B-B,

1 meaning both his mom and dad had a B.

2 In G-Y-P-A, A-B. In H-B-G-G, A. I won't go
3 through the rest of them, but you can see if you look at
4 it that this is a composite. This is what we call his DNA
5 type at eight different sites that we typed. One thing we
6 also do is, we try to type the standard to determine
7 whether it's male or female. So this is male. Obviously,
8 Mr. Seka is a male.

9 If we look at Mr. Limanni's, again, this is
10 his DNA type. The thing that I would point out to
11 you -- again, all three of these are males. The thing I
12 would point out to you is, if you would look at those one
13 next to the other, you can see that they're different.

14 If you look at DQA1, we see that Mr. Seka is
15 what we call a 1.33. Mr. Limanni is a 1.2. Mr. Hamilton
16 is 1.4, 1.4. So just at that site we can separate those
17 three bloods.

18 If you continue to focus and look at the
19 different other sites here, for example, D1S80, Mr. Seka
20 is a 24, 27; Mr. Limanni is 18, 25; Mr. Hamilton, 25, 31.
21 If you look at the rest of those sites you can see that we
22 can easily distinguish one person's blood or DNA from
23 another.

24 So these are reference standards of suspect
25 and victims where we did the DNA type. And, again, as I

1 was describing the probabilities like the B negative
2 aspect, these numbers here represent what is the
3 probability of finding this particular blood or DNA type
4 in a random population.

5 So if you have a random population and you
6 were to do DNA typing on those random people, what you
7 would find out is that in the Caucasian population, in a
8 white population, the probability of finding somebody with
9 this blood type or this DNA type, excuse me, are one in
10 1.9 million. So you would have to test 1.9 million people
11 in order to find one person that has this DNA type.

12 Now, the probabilities vary by race. So if
13 you were looking at an African American population, it's
14 rare to find that DNA type. You would have to check 84
15 million people in order to find one person with that DNA
16 type. In the Hispanic population you would have to examine
17 17 million people.

18 So, again, those numbers are just
19 probabilities. What is the probability that you are going
20 to find a person with this blood type in the general
21 population? That's Mr. Seka.

22 In the case of Mr. Limanni, you can see
23 there are numbers but they vary because it's a different
24 person, and the probabilities are different. Just like we
25 discussed the B negative person, what is the probability

1 of finding somebody that's A-B positive? It's a different
2 type, different set of numbers associated with it.

3 And, again, Mr. Hamilton, you can see that
4 there are numbers. His DNA type is different than the
5 other two, and there are numbers associated with the
6 probabilities of finding those types.

7 Q And showing you Exhibit 35, what do we see
8 on this Exhibit?

9 A Well, what we see is the typing results of
10 various pieces of evidence that were examined in this
11 particular case by me.

12 Q Let's start with the top there. We have
13 "booked by." Would that be Mr. McPhail, the crime scene
14 analyst?

15 A Yes, that would be.

16 Q And under there we have a package?

17 A Yes. To identify the evidence that was
18 examined in a little bit more detail, we try to put down
19 who booked the evidence, what the package number was, what
20 the item number was, and a short description of the item
21 itself. So, yeah, this is a swab with blood booked by
22 Mr. McPhail under that package number, and that was the
23 item number. This was the results of the analysis.

24 Q Okay. And this is Item No. 4 from
25 Mr. McPhail?

1 A Right.

2 Q Which was from the 1998 Dodge van?

3 MR. CHRISTIANSEN: Your Honor, may I
4 approach to see better?

5 THE COURT: Yes, you may.

6 Q (By Mr. Fattig) Could you get into your
7 conclusions regarding this first piece of evidence booked
8 by Mr. McPhail from the Dodge van?

9 A Again, the middle portion of the chart or
10 the typing results, and then the side portion of the chart
11 has the conclusion. So the conclusion was, Mr. McPhail
12 called it apparent blood. It was determined that it was
13 human blood.

14 Q You conducted the test?

15 A I conducted the test to determine it was
16 human blood. The next part of the conclusion says who is
17 included as a source of the human blood. Well, Mr. Peter
18 Limanni. So what that means is, if you look it means that
19 he can't be excluded. In other words, this DNA type is
20 the same as Mr. Limanni. And if you look over here and
21 you look at the first one, you will see a B, B, A, A, A,
22 A, 1.2, 18, 25.

23 In this particular case, there was an NR put
24 up there. What that means is no results. Sometimes in
25 the DNA typing there are things that we encounter that

1 prohibit us from doing the typing. In other words,
2 remember, these are not pristine samples. These are
3 samples that are found at crime scenes.

4 There are things that can be found on
5 clothes like dyes that sometimes interfere with the DNA
6 testing. There are chemicals that are used on rugs that
7 may interfere with the DNA testing. So sometimes we hope
8 we get all the DNA results, but sometimes that just
9 doesn't happen.

10 In this case, there was some kind of
11 reaction where I did not get a result as far as whether
12 the DNA was male or female. So in those cases we just put
13 an NR there, meaning no results were obtained.

14 Q Does that affect your ability to make a
15 probability?

16 A No. The antigen is not taken into account
17 as far as the probability. It's just additional
18 information that says whether the blood was male or
19 female, but it's not taken into these numbers at all.

20 Q And what was the probability on that first
21 piece of evidence that it was Peter Limanni's blood, if I
22 were to tell you Peter Limanni was a Caucasian man?

23 A Then the probabilities are one in 1.8
24 million, meaning that you would have to test 1.8 million
25 people in order to find one person with that DNA type, and

1 the DNA matches Mr. Limanni.

2 Q Let's go on to the second piece of evidence
3 here which is listed as glass fragments with apparent
4 blood booked by Crime Scene Analyst Ruffino, Item No. 9
5 which he actually testified about.

6 What were your results on that test?

7 A Well, again, on the glass fragments we
8 generated the DNA type with probabilities. It was human
9 blood, and the included source is Eric Hamilton, which if
10 we look over here at Eric Hamilton's -- and I apologize
11 for having to write this in, but I hope you can see that
12 all the DNA types match Mr. Hamilton's, so the type is the
13 same.

14 Q And with regards to Mr. Hamilton, if I were
15 to tell you that Mr. Hamilton is an African American male,
16 what was the probability that that was his blood?

17 A If he was an African American male, then the
18 probability is one in 2.8 million, meaning you would have
19 to sample 2.8 million people to find one person that has
20 this type.

21 Q Would you have to sample 2.8 million African
22 Americans?

23 A Yes. If you want to talk specifically about
24 African Americans, right.

25 Q And let's move on to the third item on the

1 chart, which is just listed as magnetic cards with
2 apparent blood, again, booked by Mr. McPhail, Item No. 14
3 which is from --

4 MR. CHRISTIANSEN: Objection, Your
5 Honor. May we approach, briefly?

6 THE COURT: You may.

7 (Whereupon, counsel conferred with the Court.)

8 THE COURT: Proceed, counsel.

9 Q (By Mr. Fattig) And, sir, on the third
10 piece of evidence that you tested, Item 14 which is the
11 magnetic cards that I was talking about, what were your
12 results based on testing of that?

13 A Well, the magnetic cards, again, it was
14 human blood. The included source is Peter Limanni. So if
15 you look at Peter Limanni, you look at the results of the
16 typing there and the typing here, and they're the same.
17 And, again, Mr. Limanni is a Caucasian and one in 1.8
18 million people have that typing.

19 Q And how about the fourth piece of evidence?
20 Looks like Mr. McPhail, Package 14, Item 37. Again, what
21 were your conclusions on that one?

22 A On this particular swab it was human blood,
23 the included source is John Seka. Now, on this particular
24 swab you can see or focus in on the numbers, and you can
25 see that they're different.

1 The reason that the numbers are different on
2 this particular swab, there was -- when I do not put any
3 results in the block, what that indicates is that it was a
4 small amount of blood there. I was not able -- I was only
5 able to do a certain amount of DNA typing, and then the
6 blood simply ran out so I couldn't do anymore.

7 So in this particular swab item, I was able
8 to type the DNA in these six areas, but I was not able to
9 do D1S80 or antigen. So, again, because I didn't examine,
10 I wasn't able to do as much DNA typing as I had on the
11 reference standards, well, the probability is lower now.
12 The less types I do, the lower the number.

13 So in this case, the number I came up with
14 for Mr. Seka on this particular source, John Seka was one
15 in 17,200.

16 Q So the fact that you were unable to a
17 conduct those particular tests affected the probability
18 that you were able to reach in the end?

19 A I couldn't. The more testing do you, the
20 more probably it is that you can identify the blood. If
21 the blood runs out, that's it. You just have what you
22 have.

23 Q And that was blood that was found inside of
24 1933 Western on the wall?

25 A I don't know where it was found.

1 Q There will be later testimony on that. The
2 last item there looks like a swab with apparent blood
3 booked by Mr. Reed, crime scene analyst.

4 A Mr. Reed. And, again, same thing, blood
5 sample identified as human blood. The included source is
6 Eric Hamilton. If you look at the DNA types in the
7 standard and compare it to that swab, you see that they
8 are the same. Again, the probability of finding that
9 type -- Mr. Hamilton is an African American?

10 Q Yes.

11 A Would be one in 2.8 million.

12 Q And you were able to -- I see on the chart
13 you have excluded and included?

14 A Right. We also exclude people. In other
15 words, the included source would be a possible suspect
16 whose blood this could be. Excluded means that we have
17 excluded those people from being possible donors.

18 Just like if we were to find Type A blood at
19 a crime scene and you're a Type B person, then you're
20 excluded as a source. You couldn't have deposited that
21 blood because you're a different blood type. So excluded
22 sources are people that we can exclude and say they cannot
23 be the donor of this blood.

24 Q And I see on this last piece of evidence you
25 have excluded source John Joseph Seka?

1 A Yes.

2 Q That can't be John Seka's blood in this
3 particular case that was found in the back of the 1998
4 Toyota pickup?

5 A No, it could not be.

6 Q Could it be Peter Limanni's blood?

7 A The excluded source -- no, it couldn't be
8 Peter Limanni's blood either.

9 Q And you don't have Peter Limanni on there as
10 an excluded source, and could you explain that?

11 A The reason for that is, is that the evidence
12 sort of trickled into the laboratory. We process evidence
13 when we get a request from a detective. In this
14 particular case, Detective Thowsen submitted a request
15 sometime December and wanted us to look at certain pieces
16 of evidence.

17 A month or two later more evidence was
18 generated, or more evidence was deemed to be important in
19 this case, and a second request was sent through saying:
20 Would you now examine this evidence.

21 So at that time when this chart was
22 generated we didn't have Mr. Limanni's blood standard, so
23 that's why it doesn't appear on this particular chart.

24 Q But you were able to compare it to the
25 reference standard, the known sample of Mr. Limanni?

1 A Yeah. If we were to just look at the
2 standard here of the last one, just look at one number in
3 particular, this is a 1.1, 4.1. Mr. Limanni is a 1.2, so
4 that can't be his blood.

5 Q And, again, we can do the same thing with
6 the fourth item of evidence, you have excluded source,
7 Mr. Eric Hamilton?

8 A Right.

9 Q Can you say that also Peter Limanni can be
10 an excluded source of the blood found on the wall?

11 A 1.33, Mr. Limanni a 1.2. So, again, he can
12 be excluded. If you were to look at the types you could
13 see that he would be excluded.

14 Q And you can say that to an absolute
15 certainty?

16 A Yes.

17 Q It's just the included part is when we have
18 the ratios?

19 A Right.

20 Q And, again, the second piece of evidence,
21 the glass fragments with apparent blood which was located
22 inside of 1929 Western, you have excluded source, John
23 J. Seka. Can we also exclude Peter Limanni from that?

24 A Again, the type here if we just focus in on
25 the DQ81, this type is a 1.1 and 4.1. Mr. Limanni is a

1 1.2, so it can't be his blood.

2 Q To an absolute certainty?

3 A Yes.

4 Q If you could take your seat back. At this
5 point I'm going to ask you, do you have a copy of your
6 reports there?

7 A Yes. I do have copies of my reports.

8 Q Did you test some other items in this case
9 that we haven't talked about yet?

10 A Yes, I did.

11 Q Referring to an item that's listed on your
12 report as swab with blood booked by Mr. Reed, 37, 31,
13 Package 1, Item 2, could you find that?

14 A Yes, I can.

15 MR. CHRISTIANSEN: What's the date of
16 the report?

17 MR. FATTIG: The date of the report is
18 December 28th of '98 -- excuse me, December 18th, '98.

19 THE WITNESS: Yes.

20 Q (By Mr. Fattig) What were the results of
21 that particular --

22 A In summary, that swab with blood turned out
23 to be human blood, and Eric Hamilton could not be excluded
24 as the source of the blood.

25 Q And you were able to exclude Mr. Limanni and

1 Mr. Seka?

2 A Yes.

3 Q And what was the ratio on that particular
4 piece of evidence?

5 A The ratio? The probability?

6 Q The probability.

7 A It would be the same as the -- well, excuse
8 me. Mr. Hamilton is the African American?

9 Q Yes.

10 A One in 2.8 million.

11 Q You had occasion to test some hairs with
12 blood. Again, that's off of the report, that same report,
13 I believe, booked by Mr. McPhail, Item No. 6, 33, 26-5,
14 hairs with blood.

15 A Yes. I see that.

16 Q And those were hairs that were found
17 underneath Mr. Hamilton's finger. What was your analysis
18 on that?

19 A That Mr. Hamilton can't be excluded as the
20 source of the hair.

21 Q And, again, is that one in 2.8 million?

22 A Yes. The numbers are consistently the same.

23 Q And how about fingernail clippings with
24 blood, again taken from Mr. Hamilton?

25 A Eric Hamilton cannot be excluded as the

1 source of the blood found under the fingernail clippings.

2 Q And in that particular analysis, I believe
3 on your report it states that the ratio or probability is
4 one in 5700, and that's from the --

5 A Yes.

6 Q And is that, again, are the numbers
7 lower? Why are the numbers lower?

8 A The numbers are lower in this case, again,
9 because there was only a certain amount of blood present
10 and I could only do so much DNA typing. I wasn't able to
11 do the full complement.

12 Q And how about Mr. Reed booked Item No. 3
13 there, 37, 31-1, Item 3, again, swab with apparent blood
14 taken from the back of the Toyota truck, a separate swab.

15 What was the analysis on that?

16 A Again, Eric Hamilton cannot be excluded as
17 the source of that blood.

18 Q And, again, that was one in 5700?

19 A Yes, that was.

20 Q And Mr. McPhail booked 33, 26, Package 1,
21 Item 1, again, a swab of apparent blood taken out of the
22 1998 Dodge van. What was the analysis on that?

23 A Could you please refer to the report?

24 Q Yes. It's off of --

25 A Is that the same report, or a separate

1 report?

2 Q It is a separate report. That is the second
3 report you generated on February 8th of 1999.

4 A Okay.

5 Q And referring to Item 1, Package 1 from
6 Mr. McPhail.

7 A Item 1, Package 1. Okay, I see that.

8 Q Swab with apparent blood?

9 A Yes. The results are Peter Limanni cannot
10 be excluded as a source of that blood.

11 Q That was from the back of the Dodge van.
12 What was the ratio or findings on that in terms of the
13 numbers?

14 A One in -- Mr. Limanni is Caucasian, one in
15 35,500.

16 Q And you also had occasion, again, referring
17 to that same report on the next page, Mr. McPhail booked
18 Package 14, Item 40, again, a swab of apparent blood off
19 of a sink counter inside 1933 Western.

20 What were the findings on that one?

21 A That John Seka cannot be excluded as a
22 source of that blood.

23 Q And since Mr. Seka is Caucasian, that would
24 be one in 1.9 million?

25 A Yes.

1 Q And you also had occasion to, again, right
2 below that Mr. McPhail booked some blue jeans with
3 apparent blood found inside of 1933 Western.

4 What was the conclusion on that one? That
5 would be Item 33, Package 11.

6 A On the blue jeans, John Seka cannot be
7 excluded as the source of the blood on the blue jeans.

8 Q And that would be one in 17,200 on that
9 particular test?

10 A Yes.

11 Q Did you also have occasion to test a piece
12 of fabric that was submitted and it was described as a
13 stained piece of fabric?

14 A Yes.

15 Q What was the test on that that you did?

16 A Testing on the fabric, I described it as
17 having reddish/brownish stains. The tests were negative
18 for the presence of blood, so they were brown stains but
19 they weren't blood.

20 Q And did you also have occasion to conduct
21 DNA analysis on two Marlboro cigarette butts that were
22 recovered by Vince Roberts near the body of where Eric
23 Hamilton was found?

24 A Yes, I did.

25 Q And what were the results of that?

1 A No typing, DNA typing results were obtained
2 on the cigarette butts.

3 Q And why is that?

4 A Sometimes on cigarettes butts we can get DNA
5 types because, as I mentioned, DNA can be obtained from
6 all the cells in your body, including the cells in your
7 mouth.

8 Generally speaking, if a person has wet lips
9 and smokes the entire cigarette and the filter would be
10 wet, the chances are very good that we could get a DNA
11 type off of that. If a person just takes one drag of the
12 cigarette and puts it down and didn't smoke much of it and
13 his lips were dry, or her lips were dry, the chances are
14 we couldn't get DNA typing results.

15 And in this case I can't tell you why we
16 didn't. There could be other reasons, we just didn't get
17 any type of results off the cigarette butts.

18 Q And to the best of your knowledge, have we
19 now covered all the items that you conducted tests on?

20 A I believe so.

21 Q And who decided which items for you to
22 conduct tests on?

23 A It's generally decided by the investigating
24 officer in charge. In this case it was Tommy Thowsen.
25 Oftentimes, the detective will call the DNA laboratory and

1 we will discuss what items collectively we think are
2 important to examine.

3 But generally, the detective will then
4 submit a request to the laboratory stating: I would like
5 to have these items examined, and that's what happened in
6 this case. And as I mentioned, after the initial analysis
7 was completed a few weeks later, it was decided that more
8 evidence was to be examined, and that's why there's a
9 supplemental report and things are a little confusing.

10 MR. KANE: Nothing further, Your Honor.

11 THE COURT: Cross-examination?
12

13 CROSS-EXAMINATION

14 BY MR. CHRISTIANSEN:

15 Q Good morning, Mr. Welch.

16 A Good morning.

17 Q I have some follow-up questions for you.

18 Now, these reports that Mr. Fattig had you look at today,
19 those were reports prepared in anticipation of trial,
20 correct; these blow-ups?

21 A The blow-ups were, yes.

22 Q And these blow-ups are portions of the
23 reports that you've been referring to; one is December
24 18th, 1998, and one is, I think, February of 1999; is that
25 accurate?

1 A February 8th of '99, that's correct.

2 Q So who prepared these reports? Who decided:
3 Hey, I'm going to take this particular result out of one
4 of the two reports and put it on a blow-up so we can show
5 the jury?

6 A The District Attorney.

7 Q And would it be fair to say that those are
8 the portions of the report that, to the extent possible,
9 summarise the State's evidence as best as possible?

10 A I would say so.

11 Q They didn't blow up both reports that you
12 made in their entirety and have you come in and show the
13 jury all the times that you couldn't find DNA, like on the
14 cigarette butts. That's not on either one of the two
15 blow-ups?

16 A Well, on our reports if it's a negative, we
17 don't create a DNA chart. We simply say the results were
18 negative. So we would never put a negative result in a
19 chart form.

20 Q You would never put something that
21 exonerated or didn't help the State on a chart that you
22 were going to testify for the State in front of a jury on?

23 A No. We don't put negative results on a
24 chart.

25 Q Now, you talked about -- and I questioned

1 you briefly about your education.

2 A Yes.

3 Q You graduated from Northeastern University
4 in 1976, or 1984?

5 A I left Northeastern to start working with
6 Metro. And at that time, having a job was more important
7 than continuing my education. But I was given the
8 opportunity in 1984 to go back to Northeastern and
9 complete my Master's Degree, which I did.

10 Q So you went to school in '75 and '76 at
11 Northwestern?

12 A Northeastern.

13 Q Took a break to start working, and then went
14 back in '84 and completed?

15 A Correct.

16 Q In 1984, what type of DNA testing was done?

17 A In 1984, research type of DNA testing was
18 done. I was not involved with DNA testing at all.

19 Q In 1984, guys like you weren't coming into
20 court and saying: Hey, this DNA stuff works to numbers in
21 excess of millions to exclude people?

22 A No, we were not.

23 Q And so you had no formal -- when I say
24 formal, I mean college setting education on DNA typing,
25 testing or expert testimony such as you're doing today?

1 A On DNA typing and testing, no. On DNA in
2 general, yes.

3 Q Now, that changed, if I count seven classes
4 you've been to in 1996, when you started going to these
5 classes for DNA analysis, correct?

6 A Correct.

7 Q And that would be about five years ago?

8 A Yes.

9 Q Now, five years ago there was a prevalent
10 type of DNA testing that was done, and what was that
11 called?

12 A I am not sure. Are you trying to ask about
13 RFLP?

14 Q Yes.

15 A Okay. I refer to this technology as an
16 older technology, and it's more specifically what we call
17 an older PCR technology. There was a DNA technology that
18 was around before this, because the technology changes
19 very rapidly. Every couple of years what was deemed state
20 of the art becomes obsolete.

21 And what you're referring to is, there was a
22 technology called RFLP. Is that what you're referring to?
23 It was predated PCR technology, and was the original old
24 DNA technology that people first started working with.

25 Q Was this RFLP testing, or was this PCR

1 testing?

2 A This was PCR testing.

3 Q And what type of testing do you do today at
4 your lab?

5 A PCR testing.

6 Q Is it a new type of PCR testing?

7 A Yes. It's a more advanced type of PCR
8 testing than what we were doing in 1998.

9 Q I understand science moves quickly and
10 you're oftentimes called upon to testify for now three
11 years, two-and-a-half years out from when you performed
12 most of these tests?

13 A Yes.

14 Q Nobody ever called you up and said: Hey,
15 Mr. Welch, why don't you test those cigarette butts under
16 the new PCR testing, the most sophisticated we have as of
17 today at the time of trial?

18 You were never called upon to do anything
19 after February of 1999, correct?

20 A That's correct.

21 Q And you understand during this trial, my
22 client is on trial for his life?

23 A Yes. I understand that.

24 Q And you told the jury one of the most
25 important things for you to do when you get blood samples

1 is to exclude people, right?

2 A That's what we believe.

3 Q And if that's what you believe was the
4 policy, wouldn't it then have been important to use the
5 most advanced DNA testing possible on the things that you
6 couldn't get results on, such as cigarette butts and other
7 items that you testified to here today?

8 A I think to answer your question is, if we
9 were requested to go back and take a second look at items
10 and see if it was possible be to get further DNA typing,
11 we would certainly do that.

12 Q And that leads me to the issue of, you do
13 these tests in a vacuum, right? Somebody says: Test this
14 and see what you can find?

15 A If I could just follow up. I don't make the
16 decisions on whether things are tested or not, just to
17 make that clear.

18 Q I think the jury understands you get a
19 request form where Detective Thowsen has written out in
20 handwriting: Dear, Mr. Welch, please do A, B and C.

21 A Correct.

22 Q And then you do A, B and C, correct?

23 A Correct.

24 Q Now, if you were given, for example, to use
25 one of your charts, if you were given some evidence such

1 as the first one on here, Item No. 1 which Mr. Fattig told
2 you was a sample taken from the back of a van.

3 A Yes, okay. Yes, I see it.

4 Q And you proceed under the presumption that
5 this item is what the officer that's taking it into
6 evidence, or the crime scene analyst has listed it as,
7 correct?

8 A Yes.

9 Q The theory is, you have to presume that
10 everything that you get is being properly identified,
11 correct?

12 A I assume that, yes.

13 Q And it's properly marked so that you don't
14 come in here and say that this source which is identified
15 as blood of Peter Limanni, say, came from the back of a
16 truck instead of the back of a van.

17 A I don't know.

18 Q It's like the theory, garbage in, garbage
19 out. If you got bad information, you're going to give bad
20 results, correct?

21 A Well, basically, I analyze the substances
22 that come into the lab, and I assume that they are marked
23 correctly and I am typing that evidence. Where that
24 evidence really came from, I really have no idea.

25 Q Tell me about the actual process of DNA

1 typing. You've talked to the people in the jury about
2 these numbers, population numbers, one in 1.3 million, one
3 in 50,000, whatever the numbers were. Do you make those
4 numbers up? Where do you get the numbers?

5 A The numbers there are population databases
6 on all of the variants, variations, various types of the
7 DNA that are published.

8 We also have our own Nevada database, which
9 is the database that we use. So just as in the example I
10 gave about B-type individuals, it's known that you will
11 find B-type individuals in approximately ten percent of
12 the population.

13 There are databases that we can go to to
14 look at what is the probability of finding a type like,
15 say, LDLR, that one that you were using an example of. In
16 other words, I can go to a database, a Nevada database, go
17 to LDLR, look up a B, and it tells me there's a number
18 there associated with that.

19 Q And that is not information that you've
20 compiled, correct?

21 A Well, it's information that our laboratory
22 has compiled, and a population geneticist has verified
23 that it's accurate.

24 Q I'll ask the question again. That's not
25 information you, yourself, David Welch has --

1 A I compiled part of the database. I worked
2 on part of the database.

3 Q Are you a population -- what did you call
4 it?

5 A No. I am not a population geneticist.

6 Q So you're relying, to an extent, upon
7 somebody else saying this is accurate; is that correct?

8 A Right.

9 Q In terms of the population databases?

10 A I am depending on him to know what he's
11 doing, yes.

12 Q And that's the same, is it not, for these
13 DNA numbers that you get? If you use one of your examples
14 where you go and say it's one in 18 million, or one in 1.5
15 million, that database that says that is the frequency of
16 this particular genetic structure, is something you
17 presume the person that put that database together did
18 correctly, correct?

19 A Well, that's correct. And as I said, we use
20 as a basis of our statistics a Nevada database. But we
21 also have compared that to other state databases and a
22 national database, and everything coincides.

23 Q Back when you had done these tests in
24 December of '98 and February of '99, you've been to six
25 classes on DNA, correct?

1 A Yes.

2 Q And your CV or your resume, for layman's
3 terms, lists you as an expert in controlled substances,
4 trace evidence, toxicology, serology, blood alcohol,
5 breath alcohol, arson, crime scene investigations,
6 clandestine laboratory response team, and DNA, right?

7 A That's right.

8 Q You're an expert in all those areas?

9 A Yes.

10 Q And in all those areas you were called upon
11 to come in and give expert opinions which is used by the
12 State in these ten different areas of expertise?

13 A That's correct. Perhaps I could clarify
14 that a little. You have to remember I've been in the
15 field for 23 years. We tend to work in one area for a
16 segment of our career.

17 I'm currently, and for the last five years
18 have been working in DNA. But prior to DNA I spent a
19 number of years working with controlled substance. I
20 analyzed controlled substance and testified on controlled
21 substances. I spent a part of my career doing arson
22 cases.

23 So when you look at my expertise, you're
24 looking at my expertise over a period of 23 years. And at
25 various times through my career, I was working in

1 different areas of the laboratory.

2 Q Fair enough. I want to talk to you about
3 your expertise in DNA. As of December of '98 and February
4 of '99 when you did these tests --

5 A Yes.

6 Q -- how many hours of college education did
7 you have on DNA testing and expert testimony in that
8 regard?

9 A How many formal college courses did I have
10 in DNA?

11 Q Yes, sir.

12 A None.

13 Q In the six classes that you attended, how
14 many total hours were you taught by college professors
15 about how to do DNA typing, testing, and how to be an
16 expert witness?

17 A Well, they didn't tell me anything about how
18 to be an expert witness.

19 Q Well, you knew that because you've been an
20 expert in nine other areas?

21 A That's correct. You're asking me a question
22 that I can't give you a specific number of hours. Most of
23 those classes or courses were either a few days, or up to
24 two weeks in the case of the FBI.

25 And during, for example, the FBI portion,

1 the majority of those classes were taught by Ph.D's who
2 are hired by the FBI who have come out of academia. And
3 the same with the other classes that were taken in Perkin
4 Elmer. There were other speakers that addressed other
5 issues in DNA analysis. I can't give you how many hours,
6 it's just I would say the majority were taught by Ph.D's.

7 Q And you've referred a couple of times to
8 this FBI workshop that you went to.

9 A Right.

10 Q Now, the name of that was Basic Principles
11 of DNA typing, correct?

12 A Correct.

13 Q It wasn't Advanced Principles of DNA typing?

14 A It was basic and advanced. That was just
15 the name of it.

16 Q Is advanced on your CV?

17 A No, it's not.

18 Q Your CV attempts to show your expertise to
19 the greatest extent possible?

20 A Well, I guess then you'd have to decide what
21 do you consider advanced. Why don't you tell me.

22 Q I'm not the expert.

23 A I'm telling you it was both basic and
24 advanced.

25 Q And yet you didn't put advanced on your CV?

1 MR. FATTIG: Objection. Argumentative.

2 THE WITNESS: No, I didn't.

3 THE COURT: Sustained. Let's move on.

4 Q (By Mr. Christiansen) You drew three or
5 four pictures for the jury on the board and talked about
6 the strands and the four compounds, A, G, T, and C, and I
7 won't even try the names, and how they line up. And those
8 are at least part of the way you do these DNA typing and
9 testing, correct?

10 A Yes. It's a very simplified explanation as
11 to what we're doing.

12 Q Am I correct that you take and actually
13 sever a portion of this DNA and then examine it under some
14 type of microscope? Is that what you do?

15 A No. It's all done chemically.

16 Q All done by a machine?

17 A Parts of it are done by a machine, parts of
18 it are done by wet chemical methods, meaning that we
19 actually have the DNA in our hands, and just as you would
20 picture a chemist working in a laboratory, mixing a little
21 bit of this, mixing a little bit of that, doing a little
22 bit of this, doing a little bit of that.

23 And eventually the end result is, we do use
24 a couple of instruments to process the DNA, and to analyze
25 the DNA. And, of course, today with the advent of

1 computers, computers help us too. So it's a long,
2 involved process.

3 Q And the tests that you did here, can you
4 tell the people in the jury how many of these -- I think
5 you called them base pairs -- were in each particular
6 strand that you examined, or caused to be examined by a
7 computer?

8 A No.

9 Q Well, the base pairs were what you told the
10 jury was the fundamental important thing for you to look
11 at, because you had either sequence variation or length
12 variation of base pairs, correct?

13 A Yes.

14 Q Well, I'd like to know if you can tell the
15 jury how many -- in any one of these tests, how many base
16 pairs were in the particular tests that did you?

17 A No, I can't. Because there are reference
18 texts for that. And, I mean, it's like asking me to
19 memorize the encyclopedia. I can look up -- if it's
20 important for me to know how many base pairs are in a
21 particular location, I simply bring out a book that's this
22 thick, go to the appropriate page and look it up. I don't
23 make a habit of memorizing base pairs.

24 Q That's what you do pretty much throughout
25 this process is, you look at something you don't know the

1 answer to it, so you go to a book that has the answer to
2 it, then you put that answer on your reports and come in
3 here and say it's your opinion, right?

4 A No. My job is, I have the education, the
5 training and the experience to work with DNA, analyze DNA,
6 and tell you what the DNA typing results are. It's not my
7 job to memorize encyclopedias or chemistry books, or
8 things I can look up if I need to.

9 Q How many times have you testified as an
10 expert --

11 A I might add that I am Board certified
12 in Molecular Biology, which indicates --

13 MR. CHRISTIANSEN: Judge, there's no
14 question pending.

15 THE COURT: Go ahead.

16 Q (By Mr. Christiansen) Mr. Welch, how many
17 times have you testified for the Defense in any criminal
18 case regarding DNA?

19 A Never.

20 Q You're a Prosecution witness, correct?

21 A No. I'm an independent witness.

22 Q You work for Las Vegas Metropolitan Police
23 Department, correct?

24 A And I often come up with negative results
25 and results that they don't like.

1 Q Mr. Welch, answer my questions. Do you work
2 for the Las Vegas Metropolitan Police Department?

3 Q That doesn't mean I work for the
4 Prosecution, and it --

5 THE COURT: We'll let the jury decide
6 what it means.

7 THE WITNESS: I am employed by the Las
8 Vegas Metropolitan Police Department, that's correct.

9 THE COURT: Counsel, approach the
10 bench, please.

11 (Whereupon, counsel conferred with the Court.)

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

21 / / /

22 / / /

23 / / /

24 / / /

25 / / /

1 Let's return at 1:45. That gives you about
2 hour and 15 minutes. Court's adjourned.

3 (Whereupon, court was adjourned until 1:45 p.m.)
4
5

6 ATTEST: Full, true and accurate transcript of
7 proceedings.
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9

10 
11 MAUREEN SCHORN, CCR NO. 496, RPR
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DISTRICT COURT

CLARK COUNTY, NEVADA FILED IN OPEN COURT

FEB 20 2001 19

THE STATE OF NEVADA,

) SHIRLEY B. PARRAGUIRRE, CLERK

Plaintiff,

) BY LINDA SKINNER
DEPUTY

vs.

) No. C159915
) Dept No: XIV

JOHN JOSEPH SEKA,

Defendant.

 **COPY**REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DONALD M. MOSLEYVOLUME IIFebruary 16, 2001
2:15 p.m.
Department XIV

APPEARANCES:

For the State:MR. EDWARD KANE
MR. TIMOTHY FATTIG
Deputy District AttorneysFor the Defendant:MR. KIRK KENNEDY
MR. PETER CHRISTIANSEN
Attorneys-at-LawReported by:
Joseph A. D'Amato
Nevada CCR #17

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

6 Will counsel stipulate all members of the
7 jury are presented and properly seated all stipulated?
8

9 MR. KANE: Yes, Your Honor.

10 MR. KENNEDY: Yes.

11 THE COURT: Let me remind you you're still
12 under oath. Proceed, please, with cross-examination.

13
14 EXAMINATION (cont'd.)

15 BY MR. CHRISTIANSEN:

16 Q. Before we left or took the lunch break I
17 was asking you some questions related to these charts
18 that were prepared and taken from the two reports you did
19 in December of '98 and February of '99?

20 A. Yes.

21 Q. On these charts, the very far right column
22 - - you can just look at the ones that you did, the small
23 ones in your hands, because those are the ones I have in
24 front of me, as well, the very right column, so the jury
25

1 can see, says sufficient sample remaining for re-test;
2 that is accurate?

3 A. Yes, it was.

4 Q. And on each of the columns, each of the
5 tests you did - - and there's more in the two sheets of
6 paper that you have in your hands and that I have in my
7 hands - - there is a check in the yes or no box, correct?

8 A. Yes, there is.

9 Q. And a variety of the tests that you
10 performed, you used the entire sample, correct?

11 A. Yes.

12 Q. Who is Tom Wall, Mr. Welch?

13 A. Tom Wall is an analyst that works with me
14 in the laboratory.

15 Q. Is he your superior or equal?

16 A. I would say he's a co-worker.

17 Q. Is it your practice that when you're going
18 to use the entire sample that you call - - in any case,
19 that you call the prosecution and say "Hey guys, I'm
20 going to use this whole sample if I do this test. Nobody
21 else will be able to check it. Do you still want me to
22 do the test?"

23 A. I wouldn't say it's general practice.

24 The practice is - - has sort of evolved
25 since we started doing DNA. I can't remember exactly at

1 this time period, since this was two to two and a half
2 years ago, what we were doing at that time.

3 Now, it's sort of our practice - - but the
4 technology has also changed. Generally speaking, today,
5 we don't have any cases where we consume the whole sample
6 and you're correct, if we feel like there is a very small
7 sample and we know we're going to consume it all we do
8 try to make contact with the District Attorney's Office
9 and sort of okay that with them and make sure everything
10 is okay.

11 And again, it sort of has been an evolving
12 practice. I really can't recall at this time whether we,
13 as a laboratory, had made a decision to do that.

14 I know now that that's the practice, but
15 it's been an evolving thing.

16 Q. And it evolves hopefully to a more fair
17 and evenhanded practice?

18 A. Yeah.

19 Our policy now is basically we try to
20 preserve at least half the sample for the defense,
21 meaning a crime scene sample.

22 If that's not possible and it's such a
23 small amount, we will retain a sample of the working
24 extract that we work with if there isn't a sufficient
25 crime scene sample to retain.

1 So you're correct. Today it's pretty
2 common that we would not consume all of the sample.

3 Q. Now, on the test you performed, December
4 18, 1998, would you look at that?

5 A. Yeah, um-hum.

6 Q. The first item which was a swab from, with
7 apparent blood that included - -

8 A. Could I ask you what report date you're
9 looking at?

10 Q. December 18 - - I'm sorry - - 1998.

11 A. December 18.

12 Q. Do you have that?

13 A. Yes, I do. Just a moment, please.

14 Q. I might be able to find it on here.

15 A. I've got it, sorry.

16 Q. I think it is - - those charts were cut
17 and pasted to make these exhibits, correct?

18 A. Yes, they were. Sorry.

19 Q. I think the very first sample is this one,
20 number 37, so the jury can see the swab with apparent
21 blood and I think Mr. Fattig said that was found at 1933
22 Western, correct?

23 A. Right.

24 Q. And that swab included Mr. Seka, correct?

25 A. Yes, it did, um-hum.

1 Q. And you can't see it in the blown up
2 portion because there's - - looks like a hole punch was
3 put over it, but none of that swab was retained?

4 A. Correct.

5 Q. So it was all used?

6 A. Yes, it was.

7 Q. So if I wanted or if I ever wanted to have
8 somebody look at that swab and check your work, so to
9 speak, that is a virtual impossibility?

10 A. Probably so.

11 Q. Okay.

12 A. Although again, this has been an evolving
13 process with how we treat the swabs.

14 It could be - - and I wouldn't know that
15 by looking at the results - - it could be that a sample,
16 the sample itself, meaning the sample from the crime
17 scene, there was not sufficient sample of it for re-test.

18 However, it could be that there is a
19 sample that I worked work with personally that may be in
20 the laboratory.

21 Q. As you sit here today you don't know the
22 answer to that?

23 A. But I don't know for sure until I go back.

24 Q. And that is the exact same situation with
25 - - on your paper that's right in front of you, on the

1 very next sample which is swab with apparent blood that
2 includes Eric Hamilton?

3 A. Yes, that's true, um-hum.

4 Q. And I think that, if I can find it, is the
5 bottom of this chart that you caused to be made, correct?

6 A. Yes, right.

7 Q. The very last one?

8 A. That's correct.

9 Q. And that, as well, shows in the box that
10 there is not a sufficient sample remaining for a re-test,
11 correct?

12 A. Yes, and again, I have to say that at that
13 time we were - - it may indicate that there may not be a
14 sufficient sample from the crime scene.

15 However, there may be some sample of
16 extract that I work with.

17 Q. For whatever reason, your document - -

18 A. Says no.

19 Q. - - says that there's not sufficient
20 sample?

21 A. Right, and I would agree when you say
22 there probably isn't.

23 Q. That is the same - - looking at your piece
24 of paper for the item right below it, another swab where
25 Eric Hamilton is the included source, correct?

1 A. Correct.

2 Q. And if you look at the other report, you
3 did one a couple months later, there are - - I count
4 three, that being two on the first page and one on the
5 second of sources of blood that were not retained, a
6 sufficient sample wasn't retained for a re-test, correct?

7 A. Correct, correct.

8 Q. One of those is the blood of Peter
9 Limanni, one is - - I'm sorry - - two are the purported
10 blood of Peter Limanni and I think Mr. Fattig said those
11 were taken from the van; is that accurate?

12 A. If you say so.

13 I'll stick by - - if it says there isn't a
14 sufficient sample on my chart you're looking at, I'll
15 agree with that.

16 Q. And one is of Mr. Seka, a swab with
17 apparent blood and that's on the second page, correct?

18 A. Yes.

19 Q. And as you've explained to the jury, this
20 evolving practice where now you call the prosecutors when
21 you're called upon by homicide or whoever to do a certain
22 test and you can look at the thing you're being asked to
23 test and knowing how you do your tests you're going to
24 use up the entire substance, you now make it a practice
25 to call the prosecutors and say "Hey guys, I'm going to

1 use this all up."?

2 A. Yes.

3 Q. And that's because you want or it is
4 fundamentally fair that a defense lawyer be able to have
5 an expert or somebody like yourself to do these same
6 types of testing, correct?

7 A. Yes, yes, if there's sufficient sample
8 left.

9 I mean, there are occasions when we do
10 call the prosecutors, now that the decision is made to go
11 ahead and just run the sample, so there are rare
12 occasions today where we still will proceed, but sort of
13 with the okay of the prosecutor's office to do that.

14 However, you're right, in that generally -
15 - and today I would say 99 - - as often as we can we try
16 to save half of the sample for the defense to re-test, if
17 they like.

18 Q. In six of the tests you did that was not a
19 possibility, correct?

20 A. At that time, that's correct.

21 The other thing is that, as I mentioned,
22 this was a little older technology and unfortunately the
23 amount of DNA that we needed to use was a little greater
24 than it is today.

25 With the newer technology we have to use

1 much less of the sample, so it changes things
2 dramatically.

3 Q. One of the tests you performed on - - I'm
4 looking on December 18, 1998 - - and this appears to me
5 to be the last test on your chart and that was the
6 fingernail clippings with apparent blood?

7 A. Yes.

8 Q. There were - - I don't know if you had
9 that blown up here - -

10 A. I don't think it's blown up.

11 Q. It's not blown up in the Court exhibits,
12 but you did some testing of a fingernail clipping with
13 apparent blood and one of the sites or locations that you
14 drew up there you were unable to give numbers or letters
15 on, correct?

16 A. Excuse me, let me find that, please.

17 Okay, I have it.

18 Q. Is that correct?

19 A. Yes, on D1S80.

20 Q. Amlagene is the male/femal one and D1S80
21 was one of the sites you related to the jury.

22 You were unable to locate that site or
23 unable to determine male or female?

24 A. Right.

25 Q. Why didn't you just re-test it?

1 It says you had sufficient sample for
2 re-test.

3 Why didn't you re-test it?

4 A. Um, I can't answer the question. I'm not
5 really sure.

6 I'd have to really look through my notes
7 in detail to answer that question for you.

8 Q. You typically keep accurate - - these
9 charts are typically accurate, correct?

10 A. Yes.

11 Q. So if it said there was sufficient sample
12 for re-test and you had a result that was not all of the
13 boxes, so to speak, all of the locations on your PCR
14 chart, you could have re-tested it, right?

15 If your - -

16 A. Yes, and again as far as the details,
17 there may have been some other circumstances that I'd
18 have to go back and really delve into to see why I didn't
19 do that.

20 Q. Tell me when the Las Vegas Metropolitan
21 Police Department started doing DNA testing in-house, in
22 other words, in the department, instead of shipping it
23 out to Cellmark or somebody like that.

24 A. I think it's been about - - I think we
25 started in 1996. It's been about five years, but I can't

1 - - not exactly sure when.

2 Q. If I told you that Cellmark was routinely
3 having stuff shipped to them in 1997 and 1998 would that
4 comport with your recollection?

5 A. We still send out samples to Cellmark and
6 other reputable DNA companies today. That's not unusual.

7 Q. The jury probably doesn't know who
8 Cellmark is.

9 Why don't you tell them?

10 A. It's a private concern that does DNA
11 testing for a fee and during the transition period in the
12 early, generally speaking, in the early '90's, mid '90's,
13 before we started our DNA laboratory and other
14 laboratories were doing DNA analysis and the prosecuting
15 District Attorney wanted to have DNA done on a sample, we
16 would routinely ship samples out to Cellmark to have them
17 do an analysis.

18 There are occasions that even today we
19 still send out samples to Cellmark so that wouldn't
20 surprise me.

21 Q. Back in 1998, '99, when you were
22 performing these tests how many times did you - - had you
23 testified and been qualified as an expert in a court of
24 this jurisdiction to testify about the type of PCR
25 testing you're talking about today?

1 A. Back in - -

2 MR. FATTIG: Objection. Asked and
3 answered.

4 MR. CHRISTIANSEN: I have never asked that
5 question.

6 MR. FATTIG: That was part of his Voir
7 Dire.

8 THE COURT: It's argumentative. Just a
9 minute. Let's keep that within the proper context.

10 Proceed.

11 THE WITNESS: Do you want me to answer?

12 BY MR. CHRISTIANSEN:

13 Q. Yes.

14 A. Back in '98, I don't know.

15 Q. I think you told me during my questioning
16 of you about qualifications that you'd done it a total of
17 three times as to this type of DNA?

18 A. Up to the present time, but in 1998, I
19 don't know. I may not have testified at all in 1998 on
20 it.

21 Q. It's quite possible, is it not, that when
22 you were doing these tests that you had never, prior to
23 that time, testified as an expert in DNA evidence for
24 PCR?

25 A. For this technology, that's true.

1 Q. There is a supervisor named Birch Henry at
2 your office; is that correct?

3 A. Yes.

4 Q. He would have had the ability to check or
5 verify this at some point if you hadn't testified
6 previously as an expert?

7 A. I don't know if Birch was with us during
8 this time period. He's been with the department about
9 two years and I'm not quite sure if he was here during
10 that time period.

11 It's common practice in our laboratory,
12 though - - I think what you're getting at is any case
13 that's done in our laboratory, if Birch was not present
14 in the laboratory, which - - wait a second, excuse me.

15 I'm sorry. I jumped ahead of myself.

16 His signature appears on the report, so he
17 was here at that time. I'm sorry.

18 Q. Prior to the break I asked you questions
19 about the books that contain these numbers that the jury
20 heard from you earlier and you told me that Metro or that
21 you have done part or taken part in a population study
22 that Metro has?

23 A. Yes.

24 Q. And you derive some of your numbers from
25 that book?

1 A. Well, what we did, what a population study
2 - - in other words, what we tried to do was create our
3 own database in the State of Nevada, so there's two
4 forensic laboratories in Nevada, one in Las Vegas and one
5 up in Reno, Washoe County.

6 And during a period of time - - and again
7 I can't really remember exactly when - - the Reno lab
8 tested a number of samples and we tested a number of
9 samples.

10 I think our number was something in the
11 order of at least a couple hundred, maybe it was in the
12 order of 400.

13 But what I mean by participated, in other
14 words, we had a number of samples that we analyzed
15 in-house, then we combined our numbers with the Reno
16 laboratory and created our own Nevada database.

17 At that point we had a population
18 geneticist or whatever review the numbers and see how
19 they coincided with national figures. When I'm saying I
20 participated, it was a participation in the analysis of
21 the samples and presenting that, you know, compiling that
22 information.

23 Q. Okay. Now, do other labs have their own
24 population studies as well?

25 A. Some do, some don't.

1 Q. So if you sent all this - - if you'd
2 retained the items that we've discussed that you used all
3 of back in '98 and '99 and had send sent it all off to
4 Cellmark, for example, isn't it quite probable that their
5 numbers would have differed from your numbers in terms of
6 probabilities?

7 Instead of one in 1.3 million, it might
8 say one in 88,000?

9 A. I don't think it would be that radical.

10 There would probably be some variation,
11 but if you're using that as an example of one in 1.3
12 billion or million, I'm sorry, I would suspect that yes,
13 you might get numbers of one in 1.2 billion or million or
14 one in 1.35 million, maybe, but you'd never get numbers
15 that radically different.

16 Q. That difference is because this test, this
17 PCR is a test of elimination, not a test of
18 identification, correct?

19 A. Well, at this time, yeah, yes.

20 Q. You eliminate who can be part or who can
21 be the donor of a given sample. You don't identify who
22 is the donor of a given sample, using this type of PCR
23 testing?

24 A. With this technology with the numbers that
25 were generated we looked at it more of as an elimination

1 type test.

2 Q. Okay.

3 A. Or as we stated, we couldn't exclude. We
4 can't exclude this person.

5 Today it's evolved to much more.

6 Q. Right. Today it's more sophisticated,
7 correct?

8 A. Today we do identity statements at the
9 laboratory.

10 Q. Nobody ever asked you to do an identity
11 statement in any of the tests in this case, correct?

12 A. No.

13 Q. Look for me if you would, on December 18,
14 1998, on that chart, those, the two defendants tests that
15 were swabs with apparent blood where you excluded Mr.
16 Seka as being the donor and included Mr. Hamilton.

17 Judge, can I approach?

18 THE COURT: Yes.

19 THE WITNESS: Sorry.

20 BY MR. CHRISTIANSEN:

21 Q. I'll show you my chart. I'm talking about
22 the first three.

23 On all three of those, those were the
24 swabs from the Toyota pickup, I believe, was the
25 testimony; is that correct?

1 A. I personally don't know where they came
2 from.

3 Q. I think we'll clear it up with the next
4 witness, but - - and all three of those were Eric
5 Hamilton's blood identified.

6 There is no ability for anybody to go
7 re-test that, because the sample was used up?

8 A. Yes.

9 Q. And the amount where you identified from a
10 swab of Mr. Seka's blood was so small that you used up
11 that sample as well, correct?

12 A. If I said there's insufficient sample for
13 re-test, that's what I meant, but are you talking about
14 Mr. Seka's blood itself?

15 Q. Correct.

16 A. If it's a reference standard, there should
17 be plenty of sample left over.

18 Q. Didn't you use a buckle swab as a
19 reference standard for Mr. Seka?

20 A. If I did - - yeah. Sometimes - -
21 sometimes we use blood standards, too.

22 If I indicated a buckle swab, then I used
23 a buckle swab.

24 Q. As you sit here today you don't remember,
25 correct?

1 A. I don't remember exactly, because I deal
2 with lots of these samples.

3 MR. CHRISTIANSEN: I'll pass the witness.
4 Thank you.

5 THE COURT: Re-direct?
6
7

8 RE-EXAMINATION

9 BY MR. FATTIG:

10 Q. You testified on cross-examination
11 regarding the Marlboro cigarette butt?

12 A. Yes.

13 Q. Were you able to find any DNA on the
14 cigarette butt at all?

15 A. Excuse me for just a moment, please.

16 Q. Certainly. Take your time.

17 A. Okay. My result on the cigarette butt
18 were no DNA typing results. No DNA typing results were
19 obtained on the two Marlboro brand cigarette butts.

20 What that indicates to me is that I
21 attempted to do DNA typing. No DNA results were
22 obtained.

23 I might have proceeded with a process to a
24 certain point and then found out that there wasn't enough
25 DNA to proceed to do any typing. I might have carried

1 the process halfway.

2 Is that what you're getting at?

3 I'm not quite sure.

4 Q. I wanted to know if you remember whether
5 or not there was any DNA on those cigarette butts at all?

6 A. I could refresh my memory by looking at
7 some notes, if you'd give me a few minutes, but I have no
8 independent recollection of that.

9 Q. Do you have the notes with you right now?

10 A. Yeah, yes, I do.

11 Q. I'll move on.

12 Is it your job to actually collect
13 evidence?

14 A. No, it's not.

15 Q. That's the crime scene analyst's job?

16 A. Yes.

17 Q. If you can remember back when you went to
18 college, did they offer courses in DNA analysis?

19 A. No, they didn't.

20 Q. Did it even exist?

21 A. Well, we talked about DNA in chemistry
22 classes I took, you know, three semesters of biochemistry
23 where we talked about DNA and I was exposed to DNA in
24 botany classes and other biology classes, but at that
25 time there was nothing - - nobody was involved with DNA

1 typing per se.

2 It's a relatively new technology.

3 Q. Have you ever been asked to testify on
4 behalf of the defense in a criminal case?

5 A. No, I have not.

6 MR. KANE: May I approach the witness,
7 Your Honor?

8 THE COURT: You may.

9 BY MR. FATTIG:

10 Q. Mr. Christiansen asked you on
11 cross-examination about the far left side sufficient
12 sample remaining for re-test, that column.

13 A. Yes.

14 Q. Is it accurate to say that with regards to
15 the glass fragments with apparent blood where you
16 identified Eric Hamilton on and the magnetic cards with
17 apparent blood where you identified Mr. Limanni on, taken
18 from the Dodge van, that there was a sufficient sample
19 with those two - -

20 A. Yes.

21 Q. - - for a re-test?

22 A. Yes.

23 Q. So the defense could have done a re-test
24 on those two?

25 MR. CHRISTIANSEN: Objection.

1 Judge, that's improper in terms of the
2 notice and the things we discussed about this witness and
3 being properly notified.

4 Can we approach?

5 THE COURT: Come forward.

6 (Discussion off the record.)

7 THE COURT: Proceed, please.

8 BY MR. FATTIG:

9 Q. Mr. Welch, with regards to - - if you can
10 refer to your report dated February 8, 1999.

11 A. Yes.

12 Q. With regards to the bluejeans with
13 apparent blood, was there a sufficient sample available
14 for re-testing of that item?

15 A. Yes, there was.

16 Q. And again, referring to your other report,
17 December 18 of 1998, was there sufficient sample for
18 re-test with regards to the hair with apparent blood that
19 was identified as Mr. Hamilton's and the fingernail
20 clippings with apparent blood?

21 A. Yes.

22 Q. So it's fair to say that some of the items
23 were used up and some of them weren't?

24 A. Yes, that's fair to say.

25 Q. In 1998, how long had this type of DNA

1 testing that you used back then been in existence?

2 A. I would say approximately three to five
3 years, perhaps.

4 Q. You testified on cross-examination about
5 some of the books that you have to rely upon when you go
6 in and you look at these long codes.

7 Do you remember that?

8 A. Yeah.

9 Q. Is that something that's commonly done in
10 the field?

11 A. Well, as I say, the explanation here is a
12 very simplistic explanation. The question that was posed
13 earlier asked if I could give you an example of a
14 sequence of one of the variants or types.

15 My answer was no, I couldn't, because
16 sometimes the sequence lengths can be hundreds of base
17 pairs long, so what you're asking me to do is do I
18 remember hundreds of sequences that are a series of four
19 letters that may go on for a hundred base periods, and
20 the answer is no, I don't have the ability to memorize
21 that much information.

22 If there is a reason or need to know what
23 the sequence is, I can provide the sequence to a
24 particular variation, but I would have to go to either a
25 book or pamphlets or reference materials of some kind to

1 get that sequence, and I would be more than happy to copy
2 that sequence off to you and mail it to you or give it to
3 you.

4 I don't have the ability to memorize that
5 complex of a series of four letters.

6 Q. And again, is that commonly the practice?

7 A. Well, there may be some people that can
8 memorize them, but I certainly don't have the ability to
9 do it.

10 Q. How many can they be?

11 A. Hundreds of base pairs long.

12 MR. FATTIG: Nothing further.

13 THE COURT: Defense counsel?

14

15 RE-EXAMINATION

16 BY MR. CHRISTIANSEN:

17 Q. Mr. Fattig asked you if you've been asked
18 to testify as a defense witnesses.

19 You're employed by Metro?

20 A. Yes, I am.

21 Q. You couldn't testify for the defense if
22 you wanted to, could you?

23 A. They would be real unhappy, if I did.

24 MR. CHRISTIANSEN: Right.

25 No further questions. Thank you.

1 THE COURT: Anything further?

2 MR. FATTIG: No.

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

5 Next witness.

6 MR. KANE: Gary Reed.

7

8 GARY REED,

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

11

12

13 EXAMINATION

14 BY MR. KANE:

15 Q. Please state your name and spell why last
16 name for the record.

17 A. My name is Gary Reed, R-e-e-d.

18 Q. By whom are you employed?

19 A. I'm employed by the Las Vegas Metropolitan
20 Police Department in the the criminalistics bureau.

21 Q. What is your specific assignment in the
22 criminalistics?

23 A. My title is crime scene analyst
24 supervisor.

25 Q. And was that your job assignment back in

1 November of 1998?

2 A. Yes, it was.

3 Q. I want to talk to you about a vehicle
4 examination that you did at the Las Vegas Metropolitan
5 Police Department garage on November 19, 1998.

6 Do you recall that?

7 A. Yes.

8 Q. And do you recall the vehicle involved?

9 A. Yes, I do.

10 Q. What type of vehicle was it?

11 A. It was a 1998 Toyota Tacoma pickup.

12 Q. Do you recall the license number?

13 A. Um, I'd have to look at my notes for that.

14 Q. Did you prepare a report?

15 A. Yes, I did.

16 Q. Would looking at the report enable you to
17 refresh your recollection and state the license number?

18 A. Yes.

19 Q. Would you do so?

20 A. The plate number was Nevada 720 JJM.

21 Q. And what did you do in terms of processing
22 this vehicle?

23 A. Initially we - -

24 Q. Let me stop you right there.

25 When you say we, who else was there?

1 A. Vince Roberts, another crime scene
2 analyst, assisted me with that.

3 I did impound evidence and prepare the
4 report for this case, but I was assisted by Vince Roberts
5 and another crime scene analyst supervisor, Joe McVeigh.

6 Q. Would you proceed?

7 And if it's you doing something, say so,
8 and if it's somebody doing something in your presence,
9 indicate that as well.

10 A. Okay. The vehicle was examined on the
11 exterior to look for anything that may tie the vehicle to
12 another scene that was worked.

13 We looked at the tires, the undercarriage.
14 We looked at the bed of the vehicle, the exterior
15 condition of the vehicle and also at the interior of the
16 vehicle.

17 The vehicle was photographed to document
18 the condition that it was in at the time we observed it.

19 The vehicle was processed for fingerprints
20 inside and out. We examined for the presence of blood in
21 the bed of the pickup.

22 We also collected - - or there again, I
23 did all the impound, so anything, blood, hairs and fibers
24 that were located, I personally did the impound on.

25 Q. Let me start with the exterior condition

1 of the vehicle.

2 Did anything about its exterior condition
3 immediately attract your attention?

4 A. Yes.

5 Q. What?

6 A. A couple of things.

7 One, the body of the vehicle itself, the
8 exterior body was clean. It looked as though it had been
9 washed, but the tires on the sidewall of the tires had
10 markings on the sidewall that appeared as though it had
11 been driven in the dirt and had rocks up on the side of
12 the tires, and also on the undercarriage of the vehicle
13 there were scrape markings in the oil pan area,
14 indicating that it had driven over some kind of brush.

15 Q. Are you saying there's was a contrast
16 between the undercarriage and tires and exterior of the
17 vehicle?

18 A. Yes.

19 Q. Was that sufficiently out of the ordinary
20 for you to note it in your report?

21 A. Yes, it was.

22 I noted that the vehicle was clean. There
23 again in the bedliner of the pickup were some stains that
24 drew our attention in that the exterior of the vehicle
25 was clean, but there were stains in the bedliner of the

1 pickup.

2 Q. We'll consider the bedliner of the pickup
3 is still part of the exterior.

4 Would you tell the jury what you observed
5 in the examination of the bedliner of the truck?

6 First of all, what do you mean by a
7 bedliner?

8 A. The bed of the pickup had one of those
9 plastic liners - - I'm not sure exactly what they call
10 those - - the plastic protective liners to protect the
11 bed from any damage.

12 Each of the four corners of the pickup
13 where the tie areas were had twine or some sort of a tie
14 attached to it and there again in the bedliner, the
15 plastic bedliner there were some areas that were noted
16 that had a stain on it, in contrast to the black liner.

17 Q. Now, when you - - in the course of
18 examining this vehicle when you come across something
19 like that that attracts your attention is there a
20 presumptive test that you do to determine whether or not
21 it may be blood?

22 A. Yes.

23 Q. What is that test called?

24 A. There are actually a couple of tests that
25 we can do and in this case we used both of them, one, an

1 initial test we would use and did use in this case is a
2 phenylthalline test for the presence of blood which will
3 give us an indication of whether we're dealing with blood
4 or not.

5 In this case we did three presumptive
6 tests using the phenylthalline and all three reflected
7 positively and at that point three samples were collected
8 from the same areas where we got the positive reaction.

9 Thereafter, we continued with a second
10 presumptive test which is called a luminol test and that
11 test is basically a visual test and can be photographed.

12 Q. What happens with the luminol test?

13 A. With the luminol test it has to be done in
14 a darkened area and as you spray this liquid luminol on
15 the area it reacts positively with blood by glowing in
16 the dark so you get a glow reaction, which can be
17 photographed.

18 Q. Did you, in fact, take photographs or were
19 photographs taken in your presence to memorialize the
20 events you've just been talking about?

21 A. Yes.

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

23 THE COURT: You may.

24 BY MR. KANE:

25 Q. I want to show you what have been marked

1 for purposes of identification as State's proposed
2 exhibits 28 through 32.

3 Without saying what they are I just ask
4 you if you recognize those.

5 A. Yes, I do.

6 Q. What are they?

7 A. Those show the pickup that we've been
8 discussing.

9 Q. And do they fairly and accurately depict
10 the way it looked when you processed it back in 1998?

11 A. Yes, they do.

12 MR. KANE: Your Honor, I would offer 28
13 through 32.

14 MR. CHRISTIANSEN: No objection, judge.

15 THE COURT: Received. Thank you.

16 BY MR. KANE:

17 Q. Would you, one at a time, take a look at
18 the back of the photo, read off the number and then
19 explain to the Ladies and Gentlemen of the Jury what's
20 depicted in each photograph?

21 A. Number 28 shows an overall condition of
22 the back of the pickup from the driver's side area, just
23 showing an overall view of the condition that we received
24 it in the exterior view.

25 Q. Did it also allow the license plate number

1 to be viewed?

2 A. Yes.

3 Q. Continue, please.

4 A. Number 29 is also a view of the exterior
5 rear of the vehicle from the passenger side, also the
6 plate is in view on this one and again shows the overall
7 exterior condition of the vehicle.

8 Number 30 is a driver's side view
9 photograph showing the side panel of the pickup and
10 basically this photograph was taken to show that it was
11 sealed, the door was sealed shut, and at the time we
12 began the examination of the truck. It arrived in this
13 sealed condition, showing the seal in place on the door.

14 Number 31 shows a view of the stain, one
15 of the stains that drew our interest in the plastic
16 bedliner at the rear of the pickup near the tailgate.

17 Number 32 shows an overall view of the
18 interior bedliner of the pickup showing the reaction of
19 the stains that were visible with the use of the luminol,
20 showing the glowing effect.

21 Q. Are those blue lines, glowing lines
22 running down the middle of the photograph, they are the
23 indications that you mentioned when you perform the
24 luminol test?

25 A. Yes, and they run from the bedliner up

1 near the back of the cab or at the back of the cab all
2 the way down to the tailgate.

3 Q. As a result of your observations in the
4 bed of the truck did you secure samples for further
5 testing?

6 A. Yes.

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

8 THE COURT: Yes.

9 BY MR. KANE:

10 Q. I want to show you first what has been
11 marked for purposes of identification as State's proposed
12 Exhibit 26 and ask if you recognize that.

13 A. Yes, I do.

14 Q. And what is 26?

15 A. Twenty-six is the envelope containing
16 three blood samples that were collected from the pickup.
17 It has the date, the event number and my signature
18 affixed.

19 Q. Does it bear any signatures or seals in
20 addition to your own?

21 A. Yes, it does.

22 Q. And are those the signature or seal of the
23 person familiar to you?

24 A. Yes.

25 Q. Who is that?

1 A. That would be Dave Welch, a criminalist
2 with the chemistry lab.

3 Q. Except for Mr. Welch's signature and seal
4 does that item appear to be in substantially the same
5 condition that it was when you first observed it back in
6 November of 1998?

7 A. Yes, it does.

8 MR. KANE: Your Honor I'd offer 26.

9 MR. CHRISTIANSEN: No objection.

10 THE COURT: Proceed. Thank you.

11 BY MR. KANE:

12 Q. I'm not going to ask that you open that
13 one. I want to show you next what has been marked for
14 purposes of identification as State's proposed Exhibit 27
15 and ask if you recognize that.

16 A. Yes, I do.

17 Q. What is 27?

18 A. Twenty-seven is a box containing eight
19 rolls of paper in which we took tire impressions for this
20 pickup we were discussing, two impressions from each
21 tire.

22 Q. Before getting into the exhibit itself
23 would you explain this physical process of taking tire
24 impressions?

25 A. If tire impressions are found at a scene

1 in order to compare impressions from a particular vehicle
2 with impressions that may have been found in the dirt or
3 the mud at another location, some method has to be
4 effected to take a sample of those tire impressions, and
5 since we're dealing with a scene that may have only a
6 small section of tire, maybe a foot or two section of
7 tire, that impression could have been made by any one of
8 the four tires on a vehicle and the entire length of each
9 tire has to be rolled in order for comparison purposes.

10 So in this case the entire circumference
11 of the tread area of a tire is driven over a piece of
12 paper and in the process of that, in this case we used
13 Armorall, it was wiped on the tread of the tire itself in
14 order to leave a greased type medium to drive over that
15 white paper.

16 In the process of driving over that white
17 paper it leaves this Armorall and the method used - - in
18 this case we used a magnetic powder, magnetic fingerprint
19 powder that's typically used to locate fingerprints that
20 can be applied on that paper with the Armorall and an
21 exact impression of that tire becomes permanent on that
22 piece of paper.

23 Q. Getting back to 27, how do you recognize
24 that?

25 A. This also has an event number attached to

1 it, my name and signature and description of the items
2 inside.

3 Q. Does it bear any signatures other than
4 your own?

5 A. Yes, it does.

6 Q. Anyone familiar to you?

7 A. Yes.

8 Q. And who is that?

9 A. Fred Boyd.

10 Q. What does Fred Boyd do?

11 A. He's a latent print examiner. He also
12 does tire and footwear impressions.

13 Q. Except for the signature of Mr. Boyd's
14 signature and seal does that exhibit appear to be in
15 substantially the same condition as it was when you last
16 observed in in 1998?

17 A. Yes.

18 MR. KANE: Move the admission of State's
19 proposed 27.

20 MR. CHRISTIANSEN: No objection.

21 THE COURT: Received. Thank you.

22 BY MR. KANE:

23 Q. Open that, please, and just display one of
24 the rolled tire impressions to the jury. There's no need
25 to take them all out, but just show them one so they know

1 what it is we're talking about.

2 You don't have to roll it all the way out.
3 Just display it to the jury so they can get the idea.

4 A. I have one of the rolls which again turns
5 to be 10 or 12 feet long to get the entire circumference
6 of the tire showing the tread pattern and in the detail
7 that's preserved by this method of putting the
8 fingerprint powder on.

9 Q. Are the impressions marked in such a way
10 that anybody looking at them later can tell which
11 particular tire it's a print of?

12 A. We mark the tire information on the paper,
13 the direction that the tire is rolling and which tire on
14 the vehicle it is.

15 Q. If you can replace that in the box,
16 please. Thank you.

17 One further question on State's exhibit 26
18 which is already in evidence, those suspected blood
19 samples that you impounded.

20 I think I neglected to ask you the
21 specific locations from which you impounded those.

22 A. The three samples were collected, one from
23 the upper front end of the bed near the cab of the pickup
24 in the plastic liner, a second one was collected from the
25 plastic liner towards the back end of the bed which would

1 be near the tailgate area and the third sample was
2 collected from the metal painted area which is actually
3 below the bedliner, between the tailgate and the
4 bedliner, on the metal, painted metal surface.

5 Q. Finally, as part of your processing of
6 this vehicle did you or did anyone in your presence
7 attempt to secure latent fingerprints?

8 A. Yes.

9 Q. And were latents obtained?

10 A. Yes.

11 Q. By yourself?

12 A. Yes.

13 Q. By anyone else?

14 A. Yes. I believe Vince Roberts also
15 recovered fingerprints.

16 Q. With respect to the ones that you
17 recovered what did you do with them?

18 A. I submitted them to the latent print
19 section for further examination.

20 MR. KANE: Nothing further Your Honor.
21 Tender the witness.

22 THE COURT: Cross-examination.
23
24
25

EXAMINATION

BY MR. CHRISTIANSEN:

Q. Good afternoon, Mr. Reed.

You just told people in this jury that you noticed this vehicle, this Toyota pickup and it struck you as odd because the outside is clean, yeah, the outside is clean and the tires and undercarriage were dirty; is that accurate?

A. The undercarriage has scrape markings in the oil pan. I wouldn't characterize it as being any dirtier than another, but it had the scratch marks that may be associated with driving over brush.

Q. And you thought that was important because you knew there was another crime scene where a body had been found out in the desert area south of town, correct?

A. Yes.

Q. So you were looking for any evidence that this vehicle may have been out in that area and then subsequently cleaned to conceal that it had been in that area, correct?

A. Right.

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

THE COURT: You may.

1 BY MR. CHRISTIANSEN:

2 Q. Mr. Reed, I'm going to hand you what has
3 been marked for identification purposes as defense
4 proposed Exhibit E. See if you recognize it.

5 A. Yes.

6 Q. What is that a picture of?

7 A. This is a picture of the bedliner of the
8 pickup with the tailgate open.

9 Q. I want you to tell the people on the jury
10 if that bedliner is clean.

11 A. I wouldn't characterize the bedliner as
12 clean, no.

13 Q. It's quite dusty, isn't it?

14 A. Yes, it is.

15 Q. And does that have some impact on your
16 theory that this vehicle was cleaned after it had been in
17 a desert area where a body was found?

18 A. I don't know that the bedliner itself
19 would have been cleaned. In reference to the cleanliness
20 of the vehicle, I guess I am mainly referring referring
21 to the paint, the windows, the body of the vehicle
22 itself.

23 Q. So a person would supposedly clean the
24 body off, but leave the part where all the evidence is
25 dirty.

1 Is that your theory now?

2 A. I can't speculate as to what someone may
3 do, but also on examination of the interior cab area,
4 that we found to be in a very dirty condition.

5 MR. CHRISTIANSEN: May I approach again,
6 please?

7 THE COURT: You may.

8 BY MR. CHRISTIANSEN:

9 Q. I'm showing you what has been marked for
10 identification purposes defense proposed Exhibit F.

11 Does that appear to be another picture of
12 the bed of that pickup?

13 A. Yes, it does.

14 Q. And is that further illustration that the
15 bed of that pickup was quite dusty?

16 A. Yes.

17 Q. And that flies against your theory that
18 the outside of this truck was cleaned after it was out in
19 the desert, doesn't it?

20 A. I don't know what condition that pickup
21 may have been in, if this were the pickup to do that.

22 The things that I did note were the
23 markings on the sidewalls of the tire, the scrapes on the
24 undercarriage.

25 There again, vegetation samples were taken

1 from the scene and the reason that was examined is to
2 determine if there might be any vegetation that may have
3 attached itself underneath.

4 MR. CHRISTIANSEN: Move for the admission
5 of defense proposed exhibits E and F.

6 MR. KANE: No objection.

7 THE COURT: Those are received. Thank
8 you.

9 BY MR. CHRISTIANSEN:

10 Q. State's exhibit 32 is the picture of the
11 bed of this pickup with the luminol stains, those kind of
12 glowing stains showing where there was blood or
13 presumptively blood in the bed of this pickup, correct?

14 A. Yes.

15 Q. And the stains extend from the very front
16 of the pickup all the way along the bed to the back of
17 the pickup, correct?

18 A. Yes.

19 Q. You could have taken far more than the
20 three samples you took of what was believed to be blood
21 in the bed of this pickup, correct?

22 A. Yes.

23 Q. And the only samples you took were those
24 three that you have testified here in Court about today
25 and that are referenced as items one through three on

1 your evidence impound report, correct?

2 A. Yes.

3 Q. The uncercarriage that you have spoken
4 about, do you have a picture of that?

5 A. I don't have one here.

6 Q. Can you tell these people in the jury what
7 the age of those scrapes on the uncercarriage is?

8 A. No. There's no way to determine that.

9 Q. Can you tell the jury how old that blood
10 in the back of the truck is?

11 A. No.

12 Q. If I understood you correct, you just took
13 the - - or did the rolls of those tire marks that you
14 started to pull out the butcher paper on, you just did
15 those samples, correct?

16 A. I'm not sure I understand the question.

17 Q. Bad question.

18 You did the rolling of the tires, for lack
19 of a better term?

20 A. Yes.

21 Q. And sprayed them with Armorall and rolled
22 them on the butcher paper to preserve a tire marking?

23 A. Yes.

24 Q. Which way did you roll the truck or the
25 tires to do that?

1 A. My recollection of that is that with the
2 front tires we rolled it backwards out of the garage and
3 with the back tires they were rolled forward.

4 Q. Did you ever have any information about
5 the scene where Mr. Hamilton was found in terms of
6 whether the tire markings appeared to be from someone
7 backing up or going forward?

8 A. I'm sorry, I don't know who Mr. Hamilton
9 is.

10 At the scene I worked I had a John Doe and
11 I'm not familiar with who that was identified to.

12 Q. You gave those rolls on the butcher paper
13 to Torri Johnson?

14 A. Fred Boyd.

15 Q. Fred Boyd.

16 MR. CHRISTIANSEN: Nothing further, thank
17 you.

18 THE COURT: Re-direct.

19

20

21 RE-EXAMINATION

22 BY MR. KANE:

23 Q. I just want to clarify that third blood
24 swab, not the one up near the cab of the truck, but the
25 one near the tailgate.

1 Would you clarify the location that was
2 found in?

3 A. Could I refer to the photograph for a
4 clarification on that?

5 Q. If it would help you to refer to the
6 photograph, just indicate which particular photo you're
7 referring to.

8 A. On number 32, which is a luminol photo,
9 that would have been collected on this metal portion
10 behind the tailgate that is actually off of the plastic
11 liner and between the tailgate, so it's on the painted
12 metal portion.

13 Q. And that's what I wanted to be clear on.

14 It's the metal portion that is not covered
15 up by the liner?

16 A. Correct.

17 MR. KANE: Nothing further, Your Honor.

18 THE COURT: Anything else?

19 MR. CHRISTIANSEN: Nothing for me.

20 THE COURT: Thank you. You're excused.

21 Next witness, please.

22 MR. KANE: Doctor Steve Trenkle, Your
23 Honor.

24

25

STEVEN JAMES TRENKLE, M.D.,

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

3
4 EXAMINATION

5 BY MR. KANE:

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

8 A. Steven, S-t-e-v-e-n James T-r-e-n-k-l-e.

9 Q. By whom are you employed?

10 A. I'm employed by the Coroner of the County
11 of San Bernardino, California.

12 Q. And for how long have you been employed
13 there?

14 A. Since July of 1995.

15 Q. Are you a medical doctor?

16 A. Yes, I am.

17 Q. Doctor, would you describe for the Ladies
18 and Gentlemen of the Jury briefly your academic and
19 professional background?

20 A. I graduated from medical school at Loma
21 Linda University School of Medicine in 1973. The initial
22 part of my career as a physician was as a pediatrician.

23 I did an internship at Los Angeles County
24 USC Medical Center, two years of pediatric residency at
25 Loma Linda University Medical Center and I had additional

1 post-graduate training in ambulatory pediatrics in Mount
2 Zion Hospital in San Francisco and Adolescent Medicine at
3 the University of California in San Francisco.

4 In 1980, I was hired by the School of
5 Medicine as an assistant professor of Pediatrics. I
6 taught pediatrics at Loma Linda for 10 years, from 1980
7 through 1990.

8 Then, in 1990, I decided to make a career
9 change within the field of medicine and switched to
10 pathology. I did four-year residency in anatomic and
11 clinical pathology, which those are the basic areas of
12 the sub-specialty of pathology, at Loma Linda, and
13 following completion of that residency I did a one-year
14 fellowship in Forensic Pathology at the Coroner's Office
15 in San Bernardino.

16 When I completed the residency, rather the
17 fellowship in forensic pathology, the coroner then hired
18 me to be one of the staff pathologists working for the
19 coroner and that's where I've been employed since July of
20 '95.

21 Q. As part of your duties with the San
22 Bernardino County Coroner's Office do you perform
23 autopsies on the bodies of persons who die under
24 suspicious circumstances?

25 A. Yes.

1 Q. Is it also part of your job to form
2 opinions as to the cause and manner of death of such
3 persons?

4 A. Yes.

5 Q. Finally, is it a part of your job to
6 testify concerning those opinions and conclusions in
7 Court?

8 A. Yes.

9 Q. Have you testified and qualified as an
10 expert in the field of forensic pathology in the courts
11 of the State of California?

12 A. Yes.

13 Q. On approximately how many occasions?

14 A. Sixty to 70 occasions.

15 Q. Have you ever testified here in Nevada?

16 A. No.

17 MR. KANE: I would tender the witness at
18 this time for Voir Dire on his expert qualifications.

19 MR. KENNEDY: No objection to him being
20 qualified as an expert.

21 THE COURT: The doctor is so found.

22 Proceed.

23 BY MR. KANE:

24 Q. I want to talk to you about December 29,
25 1998.

1 Did you perform an autopsy on that date on
2 a person identified to you initially as a John Doe and
3 eventually as a Peter Limanni?

4 A. Yes, I did.

5 Q. Would you describe for the Ladies and
6 Gentlemen of the Jury the significant observations that
7 you made during your external examination of this body?

8 A. The major findings in the external
9 examination were that this body was partially decomposed
10 and it had evidence that animals such as dogs or coyotes
11 had had access to the body.

12 The body was clothed only in a pair of
13 undershorts and it had been discovered partially buried
14 and partially uncovered, so there was a large amount of
15 adherent to dirt and gravel to the body when I first saw
16 it.

17 After I washed all that dirt away and
18 cleaned the body, basically the soft tissues, the skin of
19 the skull, the face, the upper part of the shoulders, the
20 upper part of the chest and portions of the sides had
21 been removed by animal activity.

22 The remaining portions of the body had
23 varying degrees of decomposition and mummification where
24 the tissue sort of dries out, consistent with having been
25 outdoors partially buried for a considerable period of

1 time, perhaps weeks.

2 The injuries - - once I had done that, I
3 also noted several tatoos on the body. The significant
4 injuries were two gunshot wounds in the left lower back,
5 two wounds right next to each other, they fractured the
6 8th and 9th ribs, two holes through and through the heart
7 associated with those.

8 Then there were several gunshot wounds of
9 the skull. The skin, again, was gone. It was not
10 present, but when examining the skull there were two
11 gunshot wounds in the very back of the skull, one of
12 which the bullet was actually imbedded in the skull
13 itself.

14 there were two gunshot wounds on the left
15 side of the head. There were two what appeared to be
16 gunshot wounds on the top of the head, but it appeared
17 that they were consistent with a bullet striking the
18 skull causing a fracture, but not penetrating through the
19 skull.

20 There was a gunshot would on the right
21 side of the head just above the level of the ear. In
22 addition, there was another gunshot wound on the top of
23 the left shoulder and there may have been another wound
24 in a shoulder area that where the skin had been removed
25 so that the wound was actually not visible.

1 Q. And did the body bear any distinguishing
2 characteristics in the form of scars, tatoos or other
3 markings?

4 A. It had several tatoos.

5 Q. Do you recall any of them?

6 A. I'd have to refresh my memory from my
7 report.

8 Q. Did you prepare a report?

9 A. Yes.

10 Q. Would it refresh your recollection to
11 refer to that?

12 A. Yes, it would.

13 Q. Would do you that and just let me know if
14 there were any tatoos that you observed on the body?

15 A. There was a tatoo on the right upper arm.
16 That was about eight inches by two inches. I described
17 it as a vulture with a yellow beak and claws holding a
18 turquoise colored branch.

19 Another cartoon-like figure next to it
20 that was - - that appeared to be either carrying a cane
21 or a long tail. Some of these tatoos were sort of - -
22 because of the decomposition that had occurred it was
23 hard to see the details.

24 Another tatoo was on the left arm. It was
25 four and a half inches. It appeared to be a flying eagle

1 like attacking flying eagle figure. On the right lower
2 extremity was a tatoo of what appeared to be a map of
3 Italy. It was a boot-shaped object with the word Italy
4 tatoo'd across it, so it would be consistent with a tatoo
5 of the outline of the country Italy.

6 On the left lower extremity was a tatoo of
7 a blue colored flower, like fur.

8 Q. Would you next describe for the Ladies and
9 Gentlemen of the Jury your significant observations
10 during your internal examination of this body?

11 A. Um, much of the internal organs were - -
12 had evidence of decomposition. The upper portion of the
13 chest, the skin and tissue had been removed and both of
14 the bones had been removed, typical for animal activity.

15 The heart was still present, however, and
16 the heart had two gunshot wounds in the front part of the
17 heart and the back part of the heart that were consistent
18 with the two wounds in the back of the chest.

19 Inside the skull cavity I recovered
20 several bullets, only one of the bullets could I be
21 definite about which wound it came from.

22 The wound in the right side of the skull,
23 that bullet was imbedded in the base of the skull just an
24 inch or so from where it entered.

25 The other wounds that were in the back and

1 the left side and sort of the left top of the head, I
2 recovered bullets from the decomposed brain, but I
3 couldn't determine which bullet went with which hole.

4 Q. Were one or more of the wounds that you
5 observed potentially fatal?

6 A. Well, both of the wounds, the entrance
7 wounds in the back that went through the heart, either
8 one of those would be fatal. Together they were fatal.

9 And the gunshot wounds to the brain, even
10 with treatment they may have been fatal. Again, because
11 the brain was decomposed, I couldn't see which portion of
12 the brain was affected by the bullet, so some gunshot
13 wounds to the brain can be survived, but all of the
14 gunshot wounds to the head were potentially fatal.

15 Q. Was there anything about your examination
16 that indicated to you the order in which these wounds may
17 have been inflicted?

18 A. No.

19 Q. Was there anything in your examination
20 that indicated to you how long that body may have
21 possibly been in the desert?

22 A. Um, well, the degree of decomposition and
23 the post-mortem changes would not have occurred within a
24 day or two and would be more consistent with weeks.

25 Being, as long as the body is covered by

1 dirt and insects and larger animals cannot get access to
2 it.

3 In December, out in the desert the body
4 may essentially be cold and fairly well preserved. Once
5 the body gets dug out by larger animals and exposed to
6 the elements, then it starts to decompose quicker.

7 Q. You believe you stated decomposition of
8 the upper exposed part of the body was far more advanced
9 than the lower part of the body?

10 A. That's correct.

11 Q. Your understanding is that the lower part
12 of the body was still buried at the time that the body
13 was discovered?

14 A. That's right.

15 Q. As a result of your internal an external
16 examination of this body were you able to arrive at an
17 opinion as to the cause of death?

18 A. Multiple gunshot wounds of the head and
19 chest.

20 Q. Were you able to arrive at an opinion as
21 to the manner of death?

22 A. Homicide.

23 Q. Was there anything about the decomposition
24 of the body which prevented you from making further
25 findings or examination?

1 A. Typically with any gunshot wound we like
2 to try and make a determination of the range of fire, how
3 far away from the body the barrel of the gun was by
4 looking for things like powder or soot or heat effects.

5 The closer the barrel of the gun is the
6 more of these kinds of things you see, but in this case
7 all of the areas of the body where the gunshot wounds
8 were, the skin and soft tissue were gone and I was unable
9 to make that sort of a determination as to whether it was
10 a contact shot or a more distant shot.

11 Q. Finally, was there anything unusual in the
12 nature of the head wounds?

13 A. Yes.

14 Q. What?

15 A. Well, one of the - - in the back of the
16 head, the bullet itself was imbedded in the outer table
17 of the skull. It was flattened, but it was right in the
18 outer tip of the skull. In other words, it did not
19 penetrate through the skull.

20 And two of the wounds on the top of the
21 head were basically dents and fractures in the outer
22 table of the skull as if a bullet or other object had hit
23 the head and bounced off, whereas the other wounds, the
24 bullet penetrated through the skull and into the brain,
25 so the fact that for sure one of the gunshot wounds the

bullet didn't penetrate the skull and two others were - -
looked like a bullet may have bounced off the skull would
be unusual.

Q. In your experience what might cause that?

A. Well, most, basically it's saying that the
bullet doesn't have enough energy to penetrate through
the skull, so there is a defective gun, there is a
defective ammunition.

MR. CHRISTIANSEN: This is beyond his
scope of expertise. He's not a gunsmith.

He's a forensic pathologist.

BY MR. KANE:

Q. Have you examined bodies before where the
cause of death is gunshot wounds?

A. Yes.

Q. As part of your purpose for examining the
body and the opinions that you form is the distance and
velocity of the shots fired?

A. Yes.

Q. A.

Q. And have you testified as an expert as to
those types of conclusions in the past?

A. Yes.

MR. KANE: Ask he be permitted to answer.

THE COURT: I'm going to allow his

1 testimony as to the unusual nature of what he found
2 stand.

3 As to what might have caused that to
4 happen, I'm going to strike that.

5 MR. KANE: Nothing further. Tender the
6 witness.

7 THE COURT: Cross-examination.

8
9
10 EXAMINATION

11 BY MR. KENNEDY:

12 Q. Doctor, your report indicates the body had
13 weighed 160 pounds when you did the autopsy; is that
14 correct?

15 A. That's correct.

16 Q. I assume that's a weight that's exclusive
17 of body fluids and other things of that type; is that
18 right?

19 A. In situations like this you would expect a
20 considerable amount of body fluids to have been absorbed
21 by the ground around it and there were - - both lungs
22 were missing and soft tissue was missing, so that would
23 underestimate the weight of the person before death.

24 Q. Given your experience in performing
25 autopsies and your general experience as a pathologist,

1 would you agree that this person's weight, when this
2 individual was alive, was in excess of 200 pounds?

3 A. It could well have been.

4 Q. I believe you said the approximate length
5 was 65 and a half inches; is that right?

6 A. Yes.

7 Q. Could that have been affected as well by
8 the age of the body?

9 A. Yes.

10 Q. Okay. let's talk about that, the age of
11 the body.

12 You said here today that the body could
13 have been there for several weeks; is that right?

14 A. Yes.

15 Q. And that the upper part of the body was
16 more decomposed than the lower half because the upper
17 part was exposed to the air; is that correct?

18 A. Correct.

19 Q. I think you noted that there was very
20 little insect activity upon the body itself?

21 A. That's right.

22 Q. Is it conceivable that this body could
23 have been at that location for two weeks or less, given
24 the decomposition of the body?

25 A. That's conceivable, yes.

1 Q. It is.

2 And the advanced decomposition of the
3 upper half, part of that, your impression was that due to
4 the animal activity upon the body itself; is that
5 correct?

6 A. Well, decomposition is a separate process
7 from animal activity, but the animal activity would allow
8 decomposition to occur faster so it's two processes that
9 are going on at the same time.

10 Q. So tears into the body by animals would
11 have basically exposed the body to increased dehydration
12 rate perhaps or allow more body fluids to escape?

13 A. Yes.

14 Q. Which that would increase the
15 decomposition rate; is that correct?

16 A. Yes.

17 Q. And you only saw the body there when it
18 was at your office in San Bernardino.

19 You didn't go out to the site, did you?

20 A. No, I did not. I only saw the body at the
21 coroner's facility.

22 MR. KENNEDY: Very well. Pass the
23 witness.

24 THE COURT: Re-direct?

25 MR. KANE: Nothing further.

1 THE COURT: Next witness, please.

2 MR. KANE: Michele Hamilton.

3

4

5 MICHELE HAMILTON,
6 called as a witness herein, was sworn by the clerk of the
7 court, was examined and testified as follows:

8

9

EXAMINATION

10 BY MR. KANE:

11 Q. Ma'am would you please state your name and
12 spell your last name for us?

13 A. Michele Hamilton, H-a-m-i-l-t-o-n.

14 Q. Ms. Hamilton, who was Eric Hamilton?

15 A. My brother.

16 Q. In November of 1998, do you know where
17 Eric was living?

18 A. Yes, with me.

19 Q. And did he come to Las Vegas at some
20 point?

21 A. Yes, he did.

22 Q. When was that?

23 A. Beginning of November, end of October,
24 something like that.

25 Q. And what did he bring with him when he

1 came here?

2 A. Just himself, what he had on his back and
3 money.

4 Q. Do you know how much money?

5 A. He had a lot of money.

6 Q. A lot could mean anything, do you know?

7 A. Maybe 3,000.

8 Q. And was he coming here to stay, do you
9 know?

10 A. He was coming here for work, yes.

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

12 THE COURT: You may.

13 BY MR. KANE:

14 Q. I want to show you what's already in
15 evidence as State's proposed exhibit 1, Ms. Hamilton.

16 Is that Eric?

17 A. Yes.

18 Q. When was the last time you talked to Eric,
19 Michele?

20 A. About maybe the first week in November.

21 Q. Was that in person or on the telephone?

22 A. Telephone.

23 Q. You were back in California?

24 A. Yes.

25 Q. Was there anyone else on the phone besides

1 the two of you?

2 A. No.

3 Q. And without asking what you discussed, did
4 you ever talk to him after that?

5 A. Yes. He called me twice a week.

6 Q. But after this last telephone conversation
7 did you ever see or talk to him again?

8 A. Oh, no.

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

11 THE COURT: Cross-examination.

12

13

14 EXAMINATION

15 BY MR. KENNEDY:

16 Q. Ms. Hamilton, do you remember giving a
17 statement to the police back in November or December of
18 1998 to a Detective Thowsen?

19 A. Yes.

20 Q. Did you meet with him in person or did he
21 talk with you on the phone?

22 A. Phone.

23 Q. And do you remember telling him that the
24 last time you spoke with your brother was on November 13,
25 1998?

1 A. Yeah, probably that.

2 Q. Did you call him or did he call you?

3 A. He called me.

4 Q. Did he tell you where he was staying at
5 that time?

6 A. Yes.

7 Q. Was it at the local hotel?

8 A. Yes.

9 Q. Do you remember the name of the hotel?

10 A. Yes.

11 Q. What was it?

12 A. Downtown.

13 Q. The Downtown Hotel.

14 Did he tell you he was staying in that
15 hotel alone or with someone else?

16 A. He didn't say, but he was registered
17 there.

18 Q. All right. What kind of work was he doing
19 in Las Vegas in November 1998?

20 A. Construction.

21 Q. Construction.

22 Did he tell you that on his last phone
23 conversation with you, that he had a job and was working?

24 A. Yeah, he told me of that maybe on the
25 second phone call.

1 Q. Earl earlier in November?

2 A. Right.

3 Q. I noted from your statement you gave to
4 Detective Thowsen that your brother had stayed at a
5 halfway house in Long Beach; is that correct?

6 A. Yes.

7 Q. Is that a half halfway house because he
8 had some substance abuse problems?

9 A. Yes.

10 Q. Did he have a cocaine addiction?

11 A. Yes.

12 Q. Do you know how long he had that problem?

13 A. No.

14 Q. Were you aware in early November as to
15 whether or not he was spending any time in the local jail
16 for any type of charge?

17 A. In November?

18 Q. Yes, in early November?

19 A. No.

20 Q. He never called you from jail and told you
21 he was in jail for any problem?

22 A. No.

23 Q. In the last phone conversation on November
24 13, did he ask you for any money, telling you he was
25 running short of cash or anything of that type?

1 A. No.

2 I still had a lot of his money in our
3 safe. He had a lot of money. He had a Versatell account
4 which came to my house, statements, and he still had
5 money.

6 Q. So there was still money in the account
7 after his body was discovered, I take it?

8 A. Um-hum.

9 Q. Is that a yes, for the record?

10 A. Yes.

11 Q. Nor the Court reporter.

12 MR. KENNEDY: Pass the witness. Thank
13 you.

14 THE COURT: Re-direct?

15

16

17 EXAMINATION

18 BY MR. KANE:

19 Q. In addition to telling he was working here
20 did he tell you who he was working for?

21 A. No. He didn't say the name, but he told
22 me - - he described them.

23 Q. Did he tell you the type of work he was
24 doing?

25 A. Yeah, he said building some type of - - I

1 can't recall what it was he was building, but - -

2 Q. How did he describe the person?

3 A. Very nice white man that owned a business
4 and he hired him to put up - - make something next door.

5 They were building something.

6 MR. KANE: Nothing further, Your Honor.

7 THE COURT: Anything further?

8 MR. KENNEDY: No, Your Honor.

9 THE COURT: Thank you. You're excused.

10 MR. KANE: For the record, counsel has
11 been kind enough to stipulate this witness may be
12 excepted from the Exclusionary Rule and may remain in the
13 courtroom following her testimony.

14 MR. KENNEDY: That is correct.

15 MR. CHRISTIANSEN: Correct.

16 THE COURT: You may remain, if you so
17 desire.

18 Counsel approach the bench, please.

19 (Discussion off the record.)

20 THE COURT: Ladies and Gentlemen we will
21 take our typical afternoon recess.

22 (Whereupon the Court admonished the jury.)

23 (Brief recess taken.).

24 THE COURT: The continuation of C159915,
25 State versus John Joseph Seka. Let the record reflect

1 the presence of the Defendant, his counsel, Mr.
2 Christiansen and Mr. Kennedy, and Mr. Kane and Mr. Fattig
3 for the State.

4 The record will further reflect that the
5 jury is absent.

6 Mr. Christiansen, you wanted to make a
7 record, I believe.

8 MR. CHRISTIANSEN: Please, Your Honor.

9 During the testimony, I believe it was the
10 re-direct testimony of David Welch, the individual the
11 State called to testify about DNA evidence and was
12 received as an expert by the Court and did so testify, he
13 was asked the question by Mr. Fattig, something to the
14 extent of or to the effect of 'Didn't the defense have an
15 ability to re-test some of these things that you have
16 done and that there's still sufficient samples of?"; to
17 which I objected.

18 We approached the bench. The Court said
19 my objection was timely and would allow me the
20 opportunity to expand on it outside the presence of the
21 jury.

22 The impropriety of that question is, it is
23 a burden-shifting question. The defense has no
24 obligation to do anything and the State cannot at any
25 point during the trial imply or elicit testimony from

1 witnesses that would tell the jury that the defense had
2 to do something or should have done something, especially
3 in light of the fact of this witness who has never - -
4 who was never given to us on an expert written notice as
5 required by statute until the day of opening arguments, I
6 believe that's the correct time frame.

7 I had one of his reports earlier in the
8 year and I freely admitted to that, but at no point was I
9 notified that Mr. Welch was going to take the witness
10 stand and testify as an expert in DNA pursuant to the
11 statute that requires us to get a CV and a 21-day
12 notification.

13 So it's improper in two respects: One, is
14 that it's a burden-shifting question and answer and the
15 State simply can't do that.

16 Two, it's exacerbated by the fact, we, in
17 fact, were not given an opportunity to call an expert to
18 go and look at this stuff, because I didn't know an
19 expert was hitting the stand until we started the trial.

20 That places us in a dubious position of
21 now having to look at the jury and say - - and explain
22 why we didn't call a witness or have a DNA expert of our
23 own.

24 We didn't, quite frankly, because I didn't
25 have the notice of expert witness. I have a lady, Nora

1 Ruden, she's out of L. A.

2 I've contacted her in this case. She
3 can't help me because she's booked up. She can't get
4 here and doesn't want to be in a position of having to
5 look at things and testify the next day and risk perhaps
6 her reputation. She would like to do some of her own
7 testing.

8 On that basis I'd like to move for a
9 mistrial.

10 I have a second basis, Your Honor. It
11 came out in the testimony of Mr. Welch that all of the
12 samples for six different tests that he conducted have
13 been used up, essentially destroyed, so that no defense
14 expert could ever look at them under any circumstances
15 whatsoever.

16 That spoliation or destruction of evidence
17 is improper. I wish I could remember the name of the
18 case.

19 MR. KANE: It's Loud Hawk.

20 THE COURT: What is the case?

21 MR. KANE: Loud Hawk.

22 MR. CHRISTIANSEN: The government or the
23 State has now admitted in testimony that there is no
24 ability for the defense to conduct tests on these items
25 that the State intentionally, although not maliciously, I

1 don't believe, but it intentionally destroyed the
2 evidence or used all of it up, for lack of a better term.

3 It's a similar situation in the civil
4 context when a company does this and at the end of the
5 case they are entitled to a Wet 'N Wild instruction which
6 says that, presumptively, "Ladies and Gentlemen, you have
7 to presume that if this evidence was preserved it would
8 be adverse to the party who destroyed it intentionally."

9 THE COURT: On that issue, I think it's
10 rather important to make a distinction between using it
11 up and destroying it.

12 Did this witness testify that there was
13 residue, there was sufficient samples for additional
14 testing and he destroyed it or he used it all in his
15 tests?

16 MR. CHRISTIANSEN: The second one.

17 He used all of it up, I don't know how
18 many total tests he did, but six of all of his tests. I
19 think there were 14 or 15 done.

20 Six of those he used the entire sample
21 that was retained by the crime scene analysts, for
22 example, the swabs from blood at the back of the truck.
23 All three of those have been used up in their entirety.

24 THE COURT: Is that not tantamount to a
25 circumstance to where you would have a limited amount of

1 material to test and that the test was conducted that
2 would necessarily use all that material?

3 Under those circumstance would it not be
4 admissible?

5 MR. CHRISTIANSEN: Judge, quite frankly,
6 it may not be admissible or I think as the witness
7 testified what they do now is they call up the DA's
8 office and say "I'm going to test this, I would may use
9 it all. You might to get a defense person down here to
10 test this and take a look."

11 He did not do that back then. He said the
12 process has been ongoing to get more fair as they have
13 gone in doing DNA over the years and their testing has
14 become better, but with this particular evidence it
15 simply is gone, for all intents and purposes.

16 I can't test it or have a DNA test done to
17 it to see whether it is the purported victim in the back
18 of his truck.

19 THE COURT: Response, Mr. Kane?

20 MR. KANE: Your Honor, first, as to the
21 mistrial motion, if I could take theme in reverse order.

22 The motion for mistrial, as I understand
23 it, is based on the fact that the defense only just found
24 out that this stuff was used up and so it couldn't be
25 re-tested.

1 Counsel has admitted having since at least
2 March of 2000 the first of the two laboratory reports.
3 And if you look at that one there were seven items that
4 were tested.

5 Four of them had sufficient sample
6 remaining for re-testing. Three of them which are all
7 three swabs from the Toyota pickup truck identified Eric
8 Hamilton indicate no in the column is there sufficient
9 material in the re-test?

10 My point is if the defense wanted to
11 re-test this issue, the government supposedly destroying
12 evidence that they had a right to re-test, that doesn't
13 require an expert witness notification. That only
14 requires disclosure.

15 They have had that disclosure for close to
16 a year. If that was an issue they wanted to raise, they
17 were clearly entitled to do it.

18 As far as the motion based on the question
19 to Mr. Welch about whether there's material left or not
20 and it could have been re-tested by the defense, I
21 believe that it was an inadvertent comment in the sense
22 that it was not meant the shift the burden to the
23 defense.

24 That can be cured by an instruction,
25 either a specific instruction, if that's what the defense

1 wants or the general standard instruction that tells the
2 jury that the burden never shifts to the defense.

3 We're certainly not going to argue in our
4 closing argument that the defense had any burden to do
5 anything and then failed to do it.

6 It was a single question and I believe it
7 was invited fair comment. I stopped counting after the
8 first three or four.

9 My guess is there were about eight
10 questions that were asked to Mr. Welch on
11 cross-examination by the defense that all amounted, more
12 or less, to "Isn't it a fact, doctor or Mr. Welch, that
13 if he or somebody else wanted to re-test this stuff we
14 can't do that because there's none of it left?" Isn't
15 that what happened?"

16 I think when do you that over and over and
17 over again, that the counter to that question "Aren't
18 there a lot of these samples where there is plenty left",
19 that if him or somebody else wanted to test them they
20 could do so.

21 I think that's a fair question.

22 THE COURT: Your response"

23 MR. CHRISTIANSEN: Briefly, judge.

24 I admit that I have had one or both of Mr.
25 Welch's reports in a timely fashion. However, I don't

1 know under any circumstances where I would retain a DNA
2 expert when I have not received notice that this
3 gentleman was going to be offered as an expert and I
4 would have to then rebut his testimony.

5 So I think that's putting the cart before
6 the horse. The State has admitted it did not comport
7 with the statutory requirements and that's the box that
8 I'm placed in.

9 Now, five of the six items that I'm
10 referring to, judge, that are no longer available to be
11 tested are, as I see it, all of the tests where the blood
12 is identified of the two victims in the two vehicles.

13 There's the three swabs from the pickup
14 truck that Mr. Welch offered testimony, those are the
15 blood of Eric Hamilton, the African American male found
16 just south of town under the lattice-type structure of
17 boards and two items collected by Randy McPhail from the
18 rear of the '98 Dodge van that are identified as Peter
19 Limanni's blood and he's the gentleman found just over
20 the border in California.

21 All of that is gone and that is the most
22 imperative evidence in this case that the State intends to
23 try to box Mr. Seka in, because his argument is going to
24 go he was the only one with access to these vehicles and
25 the only one that knew both of these victims.

1 Now we're in a spot where we can have no
2 opportunity to look at this evidence from an independent
3 standpoint. And, you know, to be quite candid, to raise
4 it before I know the guy is going to testify is
5 impossible. I would have no reason to do so.

6 We would request the limiting instruction,
7 if the Court denies the mistrial motion on the question
8 asked by Mr. Fattig, and as to the items that have been
9 identified as the blood of the two victims and the
10 various vans, it's a spoilation of evidence.

11 If the Court would like us to do some
12 research to see the appropriate remedy, I'm happy to do
13 that over the weekend and get you some case law on it.

14 I think Mr. Kane probably knows the cases
15 off the top of his head, but I, quite candidly, don't.

16 THE COURT: Is there any demonstration of
17 a destruction of any samples that would have been
18 available for your testing.

19 MR. CHRISTIANSEN: They used all the
20 sample up.

21 THE COURT: Right.

22 That's not really spoilation. It's
23 utilization. It's not the willful destruction of
24 evidence.

25 MR. CHRISTIANSEN: I would say it's

1 willful, but not malicious. It's intentional they use it
2 all up.

3 They are not doing it necessarily - - or
4 my contention is that they - - I'm not saying they did it
5 on purpose so we wouldn't have it. I'm saying they did
6 it on purpose and now we don't have it and that's the
7 situation we're in.

8 MR. KANE: One further issue on the
9 government's issue of good faith. I think Mr. Welch's
10 testimony is now clear that technology has now advanced
11 to the point where you use a lot less of the sample so
12 today they can preserve a lot of things they couldn't
13 back then.

14 There's absolutely no evidence that he
15 deliberately destroyed anything or that anything was
16 consumed except in the process of testing, using the best
17 technology that existed at the time.

18 THE COURT: Thank you, gentlemen.

19 As you know, counsel, I indicated at the
20 bench when you approached that I was going to allow the
21 State to proceed and not strike the question asked by Mr.
22 Fattig.

23 My thinking at that time is my thinking
24 now and that is simply this: We've spent quite a lot of
25 time here today on this DNA question. It is an important

1 question in this case as far as I can determine.

2 The doctor or the chemist had been
3 challenged in a number of ways and so it is of some
4 import. My thinking at the time that you approached was
5 that clearly the defense counsel's questions of the
6 chemist, Mr. Welch or however you care to characterize
7 his title, left definite inferences that somehow, if we
8 just had had an opportunity to test this, somehow his
9 examination would be discredited and his findings would
10 be invalidated in some fashion.

11 I think after that clear inference is made
12 that Mr. Fattig was in his rights to make a
13 counter-assertion to the question he asked. I think
14 that's basically fair.

15 Now, I agree with Mr. Christiansen that
16 there should not be a shifting of the burden here, but I
17 think in the context of what we find here in this case
18 this afternoon, a shift in the burden has not occurred.

19 Now, as to the other issue, I'm afraid I
20 don't subscribe to the theory that lack of notice of an
21 expert being called, which we have to concede here was
22 not properly done through, as Mr. Kane says, inadvertence
23 and there's no reason to believe otherwise, but there was
24 no notice given, per se, that an expert would be called
25 in this instance.

1 But I don't think that fact necessarily
2 justifies or suggests that DNA testing would not be
3 pursued or inquiry would not be made as to whether or not
4 there was additional amounts of blood or DNA material to
5 be tested.

6 I think it's more likely, candidly, that
7 defense counsel had no reason to believe that the Metro's
8 testing was inaccurate or that there would be any
9 advantage to testing that material.

10 Now, that's just my offhand assumption and
11 I realize that's all it is.

12 I don't think one necessarily means the
13 other. Once the report was received last March, almost a
14 year ago, of the results of the DNA testing, I think if
15 there was any bonafide reason to challenge it counsel
16 might well have inquired at that juncture "Is there more
17 material to test, at least," and that certainly would beg
18 the question "By the way, are you going to call an
19 expert?"

20 That's not the defense's responsibility to
21 ask if you're going to call an expert., But I think if
22 there was a legitimate concern about the DNA testing,
23 that that would have prompted the question "Is there
24 sufficient material for us to have our tests run?"

25 I say that in all candor. By this I'm not

1 in any way chastising defense counsel. I just frankly
2 think it was going to pay off.

3 I'm not expecting them to admit that on
4 the record one way or the other.

5 Anything else to be said in the matter?

6 MR. CHRISTIANSEN: No, sir.

7 MR. KANE: No, Your Honor.

8 THE COURT: Mr. Bailiff, please.

9 (Whereupon, the bailiff brought the jury
10 to the courtroom.)

11 THE COURT: Will counsel stipulate all
12 members of the jury are present and properly seated?

13 MR. KENNEDY: Yes, Your Honor.

14 MR. KANE: Yes.

15 THE COURT: Your first witness, after our
16 break?

17 MR. KANE: Takeo Kato, Your Honor.

18
19 TAKEO KATO,
20 called as a witness herein, was sworn by the clerk of the
21 court, was examined and testified as follows:

22 THE COURT: Speak into the microphone.
23 Keep your voice up.

24

25

EXAMINATION

BY MR. KANE:

Q. Sir, please state your name and spell your first and last name for the record.

A. The first name is Takeo, last name is Kato, K-a-t-o.

Q. Mr. Kato, I want to talk to you about 1998.

At that time did you know a person named Peter Limanni?

A. Yes.

Q. How and where did you first meet Mr. Limanni?

A. He was my - - he had office right next to my office.

Q. Where was that, sir?

A. It was in Santa Monica, in California.

Q. Eventually did you enter into a business arrangement with Mr. Limanni here in Las Vegas?

A. Yes, I did.

Q. When was that?

A. It was, I would say, '98.

Q. And what type of business was it?

A. It was air conditioning replacement or

1 some kind of - - the air conditioning business actually.

2 Q. And roughly were you 50/50 partners or was
3 there some other arrangement?

4 A. Are you talking moneywise?

5 Q. Yes.

6 In terms of the money that the business
7 would make would you both share 50/50 or was there some
8 other kind of arrangement?

9 A. In the beginning, it was 50/50 and we
10 changed it later.

11 Q. In terms of the money that was put into
12 the business did you put in equal shares?

13 Did you put in more?

14 Did he put in more?

15 A. It was 50/50. Actually, it was 51 and
16 that was him and 49 is mine.

17 Q. And how much money did you yourself put
18 into that business from the time you got started until
19 the time it ceased operation?

20 A. Are you talking about cash?

21 Q. Yes, cash money that you had to put into
22 the business.

23 A. It was about 35 to 40.

24 Q. How much if you know did Mr. Limanni put
25 in?

1 A. None.

2 Q. Was his investment, are you familiar with
3 the term sweat equity?

4 A. Um-hum.

5 Q. Where you basically earn your equity by
6 the work you do in the business?

7 A. Yes.

8 Q. Was that Mr. Limanni's way of putting
9 value into the business?

10 A. No.

11 Q. What did he put into the business then?

12 A. He was - - he had a license to do the
13 business, so that's the - -

14 Q. So that was his contribution?

15 A. Yes.

16 Q. Did the business do well when it started?

17 A. No, actually not.

18 Q. So right from the beginning it didn't do
19 very well?

20 A. Yes. It was before summer so it didn't
21 happen, anything, so I stayed Four months.

22 Q. By the Fall of 1998 had you decided to
23 terminate your business relationship with Mr. Limanni?

24 A. Actually, that was the beginning of the
25 summer.

1 Q. So way back at beginning of the summer you
2 were trying to get out of things.

3 There was a lease here in Las Vegas; was
4 there not?

5 A. Yes.

6 Q. And you were trying to get out from being
7 the guarantor of that lease; is that correct?

8 A. Yes.

9 Q. Now in November 1998 were you made aware
10 that Mr. Limanni had gone missing?

11 A. Yes.

12 Q. And how did you find that out?

13 A. 1999 or - -

14 Q. 1998, or in November of 1998?

15 A. Okay. I called, then I don't recall too
16 much, but I think I spoke to a landlord out at the office
17 and he said he's missing.

18 Q. Were you eventually contacted by the
19 police?

20 A. Yes. Actually, I think that was FBI.

21 Q. But do you remember being contacted by
22 police officials here in Las Vegas?

23 A. Yes.

24 Q. Do you remember that at some point you
25 found a written list and mailed it to the police

1 officers?

2 A. I don't quite understand.

3 MR. KANE: May I approach, judge?

4 THE COURT: You may.

5 BY MR. KANE:

6 Q. I want to show you what has been marked
7 for purposes of identification as State's proposed
8 exhibit 20. Do you recognize that?

9 A. I don't recall.

10 Q. Is that your name and forwarding address
11 up at the top?

12 A. Yes, it is.

13 Q. Is that the address that you had back in
14 the Fall of 1998?

15 A. Yes, it is.

16 Q. Would you take a look at the contents of
17 this envelope and tell me if you recognize that?

18 A. Yes, I do.

19 Q. What is that?

20 A. This is the list of to-do lists I found
21 after I went to office. Peter was gone and nobody was
22 there, except him, and then I found this one and then I
23 think I sent or give to the police.

24 I don't recall.

25 Q. Let me take you through it.

1 This was the office at 1933 Western?

2 A. Yes.

3 Q. You said you found this after Peter had
4 gone missing, correct?

5 A. Yes.

6 Q. You said he was there.

7 Who were you talking about?

8 A. By the time that - - he was called Jack,
9 which is I think him.

10 Q. Jack is here in the room?

11 A. No. Actually - - the first time I was
12 there - -

13 Q. No, no. I'm sorry. I'm not making myself
14 clear.

15 Is the person you know as Jack here in the
16 room?

17 A. Yes.

18 Q. Would you point to him and tell me what
19 he's wearing?

20 A. That's him.

21 Q. Point to him.

22 A. (Witness indicating.)

23 MR. KANE: May the record reflect
24 identification of the Defendant?

25 THE COURT: What is he wearing?

1 THE WITNESS: A brown sweater.

2 THE COURT: The record will so reflect.

3 BY MR. KANE:

4 Q. And after you found that at 1933 Western
5 you furnished it to the police either in person or by
6 mail?

7 A. I don't recall, but yes, I did.

8 Q. But somehow you got it into the hands of
9 the police?

10 A. Yes.

11 Q. After you heard that Peter Limanni had
12 gone missing did you ever talk to or hear from Peter
13 Limanni again?

14 A. No.

15 Q. You're aware that Mr. Limanni is deceased;
16 are you not?

17 A. I'm sorry?

18 Q. You're aware that Mr. Limanni is deceased
19 now, he's dead?

20 A. Yeah.

21 Q. Do you know anything about how that
22 happened?

23 A. No, I don't.

24 Q. Did you have anything to do with it?

25 A. No, I don't.

1 MR. KANE: Nothing further. Tender the
2 witness.

3 THE COURT: Cross-examination.
4

5
6 EXAMINATION

7 BY MR. KENNEDY:

8 Q. Mr. Kato, do you remember having a
9 conversation on the telephone with Detective Thowsen in
10 December 1998?

11 A. Yes, I did. Yes, I do, but I don't know.
12 I don't recall the conversation, but he
13 did call me.

14 Q. I'll ask you a few details.
15 Do you remember telling Detective Thowsen
16 that you had another partner named K-a-z T-o-e ?

17 A. Yes.

18 Q. And that you and Mr. Toe had invested a
19 hundred thousand dollars in Mr. Limanni's air
20 conditioning business?

21 A. A hundred thousand - - don't know - - I
22 don't know if it was a hundred thousand, but total could
23 be, yes.

24 Q. You told us you invested approximately up
25 to \$40,000 in cash; is that right?

1 A. Yes.

2 Q. And you also leased several vans and a
3 truck; is that correct?

4 A. Yes, the Toyota, yes.

5 Q. Was there any equipment that you purchased
6 or leased as well?

7 A. Yes, we did.

8 Q. So the hundred thousand dollar total
9 investment sounds about right?

10 A. Yes. More than a hundred thousand.

11 Q. So you and Mr. Toe invested all this money
12 and gave it to Mr. Limanni to start this business here in
13 Las Vegas; is that correct?

14 A. Um, yes. In the beginning it wasn't a
15 hundred thousand, but the overall, yes.

16 Q. Overall investment?

17 A. Yes.

18 Q. Now, you told us on direct examination
19 that the business - - I want to make sure I understood
20 you correctly - - the business started to fail in the
21 summer of '98; was that right?

22 A. No.

23 Actually, the business - - right after we
24 started I stayed there for about three months, stayed
25 with Peter Limanni.

1 I felt it's not for my business type, so I
2 just - - even before start summer I just left, because we
3 had kind of bad relationship.

4 Q. You and Mr. Limanni had a bad
5 relationship?

6 A. I would say he - - I found out he is using
7 companies money using for personally, so I didn't like
8 it. It's a company, so I didn't like it.

9 So I told him.

10 Q. He was using company money for personal
11 reasons?

12 A. Exactly, for personal uses. I told him
13 couple times, but he didn't fix it. And also he felt
14 something for me, I think.

15 Q. You feel he didn't like you as well?

16 A. Kind of, I guess.

17 Q. Was your partner Kaz Toe, was he here in
18 Las Vegas with you?

19 A. He was here, but he just left because he
20 got to go back to L. A..

21 Q. Back to L. A.?

22 A. He was going to come, but couldn't make
23 it.

24 Q. Do you remember in October '98 that you
25 had a meeting with Mr. Limanni where you told him you

1 wanted your money back?

2 A. I'm sorry, when?

3 Q. In October '98 that you had a meeting with
4 Mr. Limanni, you told him you wanted your investment
5 back, you wanted to be paid back all the money and effort
6 you put into this?

7 A. Yes, that was right before I left. So
8 it's October already. I didn't have a contract, but that
9 was like three months after I agree, both of us.

10 Q. So I'm clear, it was October that you had
11 a conversation with Mr. Limanni and you told him that you
12 wanted your investment back, that you wanted to get out
13 of this business; is that correct?

14 A. I think - - it's not October, no. It was
15 before the summer.

16 I don't recall the month, but before the
17 summer.

18 Q. Okay.

19 A. October, I wanted the money back by
20 October.

21 Q. Do you remember coming to Las Vegas in
22 October and maybe the end of October and taking back one
23 of the vans, one of the vans that you had leased back to
24 California?

25 A. Yes. I don't recall the date, but I did

1 do that.

2 Q. Why did take that van back?

3 A. Because that was under - - everything
4 under my name, so he didn't pay the lease, so I found
5 out, and also the insurance is under my name, so I kind
6 of, you know, worry about it, so I just took it.

7 Q. Did you have intentions of coming back to
8 Las Vegas to take the other vehicles back to California?

9 A. No, I didn't, actually.

10 Q. You were just going to take one back?

11 A. Just one, because he needed two more, you
12 know, keep doing the business, so I left the two, but I
13 kept the one.

14 Q. Now, there were three vans and one truck;
15 is that correct?

16 A. Three van, yes.

17 Q. You were the one who leased all four
18 vehicles; is that correct?

19 A. Actually, yes.

20 Q. Did you have your own set of keys for all
21 four of those vehicles?

22 A. No, I don't.

23 Q. They were all here with Sinergi here in
24 Las Vegas?

25 A. Yes.

1 Q. Do you remember Mr. Limanni trying to get
2 you to become involved in his cigar business?

3 He wanted to open up a cigar shop?

4 A. Yes, I remember. Actually he came to - -
5 I met him - - both of them. I met him in Santa Monica.

6 Q. And did you decide that you would invest
7 in the cigar business or you didn't want anything to do
8 with it?

9 A. No. I didn't say no, but I didn't think
10 so.

11 Q. Do you recall telling - - that you told
12 the police that Mr. Limanni boasted or told how he could
13 get new identification and become a new person with false
14 ID?

15 Do you remember telling the police that?

16 A. Yes.

17 Q. Mr. Limanni told you that, that he could
18 become a new person?

19 A. Like he can get - - because I am from
20 Japan I do need Green Card. He knows about those things
21 and he actually told me about that.

22 Q. Okay. Did he tell you as well that you
23 could become a new person and obtain new credit, new
24 credit with banks?

25 A. Yes, he did. Can I ask you something?

1 Q. I get to ask all the questions. That's
2 the purpose of his whole system.

3 A. He did ask me, but the reason I say yes,
4 because - - because I didn't want him to leave the
5 business, just leave everything and I'm in trouble, so I
6 say I wanted to do some Visa things or Green Card things
7 and then I can contact him all the time.

8 Q. You didn't want him to abandon the Sinergi
9 business or just leave it, because you had all your money
10 invested in it; is that correct?

11 A. Yes.

12 Q. I'm going to show what you has been marked
13 - - may I approach the witness?

14 THE COURT: You may.

15 BY MR. KENNEDY:

16 Q. - - as Plaintiff's - - as Defendant's
17 proposed G. Have you seen that document before?

18 A. Yes.

19 Q. And what is that?

20 A. This is the - - I can't read it.

21 Q. Go ahead and read it to yourself.

22 A. Yes, I do remember.

23 Q. Is that a letter you wrote?

24 A. Actually, this is my partner. Kaz did it.

25 Q. Is that your signature at the bottom?

1 A. Yes, I agreed to sign it.

2 Q. So your partner wrote the letter, but you
3 signed off on it?

4 A. Yes, I did.

5 Q. Did you read the letter before you signed
6 it?

7 A. Yes, I did.

8 Q. Is that a copy of that letter?

9 A. I think so.

10 MR. KENNEDY: Your Honor at this time we
11 move for the admission of Defendant's G.

12 MR. KANE: No objection.

13 THE COURT: So admitted.

14 BY MR. KENNEDY:

15 Q. You wrote a letter to Michael Cerda of
16 Nevada Properties?

17 A. I don't remember.

18 Q. Do you remember Michael Cerda who was the
19 landlord at office at 1933 Western?

20 A. Landowner?

21 Q. One of the representatives of Nevada
22 Properties.

23 A. I don't recall his name.

24 Q. And did you write in this letter that you
25 wanted to get out of the lease on 1933 Western?

1 A. Yes.

2 Q. And did you also put in this letter that
3 you felt that you had been misled or betrayed by Peter
4 Limanni?

5 A. I don't know.

6 Q. Just read the second paragraph to
7 yourself.

8 A. What was the question?

9 Q. The question is did you feel that you had
10 been misled or betrayed by Peter Limanni?

11 A. Well, um, that time, yes, I did, but now I
12 feel it was a business thing so, now you feel like 50/50.

13 Q. You feel like 50/50 what?

14 A. Like it was my fault also.

15 Q. All right. But it was your money and your
16 investment in this business; is that correct?

17 A. Yes.

18 Q. In fact, you were one of the guarantors on
19 1933 Western; is that right?

20 In other words, you guaranteed the lease?

21 A. Yes.

22 Q. Is it true, Mr. Kato, that in January 1999
23 you had to file a Chapter 7 bankruptcy?

24 A. Yes, I did.

25 MR. KENNEDY: If I may approach the

1 witness.

2 THE COURT: You may.

3 BY MR. KENNEDY:

4 Q. Let me show you what has been marked as
5 Defendant's proposed exhibit I. This document appears to
6 be from the Bankruptcy Court in the Central District of
7 California.

8 Is that your name on the filing for
9 Chapter 7 bankruptcy?

10 A. Yes.

11 MR. KENNEDY: At this time move for
12 admission of Defendant's proposed exhibit I.

13 MR. KANE: No objection.

14 THE COURT: Received. Thank you.

15 BY MR. KENNEDY:

16 Q. Mr. Kato, in January 1999, just two to
17 three months after you last saw Mr. Limanni, you had to
18 file for Chapter 7 bankruptcy; is that right?

19 A. Yes, actually, but I was - - that was the
20 process to finish that day, but I was doing for about
21 three months.

22 Q. In this bankruptcy you had certain debts
23 that you had incurred, including the leases on the
24 vehicles for Sinergi; is that right?

25 A. Yes, I did.

1 Q. Did you list the lease that you had with -
2 - at 1933 Western as an asset in your bankruptcy estate
3 in order to get off of that lease?

4 A. I think so. I don't recall, but I think
5 so.

6 Q. But you were a guarantor on that lease; is
7 that correct?

8 A. Yes, but I think I was talking to - - I
9 think I did, yeah. I don't recall too much.

10 Q. So things got really bad for you,
11 financially, towards the end of 1998; is that right?

12 A. Yes.

13 Q. Your friend, Kaz Toe, did he leave - -
14 when did he leave for Japan?

15 Did he ever go back to Japan?

16 A. Both of them, yes, both of us.

17 Q. When did you go to Japan, in 1998?

18 A. 1998, I think end of December or
19 something.

20 Q. The end of December.

21 Obviously you came back to the United
22 States; is that right?

23 A. Yes.

24 Actually, back and forth. I do business
25 over there, too.

1 Q. Did Kaz come back immediately from Japan?

2 A. No. After, I think, four months, five
3 months.

4 Q. Then he came back in 1999, later on?

5 A. Yes. I was -- that was March.

6 Q. And Kaz, did he also have money in this
7 venture to set up the air conditioning business here?

8 A. Actually, I did have the company called
9 Tak Trading. The company invested, so he was my partner,
10 silent partner.

11 Q. He was a silent partner in your company,
12 is that yes, for the record?

13 A. Yes.

14 Q. The money that you had -- you told us you
15 had around \$40,000 to invest in the Sinergi business.

16 Is that money you had saved up or was that
17 from another source?

18 A. No. It's save up. Also -- no, I lend it
19 from friends in Japan.

20 Q. You borrowed money from your friends in
21 Japan to further this business here in the United States;
22 is that right?

23 A. Yes.

24 Q. And when this business fell through, the
25 Sinergi business, did you still have to pay back your

1 friends in Japan for the money you borrowed?

2 A. Yes. I'm still doing that.

3 Q. You're still doing that?

4 A. Yes.

5 Q. Do you pay them something every month?

6 A. Every month.

7 Q. Were your friends upset over the loss of
8 this money back in 1998?

9 A. Oh, no. Just pay them back so it's
10 nothing.

11 Q. They are fine with everything?

12 A. Yes.

13 Q. Do you recall when the last time - - you
14 may have been asked this on direct, I just want to
15 clarify it - - do you remember when the last time it was
16 that you spoke with Peter Limanni, either by telephone or
17 in person?

18 A. I don't recall the date, but I do
19 remember.

20 Q. Would it have been the time you came to
21 Las Vegas and took the van back or was it after that?

22 A. Don't recall, but very close. It was
23 right before or right after.

24 Q. Were you aware that Mr. Limanni was trying
25 to start another business very similar to this in Lake

1 Tahoe?

2 A. I don't recall if he told me, but I kind
3 of knew it.

4 Q. You kind of knew it?

5 A. Because, um, I think we got some call or
6 we found a paper or something. I don't remember, but I
7 kind of knew he is opening, I think, some cigar business.

8 Maybe he told me, I don't recall, but I
9 kind of knew.

10 Q. Were you aware that he had entered into a
11 lease for some office property in September 1998 in Lake
12 Tahoe?

13 Did he tell you about that?

14 A. I don't know if he told me, but I do - - I
15 did know, but I don't know how. I don't recall why.

16 Q. Was it your understanding that if he had
17 opened this office in Lake Tahoe that you were to receive
18 some of the profits from that business?

19 A. No.

20 Q. That was his separate business?

21 A. I think so, but from that business, but
22 personally he supposed to give me back, but from that
23 business. I don't know.

24 Q. So I'm clear, you and your friend Kaz,
25 you're providing the backup, the money, the vehicles,

1 whatever is needed to get this business going here called
2 Sinergi and you expect some profits in return; is that
3 right?

4 A. In the beginning, yes, yeah.

5 Q. And so if Mr. Limanni was forming another
6 Sinergi office in Lake Tahoe would you expect business
7 there, profits from that?

8 A. I didn't know it was Sinergi business in
9 Tahoe. I thought it was - - I would imagine it was
10 cigarette business.

11 Q. You were never told they were going to
12 open up a heating business in Lake Tahoe?

13 A. No.

14 Q. You you were never told that?

15 A. No. First time I know.

16 Q. Sinergi, was that heating and air
17 conditioning?

18 A. I think so, yes.

19 Q. Were you aware he took one of your vans up
20 to Lake Tahoe and left it there for a period of time?

21 A. I don't recall when, but I knew.

22 Q. Did that upset you that one of your vans
23 was up there?

24 A. Of course.

25 Q. Because that van should have been used for

1 the business here in Las Vegas; is that right?

2 A. Yes.

3 Q. Of course, you thought Tahoe was going to
4 be a cigar shop business; is that right?

5 A. What's that?

6 Q. You thought Lake Tahoe was just going to
7 be a cigar shop business?

8 A. Yes.

9 I think one time at the Santa Monica
10 meeting he was on the way to Tahoe. He say he going to
11 meet somebody over there. I could imagine he was going
12 to have some business of there.

13 MR. KENNEDY: Pass the witness.

14 THE COURT: Re-direct?

15 MR. KANE: Just two things.

16

17 RE-EXAMINATION

18 BY MR. KANE:

19 Q. In November of 1998 when Peter went
20 missing, where was - -

21 A. '99 or '98?

22 Q. '98. Where was Kaz Toe at that time?

23 A. He was - - I'm sorry, when?

24 Q. In November 1998 at time when Peter went
25 missing.

1 A. I think he was either here or Japan. Both
2 of us left same day to Japan, so if you tell me exact
3 day.

4 Q. But you both continued to travel back and
5 forth?

6 A. After that.

7 Q. After the end of 1998?

8 A. Well, yes, we stay there six months and he
9 stayed four-month and come back.

10 Q. And the Santa Monica meeting where Mr.
11 Limanni met with you and was pitching his smoke shop, I
12 thought you said "I met with both of them."

13 Did I hear you right?

14 A. Yes.

15 Q. Who was both of them?

16 A. It was Jack and also Peter Limanni.

17 Q. Were you told at that meeting what was
18 going to be the business arrangement in this smoke shop
19 between Jack and Peter?

20 A. I'm sorry?

21 Q. Did they tell you at the meeting what was
22 going to be the business arrangement, were they going to
23 be 50/50 partners, boss and employee?

24 A. With me or with - -

25 Q. With each other?

1 A. With each other mean Peter and I?

2 Q. No.

3 A. Peter and Jack?

4 Q. Let me try and make it plain.

5 They wanted you to give them money so they
6 could start a smoke shop, correct?

7 A. Actually they looking for another partner.

8 Q. Leave you out of it.

9 Did you understand that Jack and Peter
10 were going to be partners in this smoke shop or that one
11 would work for the other one, or was it discussed?

12 A. It was not discussed. I didn't even know.

13 Q. But they both came over to Santa Monica to
14 meet with you and talk to you about it?

15 A. Yes.

16 MR. KANE: Nothing further Your Honor.

17 THE COURT: Re-cross.

18 MR. KENNEDY: No re-cross.

19 THE COURT: Thank you, sir. You're
20 excused.

21 Next witness, please.

22 MR. KANE: Ken Wolf.

23

24

25

1
2 KENNETH WOLF,
3 called as a witness herein, was sworn by the clerk of the
4 court, was examined and testified as follows:
5
6

7 EXAMINATION

8 BY MR. FATTIG:

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

11 A. Kenneth Wolf, W-o-l-f.

12 Q. How are you employed?

13 A. I'm a detective with the San Bernardino
14 County Sheriff's Department.

15 Q. Are you assigned to a specific detail?

16 A. Yes, I am.

17 Q. What is that?

18 A. I'm assigned to the Sheriff's Department
19 Homicide Bureau.

20 Q. How long have you been a police officer?

21 A. Been a police officer for 21 years.

22 Q. How long have you been in homicide?

23 A. Eight years.

24 Q. On December 23, 1998 were you on duty that
25 day?

1 A. Yes, I was.

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

4 A. Yes.

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

6 A. On that day I got called approximately
7 9:00 o'clock in the morning for a callout out into the
8 Mountain Pass community, one mile east of interstate 15
9 off of Nipton Road regarding a dead body.

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

11 A. I was in San Bernardino.

12 Q. Is that where your normal office is at?

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

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

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

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

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

24 Q. It was several hours?

25 A. Yes.

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

3 A. Yes.

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

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

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

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

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

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

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

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

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

4 Q. What did that entail?

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

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

10 A. Yes.

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

13 THE COURT: Yes.

14 BY MR. FATTIG:

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

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

20 A. Yes, I do.

21 Q. And what do they show?

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

25 Q. Do they fairly and accurately depict the

1 gravesite and the location when you arrived that
2 afternoon?

3 A. Yes.

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

6 MR. KENNEDY: No objection.

7 THE COURT: They are received. Thank you.

8 BY MR. FATTIG:

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

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

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

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

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

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

25 Q. Could you generally describe the placement

1 of how the body was in the gravesite?

2 A. Yes.

3 The victim was face down.

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

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

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

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

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

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

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

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

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

4 It's very desolate, no homes.

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

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

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

13 A. Yes, I was.

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

19 I was present when that occurred.

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

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

25 Q. Did the body have any jewelry or any rings

1 or anything on it?

2 A. I did not note any.

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

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

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

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

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

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

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

22 A. Yes.

23 Q. After you got that what did you do?

24 A. The fingerprints were submitted on the
25 23rd, on that same day, to our lab and on the 24th I got

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

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

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

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

11 A. Yes, I did.

12 Q. When did you do that?

13 A. That was on December 28.

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

18 MR. FATTIG: May I approach the witness?

19 THE COURT: You may.

20 BY MR. FATTIG:

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

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

25 Q. And is the body visible in that

1 photograph?

2 A. No, it's not.

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

5 A. Yes, it is.

6 MR. FATTIG: Nothing further at this time.

7 THE COURT: Cross-examination.
8
9
10

11 EXAMINATION

12 BY MR. KENNEDY:

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

16 A. No.

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

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

24 A. That's fair, yes.

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

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

3 A. Yes.

4 Q. And I believe in your report you - - the
5 indications, at least to the naked eye, was the body was
6 180 to 200 pounds; is that about right?

7 A. Estimating, yes.

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

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

13 MR. KENNEDY: Pass the witness.

14 THE COURT: Anything further?

15 MR. FATTIG: No.

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

18 THE WITNESS: Thank you, Your Honor.

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

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

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

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

9 THE COURT: Thank you.

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

12 MR. KANE: Yes, Your Honor.

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

15 MR. KENNEDY: No objection, Your Honor.

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

18
19 (Whereupon, the Court admonished the
20 jury.)

21
22 THE COURT: Thank you for your
23 accommodation to my schedule. We will begin Tuesday - -
24 as you probably know, Monday is a holiday. We will begin
25 Tuesday at 1:00 o'clock. It's a long weekend.

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

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

5 We will remain in session.

6 (Whereupon, jury exited the courtroom.)

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

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

12 MR. KANE: That's correct.

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

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

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

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

24 THE COURT: All right.

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

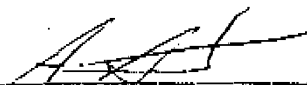
1 THE COURT: Right. All right then. We
2 will stand adjourned. I'll see you Tuesday.

3 MR. KANE: Thank you.

4 MR. CHRISTIANSEN: Thank you, Your Honor.
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8

9 (4:30 p.m.)
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22 ATTEST that this is a true and complete transcript of the
23 proceedings held, DATED this 18th day of February 2001.
24
25


J. A. D'AMATO CCR #017