

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 5 of 15

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

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DISTRICT COURT
CLARK COUNTY, NEVADA IN OPEN COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

JOHN JOSEPH SEKA,

Defendant.

FILED FEB 21 2001
SHIRLEY D. PARRAGUIRRE, CLERK
BY JUDY NORMAN
DEPUTY

No. C159915
Dept No: XIV

 **COPY**

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

VOLUME I

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

APPEARANCES:

For the State:

MR. EDWARD KANE
MR. TIMOTHY FATTIG
Deputy District Attorneys

For the Defendant:

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

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

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RICHARD NOGUES:

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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. Fattig and Mr. Kane for
5 the State.

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

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

10 MS. CLERK: The panel is present.

11 THE COURT: Good.

12 Good afternoon, Ladies and Gentlemen.

13 The State's next witness, please.

14 MR. KANE: Thomas Cramer.

15
16 THOMAS CRAMER,
17 called as a witness herein, was sworn by the clerk of the
18 court, was examined and testified as follows:

19
20 EXAMINATION

21 BY MR. KANE:

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

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

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

1 A. Yes, I do.

2 Q. How long have you known Mr. Seka?

3 A. Now? About 12 years now.

4 Q. Is he present here in Court?

5 A. Yeah.

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

8 A. Right there, dead in the middle, with the
9 sweater on.

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

12 THE COURT: It shall.

13 BY MR. KANE:

14 Q. Before I get into the facts let me ask you
15 a couple questions about yourself.

16 You're currently under treatment for
17 alcohol addiction; is that correct?

18 A. And depression.

19 Q. And do you take medications for those
20 conditions?

21 A. Yes, I do.

22 Q. You're under the care of one or more
23 physicians?

24 A. Yes.

25 Q. Tell us what medications you're currently

1 taking, please.

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

4 Q. What do they do for you?

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

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

13 A. Definitely not; it's good.

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

16 A. Yes.

17 Q. Do they - -

18 A. I take them every day.

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

21 A. Absolutely not.

22 Q. Are you able to respond to my questions?

23 A. Yes, I am.

24 Q. I want to talk to you about 1998.

25 Were you friends with Jack Seka from the

1 time you met him up through 1998?

2 A. Yes.

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

5 A. Yes.

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

7 A. Yes.

8 Q. Who was that?

9 A. Pete Limanni.

10 Q. Had you met Pete Limanni before 1998?

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

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

15 A. Yes.

16 Q. How often?

17 A. Once a week, once every two weeks.

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

20 A. No.

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

23 A. Yes.

24 Q. Once or more than once?

25 A. Once.

7
1 Q. And when was that, as well as you can
2 remember?
3 A. Let me think. It's either September or
4 October. It was in between like right around in there.
5 Q. What was the nature of the remarks that
6 Mr. Limanni was making that you heard?
7 MR. CHRISTIANSEN: Hearsay objection, Your
8 Honor.
9 A. I never - -
10 THE COURT: I'm sorry.
11 MR. CHRISTIANSEN: That would be a hearsay
12 objection. He's talking about the comments of Mr.
13 Limanni.
14 MR. KANE: Not offered for the truth.
15 Simply to indicate the relationship
16 between Mr. Limanni and Mr. Seka.
17 MR. CHRISTIANSEN: If Mr. Limanni is in
18 the background saying anything, that's classic hearsay.
19 THE COURT: Approach the bench.
20 (Discussion off the record.)
21 THE COURT: The Court will overrule the
22 objection. I do want you to be very aware of the
23 testimony as it proceeds.
24 BY MR. KANE:
25 Q. What did you hear Mr. Limanni saying to

1 Mr. Seka?

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

4 Q. In what way?

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

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

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

15 I was stunned.

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

18 A. Yes, I know Lee.

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

21 A. In November, yeah.

22 Q. And what did Lee Polski tell you?

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

25 What did he say to you?

1 MR. PETERSON: Same objection, Your Honor.

2 THE COURT: Same ruling.

3 Go ahead.

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

9 I said no.

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

12 I said Lee - -

13 BY MR. KANE:

14 Q. Please don't give me your response.

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

17 A. Implying Jack.

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

20 A. Yes.

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

24 A. No.

25 Q. I want to talk to you now about

1 Christmastime time of 1998, around the Christmas
2 Holidays.

3 Did you see Jack Seka around that time?

4 A. Yes.

5 Q. Where?

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

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

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

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

14 A. Yes, I did.

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

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

21 Q. And do you know when?

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

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

1 A. No.

2 It was just me and him, personal.

3 Q. Just the two of you?

4 A. Yes.

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

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

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

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

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

15 THE COURT: Just a minute, sir.

16 THE WITNESS: I'm sorry.

17 THE COURT: Objection?

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

20 It's irrelevant, judge.

21 THE COURT: Response?

22 MR. KANE: Non-responsive, judge.

23 THE COURT: Listen to the question, once
24 again.

25 BY MR. KANE:

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

3 A. Yeah.

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

7 A. Yes.

8 Q. When did that occur?

9 A. January 23rd.

10 Q. Where?

11 A. At my grandmother's.

12 Can I have a glass of water?

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

15 A. Yes.

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

19 A. They were in the residence.

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

22 A. No. It was me and him.

23 Q. What was the argument about?

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

1 Like he got in trouble with the law.

2 I testified for him.

3 MR. CHRISTIANSEN: Objection. Your Honor.

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

6 THE WITNESS: I'm trying to explain.

7 THE COURT: Just a minute. All right.

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

11 MR. CHRISTIANSEN: Move to strike.

12 THE COURT: No objection?

13 MR. KANE: No objection.

14 THE COURT: It is stricken.

15 Next question.

16 BY MR. KANE:

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

20 A. Yes.

21 Q. By yourself or by Mr. Seka?

22 A. By Mr. Seka.

23 Q. And what did he say?

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

1 room. We were upstairs.

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

4 At that point I looked in his eyes and
5 never saw anything. I never looked in - - I never saw -
6 -

7 MR. CHRISTIANSEN: Objection, Your Honor.

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

10 THE COURT: Just a minute.

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

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

17 THE WITNESS: And why I did what I did.

18 THE COURT: Just a moment. All right.

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

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

1 following actions.

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

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

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

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

14 BY MR. KANE:

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

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

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

23 Q. And what did you do?

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

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

3 A. Yeah.

4 Q. And - -

5 A. Not arrested; committed to a mental
6 institution.

7 Q. For how long?

8 A. Um, couple weeks.

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

12 A. Yes.

13 Q. One or more than one?

14 A. Um, more than one.

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

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

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

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

1 A. When I was in the hospital.

2 Q. I'm not asking you that.

3 I'm asking after you were released when
4 was the next time?

5 A. After I was released? Two, three weeks.

6 Q. Where did that conversation take place?

7 A. In my grandmother's house.

8 Q. Again was there anyone present besides the
9 two of you when you were having this conversation?

10 A. No. Just me and him.

11 THE COURT: Wait until the question is
12 asked.

13 BY MR. KANE:

14 Q. Did the conversation concern Pete Limanni?

15 A. Yes.

16 Q. What did you two talk about?

17 A. At that point I was trying to find out
18 exactly what happened and get information out of him and
19 it was like major cat and mouse game.

20 I felt that I had just become a loose end
21 at this point, that he would - -

22 MR. PETERSON: Objection, Your Honor.

23 THE COURT: Tell us - -

24 MR. PETERSON: May we approach?

25 THE WITNESS: This is important.

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

3 (Discussion off the record.)

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

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

9 The question now is what?

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

13 THE WITNESS: Okay.

14 BY MR. KANE:

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

18 Can you tell me that?

19 A. Yeah.

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

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

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

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

8 A. Was I?

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

12 A. Yes.

13 Q. And did you tell them what you knew?

14 A. Yes.

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

17 A. Yes.

18 MR. KANE: Nothing further, Your Honor.

19 Tender the witness.

20 THE COURT: Cross-examination.

21

22

23

24

25

EXAMINATION

1

2 BY MR. KENNEDY:

3

4

5

6

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

7

A. That's correct.

8

9

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

10

A. To a mental institution?

11

Q. Yes.

12

13

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

14

15

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

16

A. Yes, I do.

17

18

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

19

THE COURT: You may.

20

BY MR. KENNEDY:

21

22

23

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

24

25

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

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

3 A. That includes rehabs.

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

7 Now you're saying your answer was one?

8 A. Okay. They were dual diagnosed.

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

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

14 Is that what what you're trying to say?

15 A. And alcoholism, yes.

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

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

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

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

23 Q. Your diagnosis now is clinically
24 depressed?

25 A. I have major depressive disorder and

1 Post-Traumatic Stress Disorder.

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

4 A. My psychiatrist right now.

5 Q. The one you're seeing now?

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

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

10 A. Psychiatrist.

11 Q. Psychiatrist, excuse me.

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

14 A. No.

15 Q. He's a different one?

16 A. No.

17 Q. He's a different doctor?

18 A. Yes.

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

22 Q. Paxil, Ativan and Xanax?

23 A. Yeah.

24 Q. That's what you testified then.

25 Today you've told us you're taking some

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

3 A. Yes.

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

8 A. Yes, yeah.

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

11 A. Yes.

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

14 A. Yeah.

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

17 A. Yeah,.

18 Q. That was on April 9 of 1999.

19 You may not remember the day.

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

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

25 Is that fair to say?

1 Are you aware of that?

2 A. I would agree with that.

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

7 Do you recall Jack telling you that?

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

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

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

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

16 Q. You were completely confused?

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

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

22 A. Yeah.

23 Q. Are you aware - -

24 A. Mostly the Paxil.

25 Q. - - are you aware that those drugs have

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

3 Are you aware those medications have all
4 those side effects?

5 A. I never experienced them from that.

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

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

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

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

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

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

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

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

1 Q. It's a good program.

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

4 A. I was sober nine years at one time.

5 Q. Were you sober in January through April of
6 1999?

7 A. January '98?

8 Q. 1999.

9 A. January '99?

10 No, I wasn't sober.

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

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

15 Q. What kind of pills?

16 A. Soma, Percosette, Xanax and Valium.

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

19 A. No.

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

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

1 out of hospitals.

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

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

6 A. Yeah.

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

10 A. Yes, I did.

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

13 A. Yes, I did.

14 Q. Is it a romantic relationship?

15 A. Yeah.

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

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

20 Q. Just answer my question, Mr. Cramer.

21 A. I broke up with her.

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

24 THE COURT: Just answer the question, sir.

25 BY MR. KENNEDY:

1 Q. Mr. Cramer, January 1999?

2 A. Yeah.

3 Q. Did Margaret Daley put a Restraining Order
4 against you?

5 A. Around that time, yeah.

6 Q. Are you aware that Mr. Seka had assisted
7 her in trying to get that Restraining Order?

8 A. I figured that out.

9 Q. You had a relationship with Margaret; is
10 that correct?

11 A. Yes.

12 Q. How long - - prior to January of 1999 how
13 long was your relationship?

14 A. Roughly five years.

15 Q. The Restraining Order that went in effect
16 in January 1999, it was still in effect when you gave the
17 statement to the police in April of '99; isn't that true?

18 A. Yes.

19 Q. And, in fact, that Restraining Order still
20 is in effect today; is that right?

21 A. She got another one, yeah.

22 Q. She got another one against you?

23 A. Um-hum.

24 Q. You're aware that Jack was arrested on
25 March 31, 1999. He was there with Margaret at Margaret's

1 house; is that correct?

2 A. Right.

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

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

7 Q. Okay. Did that make you - -

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

10 Q. Okay.

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

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

16 A. Yeah.

17 Can I make a comment?

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

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

22 THE WITNESS: I'm just saying - -

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

25 THE WITNESS: Yeah, Jack had me put away.

1 BY MR. KENNEDY:

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

5 A. No.

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

8 A. Right. I signed myself in.

9 Q. You always signed yourself in?

10 A. Yes.

11 Q. You told us here today, let's see, that on
12 one of the occasions, I guess it was probably February of
13 '99, after you got out of the hospital, you said you were
14 in the hospital for a couple weeks?

15 A. Um-hum.

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

22 You said that here today; is that right?

23 A. Yeah.

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

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

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

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

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

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

10 BY MR. KENNEDY:

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

15 A. Um, I thought I did.

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

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

21 When did you remember this?

22 Is today the first time you remembered
23 that?

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

1 Q. But you didn't tell that to the police?

2 A. The first time I heard it was right after
3 I got out of the hospital.

4 Q. Mr. Cramer, you didn't tell that to the
5 police, did you, Mr. Cramer?

6 A. Which police, the Philadelphia police?

7 Q. Did you tell that - -

8 A. To the FBI?

9 Q. Mr. Cramer, did you tell that to the
10 police when you gave a statement to them, in
11 Philadelphia, on April 1999?

12 A. I don't remember. I cried through the
13 whole thing.

14 Q. You were hysterical; is that right?

15 A. I was hysterical.

16 Q. You took your medication that morning; is
17 that right?

18 A. I don't remember.

19 Q. Does your doctor advise you to take your
20 medication every day?

21 A. Yeah, and I'm following that.

22 Q. Did you follow his advice back then in
23 1999?

24 A. Through all the times I went into the
25 hospital for depression, I would take it for a little

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

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

6 Q. Mr. Cramer, please.

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

9 BY MR. KENNEDY:

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

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

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

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

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

23 The question is what do you recall?

24 You're here testifying under oath.

25 You do understand what it means to take

1 that oath; is that correct?

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

3 Q. It is very important.

4 We just want to know what you know.

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

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

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

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

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

18 A. Yeah.

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

21 A. Yeah.

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

25 Did you talk with him?

1 A. I didn't like him right away.

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

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

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

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

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

12 Q. Was he tall?

13 A. I don't remember.

14 Q. Was he bigger than Jack Seka?

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

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

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

22 A. Negative is a kind word.

23 Q. That's the word I choose.

24 A. Okay.

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

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

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

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

7 A. Only that one time.

8 Q. Only one time?

9 A. Yes.

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

12 A. A week, every two weeks.

13 Q. Every two weeks. He was your friend?

14 A. Yeah.

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

17 A. No.

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

20 A. I would never touch Paxil.

21 Q. They had some bad effects on you?

22 A. Terrible.

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

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

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

4 Q. When was that?

5 A. I got the letter on my birthday, [REDACTED]

6 [REDACTED] of '97, I believe.

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

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

12 Q. How come you were taking the Paxil?

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

15 That's really my question.

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

17 Q. Only four months?

18 A. Maybe five months.

19 Q. So you got off of it then?

20 A. And it was a low dose.

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

23 A. I was already way off of it.

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

1 months of 1999.

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

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

8 Q. When you gave that statement in April of
9 1999 to the police you were certainly on the Paxil as
10 well as the Ativan and the Xanax; is that right?

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

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

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

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

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

22 A. Yeah.

23 Q. That is true?

24 A. Yeah.

25 Sometimes I would skip a day and not take

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

3 MR. CHRISTIANSEN: Pass the witness, Your
4 Honor.

5 THE COURT: Anything further on re-direct?

6 MR. KANE: No re-direct.

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

9 Next witness, please.

10 MR. KANE: Vince Roberts.

11

12 VINCENT ROBERTS,
13 called as a witness herein, was sworn by the clerk of the
14 court, was examined and testified as follows:

15

16

17 EXAMINATION

18 BY MR. KANE:

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

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

23 Q. By whom are you employed?

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

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

3 A. A little over three years.

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

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

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

10 A. Yes.

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

14 Is that what you do?

15 A. Yes, I do.

16 Q. I want to talk to you about November 16,
17 1998. Were you called to a suspected crime scene about
18 2.1 miles south of Route 146 on Las Vegas Boulevard
19 South?

20 A. Yes, I was.

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

23 A. There were others there as well.

24 Q. And what was your specific assignment?

25 A. My specific assignment when I arrived at

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

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

5 A. Yes.

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

8 A. No, they were not.

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

11 A. Yes, I did.

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

14 A. Yes.

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

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

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

25 In our field when you work a scene you

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

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

10 Q. Did you personally impound certain items
11 of evidence?

12 A. Yes, I did.

13 Q. Were there tire tracks found at the scene?

14 A. Yes.

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

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

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

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

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

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

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

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

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

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

1 scene?

2 A. Yes.

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

5 A. Yes.

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

7 THE COURT: You may.

8 BY MR. KANE:

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

12 A. Yes, I do.

13 Q. What is that?

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

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

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

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

23 A. Yes, there are.

24 Q. Is that a person that you know?

25 A. Yes.

1 Q. Who is that?

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

4 Q. Does Fred Boyd work in the forensic
5 laboratory?

6 A. Yes, he does.

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

11 A. Yes, it does.

12 MR. KANE: Offer 70, Your Honor.

13 MR. CHRISTIANSEN: No objection.

14 THE COURT: Received. Thank you.

15 BY MR. KANE:

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

18 A. (Witness complied with request of
19 counsel.)

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

23 A. (Witness complied with request of
24 counsel.)

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

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

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

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

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

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

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

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

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

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

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

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

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

8 You were aware of that; were you not?

9 A. Yes, I was.

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

12 A. That is correct.

13 Q. Did you impound those pieces of lumber?

14 A. Yes, I did.

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

16 THE COURT: You may.

17 BY MR. KANE:

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

21 I ask if you recognize that.

22 A. Yes, I do.

23 Q. How is it that you recognize that?

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

1 and the date.

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

4 A. Yes, it do.

5 Q. Whose?

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

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

11 A. Yes.

12 Q. Other than the identification of Mr.
13 Boyd's signature and seals do those items appear in the
14 same condition as when you observed them on November 16,
15 1998?

16 MR. KANE: Move the admission of State's
17 71.

18 MR. CHRISTIANSEN: No objection.

19 THE COURT: They are received. Thank you.

20 BY MR. KANE:

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

23 A. No, I did not.

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

1 A. Yes.

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

5 A. Yes.

6 Q. What's that?

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

10 Q. What was your reason for taking the tag?

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

14 MR. KANE: Offer Exhibit 72, Your Honor.

15 MR. CHRISTIANSEN: No objection.

16 THE COURT: Received. Thank you.

17 BY MR. KANE:

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

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

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

1 A. Yes.

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

4 A. Yes, it does.

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

7 MR. CHRISTIANSEN: No objection.

8 THE COURT: They are received.

9 BY MR. KANE:

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

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

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

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

21 BY MR. KANE:

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

24 A. Yes.

25 Q. That's the roadway along which John Lumber

1 Doe was found?

2 A. Yes.

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

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

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

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

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

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

18 B]Y MR. KANE:

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

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

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

1 A. Yes, it is.

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

4 A. No, it's not.

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

7 A. Yes.

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

9 MR. KANE: Offer 79.

10 MR. CHRISTIANSEN: No objection.

11 THE COURT: Received. Thank you.

12 BY MR. KANE:

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

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

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

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

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

3 Q. Can you resume your seat?

4 You mentioned a reference point.

5 What's a reference point?

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

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

16 A. That's correct.

17 Q. Then you measure everything from that
18 spot?

19 A. Yes.

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

24 A. At this particular scene, no.

25 MR. KANE: Nothing further, Your Honor.

1 Tender the witness.

2 THE COURT: Cross-examination

3

4

5

EXAMINATION

6

BY MR. KENNEDY:

7

8

9

10

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

11

A. Yes.

12

13

14

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

15

A. No, I did not.

16

17

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

18

A. Yes, we would have.

19

20

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

21

A. Yes.

22

23

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

24

A. Yes, just because of the label.

25

Q. You collected those items of evidence

1 yourself?

2 A. Yes.

3 MR. CHRISTIANSEN: Pass the witness.

4 THE COURT: Anything further?

5 MR. KANE: Just one further thing.

6 BY MR. KANE:

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

10 A. Yes.

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

13 A. Not at this particular time.

14 MR. KANE: Nothing further.

15 THE COURT: Anything further?

16 BY MR. CHRISTIANSEN:

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

19 A. Yes, they were.

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

21 A. No, I did not.

22 MR. CHRISTIANSEN: Pass the witness.

23 THE COURT: Anything further?

24 MR. KANE: No.

25 THE COURT: Thank you, very much, Mr.

1 Roberts.

2 Next witness, please.

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

4

5

ROBERT KROLL,

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

8

9

10

EXAMINATION

11

BY MR. FATTIG:

12

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

14

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

16

Q. How are you employed?

17

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

19

Q. What is your assignment?

20

A. Patrol.

21

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

23

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

1 Q. How long have you been so employed?

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

4 Q. Were you on duty back on November 17,
5 1998?

6 A. I was.

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

9 A. I did.

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

12 A. I did.

13 Q. What was the nature of the call?

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

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

18 Q. Who is your partner?

19 A. Officer Rick Nogues.

20 Q. Are you guys in separate vehicles?

21 A. Yes.

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

23 A. We did.

24 Q. What did you do upon responding?

25 A. Upon arrival we made contact with the

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

7 Q. What did you do after you saw that?

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

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

17 Q. What did you generally see inside the
18 business?

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

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

1 A. We did not.

2 Q. In that business?

3 A. No.

4 Q. That was 1929 Western?

5 A. It was, yes.

6 Q. What did you do after you surveyed the
7 business?

8 A. We took a closer look inside and we saw
9 what we believed to be expended bullets that were also on
10 the floor inside of that business.

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

16 Our supervisor advised that we should have
17 the identification technicians come out to the scene and
18 process the scene.

19 Q. Did you call an ID tech out?

20 A. We did.

21 Q. Would that be Dave Ruffino?

22 A. Yes, it was. Dave Ruffino responded.

23 Q. What did you do after you called the ID
24 tech out?

25 A. We took a look around the perimeter to see

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

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

9 A. I believe it was late morning.

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

12 A. They did.

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

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

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

19 A. I do.

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

22 A. Sure.

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

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

3 THE COURT: It may.

4 BY MR. FATTIG:

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

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

12 Q. What did the Defendant tell you?

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

16 I really don't recall at this time.

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

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

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

24 A. He did.

25 He said he had a partner at the business

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

4 I believe the partner's name is Peter
5 Limanni.

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

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

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

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

15 Q. Did you make a report in this case?

16 A. I did.

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

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

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

24 THE COURT: You may.

25 BY MR. FATTIG:

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

3 A. I do.

4 Q. And what is it?

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

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

11 A. It does.

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

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

16 Q. What happened next?

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

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

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

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

3 Q. Did you eventually go into the business?

4 A. I did.

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

7 A. It was.

8 Q. And what did you see upon entering?

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

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

16 It was obvious they were constructing a
17 humidor in there.

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

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

21 Q. Did you continue back into the office?

22 A. I did.

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

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

5 Q. Can you describe what the bullet looked
6 like?

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

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

11 A. I saw some knives in there as well.

12 Q. What did you do?

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

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

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

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

1 medical attention.

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

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

8 Q. Did you find anyone in there?

9 A. I did not.

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

12 A. He did, Mr. Dave Ruffino did.

13 Q. Did you leave the scene at some point?

14 A. We did.

15 Q. Did you and your partner leave?

16 A. We did.

17 Q. Why did you leave the scene?

18 A. They didn't need us there anymore. I

19 believe that the homicide detectives had arrived.

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

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

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

1 THE COURT: What's your next question?

2 BY MR. FATTIG:

3 Q. Did you unhandcuff Mr. Seka?

4 A. Yes.

5 Q. Then you and your partner left?

6 A. We did.

7 Q. And you were at lunch at that time?

8 A. We were.

9 Q. Did you eventually respond back to the
10 scene?

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

13 Q. Who called you?

14 A. I believe it was a homicide sergeant.

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

16 A. We did.

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

19 A. I would say an hour and 15 minutes.

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

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

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

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

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

9 He said that he had not.

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

13 A. That's right.

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

16 A. No, I didn't.

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

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

21 MR. FATTIG: Nothing further at this time.

22 THE COURT: Cross-examination.

23 MR. PETERSON: Thank you.

24 May I get the lectern?

25 THE COURT: You may.

EXAMINATION

BY MR. CHRISTIANSEN:

Q. Good afternoon, Officer Kroll.

A. Good afternoon.

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

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

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

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

A. Yes, I do.

Q. The academy is pretty extensive training?

A. It is.

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

A. They do.

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

1 A. Yes, that's correct.

2 Q. This happened November 17, 1998.

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

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

7 MR. PETERSON: May I approach?

8 THE COURT: You may.

9 BY MR. CHRISTIANSEN:

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

12 A. Absolutely.

13 Q. Does that help you?

14 A. It says December 10 of 1998.

15 Q. Does it appear that it was dictated?

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

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

18 A. No.

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

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

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

1 A. Yes.

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

5 A. That's correct.

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

7 A. That's correct.

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

11 A. That's correct.

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

14 A. That's right, Bechyne.

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

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

20 Q. Did he show up?

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

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

25 A. Nogues, yes.

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

3 A. Yes.

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

9 A. That's correct.

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

13 A. Yes, they are.

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

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

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

23 A. I didn't, no.

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

1 A. Not necessarily.

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

4 A. Exactly.

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

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

11 A. That's correct.

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

15 A. That's correct.

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

19 A. Yes.

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

25 A. That's correct.

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

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

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

11 A. He couldn't have done it when I was there.
12 I can't speak for after when I left what
13 was done and wasn't done.

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

17 Mr. Seka was cooperative with you?

18 A. Absolutely.

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

21 A. That's correct.

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

25 A. That's correct.

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

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

5 A. That's correct.

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

9 A. I don't know.

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

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

13 Q. How long is that?

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

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

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

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

22 A. It looked twice the length of mine.

23 Q. Would that be consistent with a rifle
24 round?

25 A. I always thought the rifles had pointed

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

3 Q. Did it appear like people were living at
4 1933 Western where Mr. Seka was at?

5 A. Yes, it did.

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

8 A. Yes, I did.

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

11 A. I don't specifically recall a kitchen.

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

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

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

20 A. May well have been.

21 MR. CHRISTIANSEN: Can I approach?

22 THE COURT: You may.

23 BY MR. CHRISTIANSEN:

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

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

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

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

8 A. I don't.

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

12 A. He did.

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

15 A. That's correct.

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

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

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

25 A. Correct.

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

4 A. I believe so.

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

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

13 A. That is correct.

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

17 A. No, he did not.

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

21 A. I wouldn't, no.

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

1 A. On that particular scene or in general?

2 Q. A murder scene in general.

3 A. Sure.

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

6 A. That's correct.

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

10 A. Yes.

11 Q. And it was Detective Buczek?

12 A. I believe it was Detective Buczek, yes.

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

16 A. I believe so.

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

20 A. Correct.

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

25 A. That's correct.

1 Q. Was Jack Seka ever violent toward you?

2 A. No.

3 Q. Was he ever anything but a cooperative
4 individual?

5 A. Not with me, no.

6 MR. CHRISTIANSEN: Pass the witness.

7 Thank you.

8 THE COURT: Re-direct?

9 MR. FATTIG: Nothing further.

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

12 MR. FATTIG: Richard Nogues.

13

14 RICHARD NOGUES,

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

17

18

19

EXAMINATION

20 BY MR. FATTIG:

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

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

24 Q. How are you employed?

25 A. With the Las Vegas Metropolitan Police

1 Department, patrol.

2 Q. For how long?

3 A. Three and a half years now.

4 Q. Were you on duty back on November 17,
5 1998?

6 A. Yes.

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

9 A. Yes.

10 Q. What was the the nature of the call?

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

15 Q. Did you have a partner?

16 A. Yes.

17 Q. Who was that?

18 A. Robert Kroll.

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

21 A. Yes.

22 Q. What did you do upon arrival?

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

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

3 We didn't see anything unusual.

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

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

9 Q. The one that you saw the broken - -

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

11 Q. - - glass was that 1929 Western?

12 A. Yes.

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

15 A. Yes.

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

20 Q. Did you go inside the business?

21 A. Yes.

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

1 Q. There was no one in side?

2 A. No, sir.

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

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

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

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

13 A. Sure.

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

20 Q. Did have occasion to look in the dumpster?

21 A. Yes.

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

25 I wasn't sure what might be in there.

1 Q. What did you see inside the dumpster?

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

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

8 A. Yes.

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

13 Q. Was that the trophy shop guy?

14 A. Yes.

15 Q. Did you look elsewhere throughout that
16 back area?

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

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

22 A. Not that I can recall.

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

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

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

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

7 A. Yes.

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

10 A. Yes, one came out.

11 Q. Would that be David Ruffino?

12 A. Yes.

13 Q. What happened next?

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

20 Q. Did you learn of any calls?

21 A. No, sir.

22 Q. Did someone eventually arrive on the
23 scene?

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

1 three showed up in a small pickup truck.

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

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

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

7 A. Yes.

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

10 A. Yes, sir.

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

13 A. Yes.

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

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

18 THE COURT: It may.

19 MR. FATTIG: Thank you.

20 BY MR. FATTIG:

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

23 A. Yes.

24 Q. - - the scene?

25 A. Yes.

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

3 A. Couple of hours, if I recall.

4 Q. Why did you and your partner leave?

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

10 It was our lunch time.

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

13 A. Yes.

14 Q. And who called you back?

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

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

20 A. Yes.

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

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

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

3 A. Yes.

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

6 A. Yes.

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

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

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

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

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

1 didn't see the first time I was there.

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

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

7 MR. FATTIG: May I approach the witness?

8 THE COURT: You may.

9 BY MR. FATTIG:

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

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

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

16 A. As far as I can recall, yes.

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

19 A. Yes.

20 MR. FATTIG: Move for admission of Exhibit
21 60.

22 MR. CHRISTIANSEN: No objection.

23 THE COURT: Received. Thank you.

24 BY MR. FATTIG:

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

1 second time when you went back to the dumpster?

2 A. Inside of the dumpster or surrounding it?

3 Q. Or surrounding it.

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

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

11 A. Yes.

12 Q. And why is that?

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

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

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

25 A. No, sir.

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

4 A. The second the second or first time?

5 Q. The second time.

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

12 MR. FATTIG: Nothing further.

13 THE COURT: Cross-examination.

14

15

16 EXAMINATION

17 BY MR. CHRISTIANSEN:

18 Q. Good afternoon, Officer Noguez.

19 A. Good afternoon.

20 Q. I'm Pete Christiansen. I have a few
21 follow-up questions for you about the events of November
22 17, 1998.

23 A. Yes.

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

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

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

4 A. Yes.

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

9 A. Yes.

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

13 A. Yes.

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

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

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

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

24 A. Not that I recall, no, sir.

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

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

3 A. I don't recall, sir.

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

6 THE COURT: You may.

7 THE WITNESS: Yes.

8 BY MR. CHRISTIANSEN:

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

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

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

16 A. No, sir.

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

19 A. Not that I recall, sir.

20 MR. PETERSON: May I approach?

21 THE COURT: Indeed.

22 BY MR. CHRISTIANSEN:

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

1 on there.

2 A. Peter Limanni.

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

8 A. No, sir.

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

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

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

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

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

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

1 person was.

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

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

5 A. Yes.

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

9 A. Yes.

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

15 A. Yes.

16 Q. Did you get a call from homicide saying
17 "Officer Noguez, do a report about the events at 1929 and
18 33."?

19 A. Yes.

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

22 A. I don't recall.

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

25 A. Hum-um.

1 THE COURT: Is that yes?

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

4 BY MR. FATTIG:

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

9 A. Yes, yes.

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

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

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

19 A. I'm sorry, number four.

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

22 A. Yes.

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

25 THE COURT: You may.

1 BY MR. CHRISTIANSEN:

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

4 A. I'm assuming an overview of calls.

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

7 A. No, sir.

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

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

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

13 A. A call sign?

14 Q. Yes. I'm sorry.

15 A. 2 Charlie 34.

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

18 A. Yes.

19 Q. And where is the first entry for 2 Charlie
20 34? Tell me the time that occurred that you see.

21 A. It looks like 10:18.

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

25 A. No, sir.

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

4 A. Yes.

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

7 A. Yes, 2 Charlie 12.

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

10 A. Yes.

11 Q. What time do you see that?

12 A. 10:18.

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

16 A. Yes, AS.

17 Q. What's that?

18 A. That means assigned.

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

21 A. Yes, sir.

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

25 A. Yes.

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

3 A. It looks like 10:24.

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

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

8 Q. Math wasn't my hobby.

9 How long were you there?

10 When did you leave?

11 A. Looks like 12:08.

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

14 A. Yes.

15 Q. CL, which is the abbreviation for clear?

16 A. Yes.

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

20 A. Yes.

21 Q. He arrives about 11:33?

22 A. Yes.

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

1 A. No, sir.

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

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

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

10 A. Not if it's a verified scene.

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

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

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

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

18 Q. That is the reason you left?

19 A. Yes.

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

24 A. Yes.

25 Q. Correct?

1 A. Yes.

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

5 A. Possibly.

6 MR. CHRISTIANSEN: May I approach?

7 THE COURT: You may.

8 BY MR. CHRISTIANSEN:

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

14 A. The night before or that morning.

15 I don't recall what he told me.

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

18 I ask you if that area looks familiar to
19 you, Officer Noguez?

20 A. Yes.

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

23 A. Yes.

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

1 Judge, would you mind him stepping down?

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

5 A. (Witness complied with request of
6 counsel.)

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

10 A. Yeah.

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

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

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

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

19 A. Yes.

20 Q. Which one is that?

21 Turn it over, if you would.

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

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

25 A. That's far as I can recall.

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

3 THE COURT: Any objection?

4 MR. FATTIG: No objection.

5 THE COURT: They are received.

6 BY MR. CHRISTIANSEN:

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

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

12 A. Yes.

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

15 A. Correct.

16 Q. I'm talking right at the corner.

17 A. Yes.

18 Q. Is that correct?

19 A. Yes, that's correct.

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

24 A. Yes.

25 I went up to the dumpster and was

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

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

6 A. Yes.

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

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

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

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

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

18 Q. So by then 11:30 a.m., you arrived about
19 10:30 then around 11:30 you secured this entire scene and
20 looked in the back and noticed the dumpster being empty?

21 A. If I had to guess, yes.

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

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

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

3 A. Yes.

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

6 A. Yes.

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

9 A. Yes.

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

13 A. Yes.

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

16 A. Yes.

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

19 A. Yes.

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

23 A. I don't know.

24 MR. CHRISTIANSEN: Can I approach, Your
25 Honor?

1 THE COURT: You may.

2 BY MR. CHRISTIANSEN:

3 Q. Point you to the second full paragraph.

4 A. What's your question again?

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

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

10 Q. Fair enough.

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

14 A. Yes.

15 Q. Maybe the manager or something like that?

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

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

21 A. Yes.

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

25 A. Yes.

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

4 A. I believe so, yes.

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

8 A. I don't recall.

9 MR. CHRISTIANSEN: May I approach?

10 THE COURT: You may.

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

13 BY MR. CHRISTIANSEN:

14 Q. Read that sentence to yourself.

15 A. Okay.

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

20 A. He was back there at the same time.

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

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

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

3 A. Yes.

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

7 A. Yes.

8 Q. You found drag marks?

9 A. Yes.

10 Q. Correct?

11 A. Yes.

12 Q. Blood?

13 A. Yes.

14 Q. A jacket with bullet holes in it?

15 A. Yes.

16 Q. And a broken store front window?

17 A. Yes.

18 Q. And bullets?

19 A. Yes.

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

22 A. Yes.

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

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

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

8 A. Possibly.

9 Q. Did Mr. Ruffino ever tell you "Hey, in my
10 27 years this looks like a murder scene to me."?

11 A. Not that I can recall.

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

14 A. Yes.

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

18 Correct?

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

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

25 A. Yes.

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

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

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

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

11 You respond "Yes, we did."?

12 A. Yes.

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

17 That's what you answered, correct?

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


20

21

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

24

25


J. A. D'AMATO CCR #017

1 **COPY**

DISTRICT COURT
CLARK COUNTY, NEVADA
FILED IN OPEN COURT
FEB 21 2001 19
* * * *
SHIRLEY B. PARRAGUIRRE, CLERK
BY JUDY NORMAN
DEPUTY

5 STATE OF NEVADA,)
6 Plaintiff,)
7 vs.) Case No. C159915
8 JOHN JOSEPH SEKA,) Dept. XIV
9 Defendant.)
10)

11 VOLUME II
12 REPORTER'S TRANSCRIPT
13 OF
14 JURY TRIAL

15 BEFORE THE HONORABLE DONALD M. MOSLEY

16 DISTRICT JUDGE

17 Taken on Tuesday, February 20, 2001

18 At 3:05 p.m.

19 **APPEARANCES:**

20 For the State: EDWARD KANE, ESQ.
21 TIM FATTIG, ESQ.
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

MAUREEN SCHORN, CCR NO. 496, RPR

APP1004

I N D E X

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36	Hair and Fingernail Samples	31	32
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O	Chart	17	17
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1 LAS VEGAS, NEVADA. TUESDAY, FEBRUARY 20, 2001, 3:05 P.M.

2 * * * *

3
4 CONTINUED CROSS-EXAMINATION

5 BY MR. CHRISTIANSEN:

6 Q And then the detective walked you back
7 around to the dumpster and said: Look in here, doesn't
8 this look unusual?

9 A I don't know if those were his words. I
10 think he asked me to look in the dumpster and see if there
11 was anything different than when I looked a little while
12 earlier.

13 Q And your response to that question is: That
14 stuff wasn't there when we went to lunch and left the
15 crime scene analyst there alone?

16 A That wasn't my response. I said, yes, there
17 appears to more -- there's a lot of stuff in the dumpster
18 now than there was when I left for lunch.

19 Q It appeared to you from the picture you
20 looked at that some of the items had been burnt in that
21 dumpster, correct?

22 A Yes, sir.

23 Q And when you were at the scene, did you
24 smell burning paper, or burning clothing, or burning
25 anything?

1 A Not that I recall, sir.

2 Q Did you see smoke?

3 A No, sir.

4 Q Had you seen or smelled any of this, would
5 you have left the crime scene analyst there alone?

6 A No, sir.

7 Q How many times in your career has homicide
8 called you up and told you to get back to a scene that you
9 just left to go to lunch?

10 A Once.

11 Q And that was this time, correct?

12 A Yes, sir.

13 Q And how many ID techs were at the scene when
14 you left?

15 A When I left to go to lunch?

16 Q Yes, sir.

17 A I believe there was just one.

18 Q Just Ruffino?

19 A I believe so.

20 Q Did you go inside of 1933, No. 3 on your
21 chart?

22 A Yes, sir.

23 Q With Officer Kroll?

24 A Yes.

25 Q Did you have a chance to see Mr. Seka?

1 A Yes, sir.

2 Q Did he appear cooperative to you?

3 A Initially, yes, sir.

4 Q Did he ever tell you to get out of his

5 place, you're not allowed to be in here?

6 A Not that I can recall, sir.

7 Q He let you come in and look around?

8 A Yes, sir.

9 Q Did it appear to you that people were living

10 there?

11 A There was clothing and couches and things

12 like that. I didn't pay attention to whether somebody had

13 been living there or not.

14 Q From looking at that incident recall, can

15 you tell me what time it was you cleared and went to lunch

16 with Officer Kroll?

17 A Looks like the same time I cleared at 12:08.

18 Q And can you tell from looking at the

19 incident recall what time homicide arrived?

20 A It looks like 12:33.

21 Q About 25 minutes after you cleared; is that

22 accurate?

23 A Yes, sir.

24 Q And did a second crime scene analyst arrive

25 in the middle?

1 A Yes, sir.

2 Q At 12:09?

3 A Yes, sir.

4 Q So there were two Metro crime scene analysts
5 at 1929 the entire time, if there was a time between when
6 you left and when homicide got there, right?

7 A It appears the second crime scene analyst
8 arrived at 12:09, and homicide arrived at 12:33.

9 Q Are you sure you left that crime scene
10 analyst there by himself?

11 A As far as I can recall.

12 Q Did you ever tell Homicide Detective Buczek,
13 the gentleman that called you back, that you had seen a
14 bullet inside of 1933 prior to being called back?

15 A Yes, sir.

16 Q When did you tell him that?

17 A Prior to being called back?

18 Q Prior to being called back.

19 A No, sir. Not that I can recall.

20 Q Detective Buczek asked you when you came
21 back about this bullet that had come up missing, right?

22 A I don't recall. I believe so.

23 Q If Officer Kroll remembered leaving only
24 after homicide arrived, would that be consistent with your
25 recollection of the events?

1 A I can't remember if they showed up just
2 before we left. I thought we had already left the scene.

3 Q But as you sit here today you don't
4 remember, do you, sir?

5 A No, sir.

6 THE COURT: Mr. Christiansen, would
7 this be an opportunity to break?

8 MR. CHRISTIANSEN: Yes, sir, it would.

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

18 We will return in approximately 30 minutes.

19 (Whereupon, a 30-minute recess was taken.)

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

25 Counsel, I want you to check in my chambers

1 if you want something outside the presence. Go ahead.

2 MR. CHRISTIANSEN: I apologize to the
3 Court. Judge, the objection deals with Thomas Creamer.
4 We made timely objections, and by my count there were
5 three different things Mr. Creamer said in response to
6 questions posed to him by the State that were all grounds
7 for mistrial, were all improper, and I'll cite the
8 reasons.

9 The first was when Mr. Creamer, in response
10 to a question by Mr. Kane, said that Jack had law trouble,
11 or trouble with the law back in Philadelphia. We
12 objected. Mr. Kane tried to redirect, or said something
13 to the effect: I'm not interested in that, that's not
14 what I'm eliciting, and got the guy back on track, the guy
15 being Mr. Creamer.

16 And the Court admonished the gentleman,
17 Mr. Creamer. And I want to point out to the Court, this
18 is a gentleman who came to the preliminary hearing back in
19 '99 and testified, and they had to take a break in the
20 preliminary hearing. I wasn't counsel of record, I hadn't
21 been appointed yet.

22 But after the lunch break, he comes back and
23 started the exact same type of nonsense he pulled in front
24 of the Court earlier this afternoon. He even started
25 screaming at Mr. Kennedy, from my reading of the

1 transcript.

2 So this is somebody who had been admonished
3 in another courtroom. Your Honor admonished him after the
4 first time when he tried to spit out something about
5 Mr. Seka's legal problems back east.

6 Now, the truth of the fact, Jack Seka had no
7 problems back east. Detective Thowsen ran this gentleman.
8 He had no warrant or arrests or anything else. There's an
9 old conviction, but the jury is now left with the
10 impression that Jack Seka had some criminal activity back
11 east.

12 And that is especially harmful in a case
13 where one of the jurors in voir dire expressed his disdain
14 for the legal system in Colorado when he found out
15 something along those lines about a defendant on a jury he
16 sat as the foreman on. So that is the first problem.

17 The second is, when Mr. Creamer, in response
18 to a question by the State, claimed that in his
19 confrontation with Mr. Seka in January of 1999, he felt
20 threatened, that he thought that he was a loose end, and
21 that Jack was going to tie up a loose end, and that Jack
22 was a threat to him. That, again, came in response to a
23 question by the State.

24 There has been no notice to us that
25 Mr. Creamer was ever going to allege that he had been

1 threatened, his uncharged misconduct and stuff that is
2 completely irrelevant and prejudicial.

3 The case law about threats is that you have
4 to show beforehand that you're going to introduce it from
5 the State's perspective, and that there has to be some
6 argument where by clear and convincing evidence it's
7 linked to a defendant before threats to a potential
8 witness can come in, because they're so prejudicial. So
9 that came out in response to a question proposed by the
10 State.

11 The final thing that he did, and probably
12 equally as harmful as the other, but in combination or
13 addition to the other two is what pushed it over the edge,
14 is when he turns to the jury and responds to the Court,
15 and I think it was the Court telling him to answer the
16 question that is posed.

17 He turns to the jury and says: But I have
18 important stuff to tell the jury. He might not have said
19 "jury." I think he said, "I have important stuff to
20 tell." And he turned and looked to the jury to do that.
21 That, again, leaves the jury with this impression that we,
22 the Defense, are hiding the ball.

23 And this uncooperative witness, Your Honor
24 tried to admonish him a number of times, and sort of
25 thumbing his nose at the Court he just continued to refuse

1 to do what was requested of him.

2 All of these amount to severe injustice to
3 Mr. Seka. He's entitled to a trial where only relevant
4 evidence comes in, and not these unsolicited color
5 commentary by a witness who has a huge axe to grind with
6 the defendant, because the defendant had him incarcerated
7 or committed to an insane asylum.

8 On those grounds I move for a mistrial.

9 THE COURT: Response?

10 MR. KANE: Real briefly, it's obvious
11 that Tom Creamer is a problem witness. I said that to the
12 jury at the beginning of the trial and made no secret
13 about it. As far as the three things that are alleged
14 that he said, let me deal with them in turn.

15 One, is that Mr. Seka had some sort of other
16 case which he; that is, Mr. Creamer testified for him.
17 That was a single reference not elicited by me, and I
18 don't think in any way calls for a mistrial.

19 THE COURT: Isn't that the item you
20 struck?

21 MR. CHRISTIANSEN: Yes, sir.

22 MR. KANE: You ordered it struck. And
23 the at the time that Mr. Creamer mentioned it, he said: I
24 testified for him. So it wasn't as if he was trying to
25 say there was something bad that he did that I want to get

1 in front of the jury. It was more in the context of him
2 trying to help him out and demonstrate any relationship
3 between them.

4 Secondly, as to whether he felt threatened,
5 the Defense has known all about this altercation between
6 the two of them where Creamer throws the defendant down a
7 flight of stairs. They cross-examined him about it at the
8 preliminary hearing.

9 The testimony by Creamer is: I'm standing
10 face to face with a guy who later tells me that he's
11 murdered Peter Limanni, and he says to me do you want me
12 to do to you what I did to Peter Limanni, and I throw him
13 down the stairs.

14 To add to that, "I felt threatened" adds
15 very little to the description of that incident. It
16 doesn't prejudice the defendant at all. It would be
17 inhuman for anybody not to feel threatened under those
18 circumstances.

19 Finally, as to the statement to the jury:
20 This is important and I want to say this, all jurors
21 understand and are instructed that the trial operates
22 under strict rules of evidence. No witness can simply
23 take the witness stand and say anything that the witness
24 wants.

25 Mr. Creamer is certainly not the first

1 witness who has in my presence in the course of a trial
2 fought against an objection by saying: What I want to say
3 is important. The fact is, he didn't say whatever it was.
4 He was admonished to just answer the questions, and
5 eventually he did so.

6 The first dealing with the other case is the
7 only thing that I think even rises to the level of
8 requiring a cautionary instruction. And the other two
9 certainly don't call for corrective action by the Court,
10 or a mistrial.

11 THE COURT: Well, coincidentally,
12 that's exactly how I interpreted the matter. I have
13 written here the three things that Mr. Christiansen
14 alluded to. The first one is the troubling one, if you
15 could say it's particularly troubling, and I would say
16 that, certainly, there could be some damage there. It's
17 hard to say, exactly.

18 I would entertain at the proper time a
19 cautionary instruction, and we'll cross that bridge when
20 we come to it, counsel, and be mindful of something that
21 we would consider.

22 As to his feeling threatened, I think that
23 is a rather natural inference and it merely justifies in
24 the witness's mind this fight that ensued. I don't know
25 if it's of any particular import him saying that he had

1 important stuff to tell.

2 If anything, it militates -- well, I suppose
3 it can be looked at in two ways, but it certainly can be
4 said to militate in favor of the Defense, and that it
5 shows a motive to fabricate. He's going to do his thing
6 here, he wants to get this across, and he's out here to
7 tell his story so he can get his licks in, in a sense.

8 I don't know that it has any significance
9 one way or the other, really. This is a murder trial. I
10 think the jury understands it's important, it's all
11 information on the part of the witness. It merely shows
12 that the witness has an axe to grind, which I think
13 counsel as competent as we have here for the Defense can
14 take it in closing and use it against him, along with his
15 other problems, his demeanor and other things, of course.

16 I think the striking of the reference to the
17 legal trouble is prudent, and I'm glad counsel brought it
18 to my attention at the time and asked that it be stricken.
19 The rest of it I'm sure, in my mind at least, does not
20 amount to a basis for a mistrial.

21 I would point out to counsel that the law
22 requires a fair trial, not a perfect trial, and these
23 things that have come out through Mr. Creamer were
24 inadvertent. I don't think anything suggests otherwise
25 here. The man, obviously, had some problems, his demeanor

1 and alcohol problem, whatever else may be occurring there.
2 So it's very difficult to elicit testimony that is just
3 absolutely admissible throughout.

4 The Court declines the motion for a
5 mistrial. Anything else outside the presence?

6 MR. CHRISTIANSEN: No, sir.

7 MR. KANE: No, Your Honor.

8 THE COURT: Mr. Bailiff, please.

9 (Whereupon, the jury entered the courtroom.)

10 THE COURT: Would counsel stipulate
11 that all members of the jury are present and properly
12 seated?

13 MR. CHRISTIANSEN: Yes, sir.

14 MR. FATTIG: Yes, Judge.

15 THE COURT: The State's next witness,
16 please.

17 MR. CHRISTIANSEN: Judge, I think we're
18 still on cross.

19 THE COURT: Officer Nogues, have your
20 seat. Let me admonish you that you're still under oath.

21 Proceed, please.

22 MR. CHRISTIANSEN: Thank you, Judge.

23 Q (By Mr. Christiansen) Officer Nogues, I
24 showed you three pictures and I asked for the admission of
25 two, and neglected to ask for the admission of three. I

1 show you what's been marked for identification purposes as
2 Defense Proposed Exhibit K. Is that a picture of the back
3 of 1933 as you've drawn it on the board?

4 A Yes.

5 Q And does that fairly and accurately depict
6 how it appeared to you back in 1998?

7 A As far as I can recall, yes.

8 MR. CHRISTIANSEN: I move for the
9 admission of Defense Proposed Exhibit K.

10 MR. FATTIG: No objection.

11 THE COURT: It is received. Thank you.

12 Q (By Mr. Christiansen) Officer Nogues, the
13 gentleman that was in the chain link area that you
14 believed was the manager, did you ever secure his name?

15 A No, sir.

16 Q And, specifically, on the day in question
17 you didn't secure his name, that being November the 17th
18 '98?

19 A No, sir.

20 Q And even when called upon by homicide to do
21 a report about 20 days later, as we've talked about on
22 December the 5th, you never went back and secured that
23 gentleman's name?

24 A No, sir.

25 Q And that was the gentleman that told you

1 there were parties going on in 1933, and people were there
2 at nighttime on a regular basis?

3 A Yes, sir. I don't recall that he was
4 telling me specifically, or if he was just telling Officer
5 Kroll. I remember he was telling us that there had been
6 parties there on a nightly basis; yes, sir.

7 Q So everybody is clear, you've drawn for the
8 jury a model of what the building, 1933 and 27 and 37
9 looks like they're on Western Avenue; is that right?

10 A As far as I can recall, yes.

11 Q And that's not to scale by any engineering
12 or construction standards, is it?

13 A No, sir.

14 Q But does that fairly and accurately depict
15 the building and the location of the dumpster, and the
16 location of that chain link fence as it relates to Western
17 back in November of 1998?

18 A Yes, sir.

19 MR. CHRISTIANSEN: Judge, I would move
20 for the admission of -- and I don't have it marked yet,
21 but I think the next one would be Defense Proposed Exhibit
22 O, and I will have it marked.

23 MR. FATTIG: No objection.

24 THE COURT: It is received.

25 MR. CHRISTIANSEN: Thank you. I have

1 no further questions from Officer Nogues.

2 THE COURT: Anything further?

3 MR. FATTIG: No.

4 THE COURT: You're excused. Thank you,
5 sir. State's next witness.

6 MR. FATTIG: Jeff Smink.

7

8 Whereupon,

9 JEFF SMINK,

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

12

13 DIRECT EXAMINATION

14 BY MR. FATTIG:

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

17 A Jeff Smink, S-m-i-n-k.

18 Q How are you employed?

19 A With the Las Vegas Metropolitan Police
20 Department.

21 Q What's your position?

22 A A crime scene analyst.

23 Q Back in December of 1998, where were you
24 employed?

25 A The Sheriff's Department of San Bernardino

1 County.

2 Q And what was your position there?

3 A A Forensic Specialist 2 assigned to crime
4 scene investigation detail.

5 Q And on December 23rd of 1998, were you
6 assigned to a particular case?

7 A Yes.

8 Q And where was that case at? Where did you
9 go?

10 A The scene was actually located on the south
11 shoulder of Nipton Road about a mile east of I15 in
12 southern California.

13 Q And did you proceed to the scene?

14 A Yes.

15 Q About what time did you get there?

16 A Approximately 1:45 in the afternoon.

17 Q And was that because you were in San
18 Bernardino and had to drive up?

19 A That's correct.

20 Q When you got to the scene, what did you see?

21 A There were several units on the scene.
22 There was a Sheriff's Department unit, as well as Highway
23 Patrol. And the scene entailed a dirt shoulder, areas of
24 raised dirt in a desert area on the south of the roadway.

25 Q And what was your assignment that day?

1 A To document the crime scene with photography
2 and locate items of evidence.

3 Q And could you generally describe the crime
4 scene?

5 A The crime scene included the Nipton Road
6 which was traveling east and west in that area, and a dirt
7 shoulder that traversed south from the roadway, and two
8 areas of raised dirt berm. There were also areas of tire
9 tracks which were into the soil, the victim's body, a hole
10 adjacent to the victim's body, and some cotton material at
11 the scene.

12 Q Could you generally describe what the
13 victim's body looked like?

14 A The victim was positioned with the head
15 towards the east, the legs towards the west. The legs
16 were buried with dirt. The head was face-down. The left
17 arm was exposed, and it had animal activity. And the
18 victim was partially dressed with a pair of pants and a
19 shirt, as I recall.

20 MR. FATTIG: Could I approach the
21 witness, Your Honor?

22 THE COURT: You may.

23 Q (By mr. Fattig) Showing you what has
24 already been marked as Exhibit 65 through 69, some
25 photographs. Would you look through those and tell me if

1 you recognize them?

2 A Yes, I do.

3 Q Do they fairly and accurately reflect the
4 crime scene when you arrived that afternoon?

5 A Yes.

6 Q Specifically referring to No. 65, could you
7 describe what is shown in that photograph?

8 A No. 65 shows the view of the crime scene
9 looking from the roadway towards the south. Specifically
10 depicted in the center portion of the photograph are a
11 series of tire tracks in the dirt berm area, and then a
12 raised dirt berm area to the south rear of the tire track.

13 Q Could you describe the condition of those
14 tire tracks?

15 A They were very poor quality. They were not
16 of significant quality to photograph with detail or for a
17 plaster cast. You can merely make out that there was a
18 tire impression, but not a discernable pattern.

19 Q After you documented the crime scene taking
20 photographs and those sorts of things, what did you do?

21 A A soil sample was collected, and the cotton
22 material was collected.

23 Q After those were collected, what did you do?

24 A After that I received permission from the
25 responding Deputy Coroner, and I attempted to obtain a

1 fingerprint from the victim's right hand.

2 Q And how did you attempt to do that?

3 A The victim's hand was unearthed from the
4 soil area. The skin had dehydrated as a process of
5 decomposition, so I used a syringe full of water, and I
6 injected water to the right thumb area.

7 That night it was particularly cold, so as I
8 injected the water into his hand, the water would freeze.
9 So I had to hold onto it for a period of time to thaw out
10 the water, and then the water had liquefied to the point
11 where I was able to place ink on the right hand of the
12 victim and obtain his fingerprint.

13 Q And were you trained to do that on a body?

14 A Yes.

15 Q Did you have occasion to use a metal
16 detector that day?

17 A Yes, I did.

18 Q What did you do?

19 A Prior to the body being recovered, and
20 subsequent or after the body was recovered, the area
21 surrounding the body, as well as the area underneath the
22 body was sifted, meaning be a shovel was used and it was
23 sifted through a screen, as well as metal detector in an
24 attempt to locate additional evidence.

25 Q Did you find anything?

1 A No.

2 MR. FATTIG: Nothing further.

3 THE COURT: Cross-examination?

4

5 CROSS-EXAMINATION

6 BY MR. KENNEDY:

7 Q Mr. Smink, that area where the body was
8 found, of course, you testified it was partially buried?

9 A Yes.

10 Q And there were extremely large piles of dirt
11 berms in the area; is that correct?

12 A That's correct.

13 Q And were you the one that used the shovel to
14 shift through the soil around there?

15 A Yes.

16 Q Is that something -- did you get dirty doing
17 that work in the soil around there?

18 A Yes. Whenever you have soil you get soil on
19 yourself, and it does get a little messy.

20 Q So you, yourself, got a little messy that
21 day on your clothing just from doing that?

22 A Yes.

23 Q Were there any footwear impressions located
24 in the area at all?

25 A There were no footwear patterns with a

1 discernable pattern. I don't know if there were any
2 specific areas, other than the tire tracks that were
3 deemed appropriate to mark for evidentiary value.

4 Q Certainly, you didn't take any footwear
5 impressions?

6 A That's correct.

7 Q Are you trained to do that?

8 A Yes.

9 MR. KENNEDY: Pass the witness, Your
10 Honor.

11 THE COURT: Anything further?

12 MR. KANE: No.

13 THE COURT: Sir, thank you very much.

14 MR. FATTIG: Jeff Lowery.

15

16 Whereupon,

17 JEFFREY LOWERY,

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

20

21 DIRECT EXAMINATION

22 BY MR. FATTIG:

23 Q Sir, will you please state your name and
24 spell your last name.

25 A It's Jeffrey Lowery, L-o-w-e-r-y.

1 Q Back on November 16th of 1998, how were you
2 employed?

3 A I was driving a truck for C and N Transport.

4 Q And where was that located?

5 A It was located at Mandalay Bay.

6 Q Did you have occasion to get some
7 information from a coworker that morning?

8 A Correct.

9 Q And who was that?

10 A I don't know his last name. I believe his
11 first name is Mike.

12 Q And what information did Mike tell you?

13 A Well, he came up there and said --

14 MR. CHRISTIANSEN: Objection. Hearsay.

15 MR. FATTIG: Offered not for the truth,
16 Your Honor, just to explain what Jeff, this particular
17 witness, did.

18 THE COURT: For that limited purpose
19 I'll allow it. Proceed.

20 THE WITNESS: He just said that he
21 thought he had seen a body on the side of the road.

22 Q (By Mr. Fattig) Based on that information,
23 what did you do?

24 Q Well, on the way back to Mandalay Bay to get
25 loaded, I took Las Vegas Boulevard and looked down on the

1 left-hand side and seen a body on the side of the road.

2 Q And was that reported to the police?

3 A Yes.

4 Q Were you on the scene when police arrived?

5 A Correct.

6 Q How much time passed until police arrived?

7 A Half hour, hour.

8 Q Did you disturb any of the scene by the

9 body?

10 A No.

11 MR. FATTIG: May I approach the

12 witness, Your Honor?

13 THE COURT: You may.

14 Q (By Mr. Fattig) Showing you what has been
15 admitted as Exhibit No. 5, a photograph, do you recognize
16 that?

17 A Yes.

18 Q What does that show?

19 A That shows the body.

20 Q Is that in the condition it was in with the
21 lumber on it?

22 A Correct.

23 Q When you found it?

24 A Correct.

25 MR. FATTIG: Pass the witness.

1 THE COURT: Cross-examination?

2

3 CROSS-EXAMINATION

4 BY MR. KENNEDY:

5 Q Mr. Lowery, did you have an opportunity to
6 approach the body before the police got there?

7 A Yes, I did.

8 Q And how far away were you from it?

9 A About five feet.

10 Q You could see everything pretty well?

11 A Pretty much, yes.

12 Q Did you notice a diamond ring on the
13 individual's right hand?

14 A Correct.

15 Q Did it appear to be a large diamond ring?

16 A Correct.

17 Q And in the area, when you went up there to
18 the area to look at the body, were you by yourself for a
19 period of time?

20 A Yeah; for about five minutes.

21 Q And during that period of time did you see
22 any footprints in that area, other than your own?

23 A Not that I know of. I wasn't really even
24 looking for footprints or anything like that.

25 Q Sure. Were you looking at the ground

1 though?

2 A The body.

3 Q The body itself?

4 A Yeah.

5 MR. KENNEDY: Pass the witness, Your
6 Honor.

7 THE COURT: Thank you very much. Next,
8 please.

9 MR. KANE: Randy McPhail.

10

11 Whereupon,

12 **RANDALL MCPHAIL,**

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

15

16 **DIRECT EXAMINATION**

17 BY MR. KANE:

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

20 A Yes. My name is Randall Mark McPhail, last
21 name is spelled M-c-P-h-a-i-l.

22 Q And by whom are you employed?

23 A Las Vegas Metropolitan Police Department.

24 Q How long have you employed by that
25 department?

1 A Approximately 13 years.

2 Q And what's your current assignment?

3 A I'm a crime scene analyst, senior level.

4 Q How long have you been in that assignment,
5 crime scene analyst?

6 A I've been a crime scene analyst for four
7 years, just over four years.

8 Q We've already heard testimony about the
9 processing of crime scenes. I want to ask you about a
10 couple other things that crime scene analysts do. One of
11 them is attending autopsies?

12 A Correct.

13 Q Would you explain why a crime scene analyst
14 attends an autopsy, and what he does at such a scene?

15 A The interest of the crime scene analyst at
16 an autopsy is almost like a separate scene on its own. We
17 view the body as a scene almost. We document the overall
18 condition of the body, show that the body was transported
19 intact with the body bag with the tag on it and seal.

20 We document any injuries on the victim,
21 collect any kind of biological samples on the outside of
22 the body, not anything internal, all the doctors do that.
23 We collect any clothing items that have any significance
24 to the case whatsoever.

25 Basically, like I said, the body is a scene

1 and we treat it with full documentation like a scene.

2 Q What is a DNA kit?

3 A A DNA kit is composed of -- usually it's a
4 sample of rib and kidney that the doctors collect for us.
5 We place those samples in a vial, and then they get frozen
6 where they stay until they determine they need them for
7 DNA analysis.

8 Q The first incident that you were involved
9 with in this investigation that I want to talk to you
10 about was the autopsy of an individual then identified as
11 John Lumber Doe back on November 16th of 1998.

12 Did you attend his autopsy?

13 A Yes.

14 Q Did you obtain one of those DNA kits that
15 we've been talking about?

16 A Yes.

17 Q You didn't bring that to court with you,
18 right?

19 A No. It's not suitable to bring into court.

20 Q Why?

21 A Because it's frozen and must stay in a frozen
22 state to preserve the evidence.

23 Q Did you also obtain other evidence in the
24 course of that autopsy of John Lumber Doe?

25 A Yes, I did.

1 Q What else did you obtain?

2 A I obtained, first of all, fingerprints from
3 the John Doe known as John Lumber Doe. I obtained hair
4 samples, blood samples, the DNA kit that we talked about.

5 I also obtained a note that was inside of
6 his jeans. The note had the name "Jack" on it with a
7 phone number. That was in the right pocket of his jeans.
8 And I think there was some other -- oh, his clothing, I
9 obtained the clothing as well.

10 MR. KANE: Judge, this witness will be
11 testifying about approximately 15 or 16 items of evidence
12 and about photographs. Just for this witness, may I have
13 blanket permission to approach?

14 THE COURT: Certainly. And is counsel
15 familiar with these items?

16 MR. KENNEDY: Yes, Your Honor.

17 THE COURT: Yes, sir.

18 MR. KANE: Thank you.

19 Q (By Mr. Kane) I Show you, first of all,
20 what's been marked for purposes of identification as
21 State's Proposed Exhibit 36, and ask if you recognize this
22 item?

23 A Yes, sir.

24 Q What is State's Proposed 36?

25 A They are hairs that I collected from the

1 victim's hand, and multiple fingernail clippings from the
2 victim's hand.

3 Q And what is it that causes to you recognize
4 that?

5 A It's my evidence package that I wrote out at
6 the scene. And I had the signature, the event number, all
7 the particulars on there that helped me identify it. It's
8 also sealed in my name in the back.

9 Q Does the package bear any signatures or
10 seals, other than your own?

11 A Yes, it does.

12 Q Is the signature of the person known to you?

13 A It looks likes it's Dave Welch from the
14 forensic lab.

15 Q What does David Welch do in the lab?

16 A He works at DNA.

17 Q Other than the addition of Mr. Welch's
18 signature, does that exhibit appear to be in the same
19 condition as when you observed it back in November of
20 1998?

21 A Yes, sir.

22 MR. KANE: Offer 36, Your Honor.

23 MR. KENNEDY: No objection.

24 THE COURT: It is received. Thank you.

25 Q (By Mr. Kane) I want to next show you

1 what's been marked for purposes of identification as
2 State's Proposed Exhibit 37, and ask if you recognize
3 that?

4 A Yes. This is a package containing a small
5 section of copper-colored scouring pad, and a piece of
6 hanger that came from the victim's front left pocket in
7 his jeans. There's also a green piece of paper with the
8 name "Jack" on it, and a phone number.

9 Q And does that exhibit also bear your
10 identifying signature and seal?

11 A Yes, it does.

12 Q Are there any other signatures or seals on
13 there besides your own?

14 A Yes. There is a seal and, I'm sorry, I
15 can't make it out. It's from a forensic lab, maybe Fred
16 Boyd.

17 Q Other than the addition of Mr. Boyd's
18 signature, does that appear to be in the same condition as
19 when you observed it back in November of 1998?

20 A Yes, sir.

21 MR. KANE: Offer 37, Your Honor.

22 MR. CHRISTIANSEN: No objection.

23 THE COURT: It is received.

24 MR. KANE: I ask that you open that
25 leaving the seal in tact, and just display to the jury the

1 note with Jack and the phone number. And the note itself
2 is in a separate package within that exhibit?

3 A Yes, it is.

4 Q For the benefit for the ladies and gentlemen
5 of the jury, since you're handling it without gloves I
6 assume it's safe for them to do so as well?

7 A Yes.

8 Q If you would replace that item.

9 I next want to talk to you for a while about
10 1933 Western Avenue. Were you assigned to process that
11 scene on November the 17th of 1998?

12 A Yes, sir.

13 Q And what time was it when you originally got
14 the call; if you recall?

15 A I am not sure when I originally got the
16 call. I arrived just after 2:00 o'clock.

17 Q And what information were you given?

18 A The reason I was asked to that scene --

19 MR. CHRISTIANSEN: Objection.

20 Speculation. He can't testify why somebody else called to
21 ask him to a scene.

22 MR. KANE: I'll rephrase the question.

23 Q (By Mr. Kane) What information were you
24 given that caused you to respond to the scene?

25 A I was told there was a break-in to an

1 adjacent business which was at 1929 South Western. And I
2 was asked due to the fact that I had just returned from
3 the autopsy on a homicide victim, whether the two scenes
4 might somehow correlate.

5 And I was asked to come down and look at the
6 scene at 1929, and see if I recognized anything that would
7 join the two together, the homicide and that scene.

8 Q And you know Dave Ruffino?

9 A Yes.

10 Q Was Dave Ruffino the crime scene analyst
11 working 1929?

12 A Yes, sir.

13 Q And was he primarily responsible for that
14 office?

15 A He was entirely responsible for that office.

16 Q Did you assume responsibility for the office
17 next door, that being 1933?

18 A Yes, sir.

19 Q And when you processed that crime scene,
20 what were you going in there looking for?

21 A We really didn't know what we were looking
22 for. I guess originally we were looking for any kind of
23 firearms evidence that might be there, and something that
24 would tie the victim to that scene at 1933 South Western.

25 Q Now, in the course of your processing of

1 1933 Western Avenue, did you recover a number of items of
2 physical evidence?

3 A Yes.

4 Q Did you also prepare a crime scene diagram
5 indicating the location of the various items of evidence
6 you recovered?

7 A Yes, sir.

8 Q I'm going to show you what's been marked for
9 purposes of identification a State's Proposed Exhibit 38,
10 and ask if you recognize that?

11 A That's the diagram I created.

12 Q That's a blow-up of your actual diagram?

13 A Correct.

14 Q Not drawn to engineering specifications,
15 correct?

16 A Correct. But it's still drawn with a scale
17 in mind.

18 Q And does it fairly and accurately depict the
19 scene and the items that you recovered?

20 A Yes, sir.

21 MR. KANE: Offer 38, Your Honor.

22 MR. CHRISTIANSEN: No objection.

23 THE COURT: It is received. Thank you.

24 Q (By Mr. Kane) If you could come down from
25 your seat, Mr. McPhail, and sort of walk the jury through

1 the scene. You'll note that there are two items that
2 don't have anything to do with the case that are blocked
3 out, and we won't be asking you to refer to those.

4 A This is the scene at 1933 South Western. It
5 was a heating and cooling business, repair business called
6 Cinergi. It consisted of the storefront, which was the
7 northwest office, the southwest office. There was
8 additional office spaces just behind the southwest office.

9 There was a large storage area, and I
10 believe there was other desks and office equipment in this
11 area, including a xerox machine and a storage area for
12 tools and other equipment associated with the business, I
13 would assume.

14 There's a small hallway leading into another
15 office area which was the northeast office. Now, this
16 office in the northeast corner of the building appeared to
17 have been used as a bedroom. There was a mattress on the
18 floor. There was an ironing board with items on top,
19 including an iron; clothing items in the room, and this
20 armchair was also in the room.

21 Back up at the northwest office it looked
22 like the whole thing was under construction. There was a
23 lot of work going on in the office. They apparently just
24 completed work on a humidior, and it was made out of cedar.
25 It was a large humidior for cigars that you could actually

1 walk in.

2 The work was either completed or just
3 nearing the stages of completion on that. So there was a
4 lot of wood and other objects laying around in the
5 northwest office toward the front of the storefront.
6 There was also in the southwest office a lot of cedar
7 wood, specifically on the floor here.

8 Additionally, there was damage to the wall
9 where I'm not sure if construction was going on and there
10 was some kind of damage to the wall, but the wall board
11 was missing behind the couch here in the south central
12 office.

13 And this wall here used to be a doorway and
14 they were, apparently, in the process of making an archway
15 that opened into this southeast office area. So there was
16 a lot of construction and construction materials laying
17 around.

18 We found several firearms evidence.

19 Perhaps, I don't want to get out --

20 Q You didn't find any firearms, correct?

21 A No firearms, meaning guns?

22 Q You found some firearms-related evidence?

23 A Yes.

24 Q Go ahead and describe that.

25 A First of all, I have to kind of give you the

1 nomenclature on the firearms. We've all been watching TV
2 and they show you a bullet, and a bullet can mean anything
3 from the thing that comes out of a gun, a lead piece that
4 hits somebody, to the whole contraption, which would
5 include the base and everything.

6 So I just wanted to kind of explain our
7 nomenclature on this. For us a complete cartridge is the
8 whole thing. It's composed of the cartridge case, which
9 is a metal cup. The metal cup is usually made out of a
10 chrome-colored metal or brass. It holds the powder or
11 propellant.

12 And then on top of that metal cup is the
13 actual bullet. The bullet also has a couple of
14 components. It has a core and it's lead, and oftentimes
15 it will have a jacket over it fully covering it, or
16 partially covering it with the bullet. And then it has a
17 primer somehow on the cartridge case.

18 Anyway, we found a cartridge case, it was a
19 357 magnum size in the false ceiling near the center of
20 the north wall in the northeast office -- northwest
21 office, I'm sorry.

22 We also found a cartridge case 357 magnum
23 size on the light fixture that was in front of the double
24 doors leading to the humidor. We also found another
25 cartridge case near the center of this south wall in that

1 northwest office, and they were all 357 magnum size.

2 Additionally, firearms evidence would
3 include a bullet that was lodged inside the wall, the
4 drywall of the south central office in the west wall. The
5 bullet had apparently traveled through the couch, the back
6 of the couch gathering up stuffing material as it went,
7 and lodged itself in the wall. When I recovered this, I
8 pulled the stuffing material out to get the bullet out,
9 and that's how that was found.

10 Additionally, there was a .32 caliber
11 cartridge, complete cartridge that had everything in it
12 that could have been fired, put into a gun and fired. It
13 was located inside the toilet in the restroom area in the
14 bottom of the bowl.

15 There was an additional .24 caliber
16 cartridge up in that false ceiling above his chair in the
17 northeast corner of the northeast office.

18 Q If you just go through the list of items
19 that you have on your diagram, I'll show the physical
20 items later. But if you could briefly go through them at
21 this point.

22 A Okay. We found numerous items out there.
23 I'll start with the dumpster in the back area. There were
24 numerous items out there, including photos and personal
25 papers in the name of Peter Limanni. There was also a

1 computer disk. There was a phone card and other personal
2 items inside that dumpster.

3 There were clothing items, a shirt in
4 particular, a green shirt that appeared to have been
5 burnt. And there on the ground we found some playing
6 cards from different casinos; a Bally's cards, Sam's Club
7 and Palace Station were all there.

8 Q Now, just to stop you. You don't mean
9 playing cards like a deck of cards that you deal?

10 A That's correct. They're kind of slot club
11 cards that you get from the casinos.

12 Q Go ahead.

13 A Apart from the firearms evidence, a piece of
14 broken glass I impounded from the floor area here. There
15 was a wall calendar with several dates circled that I
16 impounded from the wall of the south central office.

17 There were some personal belongings, photos,
18 papers inside a plastic bag in the garbage can in this
19 south central office. Some of those photos were of Peter
20 Limanni and family, I would assume.

21 There was also a bill fold, not a bill fold,
22 it's more of a business card holder, a leather business
23 card holder in the ceiling above this desk in the south
24 central office. And there were different cards in there,
25 business cards, and also a birth certificate in the name

1 of Peter Limanni in that area.

2 I collected several pieces of wood in this
3 area here. And the reason for that is, again, seeing if
4 we could tie it to the body that was found in the desert,
5 and we weren't sure if they matched or not so we collected
6 some of those.

7 There were numerous apparent blood stains.
8 I say apparent blood stains, because we found a stain that
9 looked like blood to us, so on the scene, or maybe even
10 after the scene at the lab, I'm not sure exactly when I
11 did it, but I checked it for a presumptive test that
12 allows us call that stain, instead of a reddish/brown
13 stain, we can call it apparent blood. It passed that
14 field test for that.

15 The apparent blood stains, most of them at
16 the stage that I recovered were not drops per say, or pool
17 or anything like that. Most of them were more of a
18 transfer where you have an object, shirt, hand, whatever,
19 that becomes -- it has some blood on it and it touches
20 something else, a wall in many of these cases, and
21 transfers the blood to the wall from the hands or shirt or
22 another object.

23 And that was the case throughout the
24 building, but there was actually a couple of drops. There
25 was a drop here on the door frame. There were numerous

1 drops in this box, it was just an empty cardboard box in
2 front of the store.

3 Most of these other areas in red here were
4 just transferred blood stains, except this one here on the
5 covered doors below the counter, there was a drop again.
6 So something had enough of it on there to actually drop
7 off and hit the cabinet door.

8 There was transfer up here. Most of these
9 other areas were transfers. And this area here that's
10 labeled B7, there was another type of transfer. It looked
11 to me possibly like a hand, fingers rubbing against the
12 wall making a semi-arch pattern right there in front of
13 that rear door of the southeast office.

14 About the only other thing, there was quite
15 a high -- 81 inches off the floor was this B10 on that
16 east wall of the northeast office. And it was, again, a
17 transfer but quite high, seven feet off the ground.

18 Q If you would resume your seat. I neglected
19 to ask you the players club cards that you found out on
20 the pavement, was there a name on those?

21 A You know, I can't recall right now. I'm
22 sorry.

23 Q I'm going to show you a series of exhibits,
24 and we'll start for purposes of identification as State's
25 Exhibit 41. And I'll utilize, basically, the same

1 procedure with each of these so we can get through them.

2 First of all, do you recognize 41?

3 A Yes, sir.

4 Q What is that?

5 A These are the playing cards we just spoke
6 of, the Bally's card and Sam's card and Palace Station
7 card.

8 Q And they are in an envelope bearing your
9 signature and seals?

10 A Yes, sir.

11 Q And do they bear any signatures or seals
12 besides yours?

13 A No; just mine.

14 Q They appear to be in the same condition as
15 when you observed them back on November the 17th of 1998?

16 A Yes.

17 MR. KANE: Offer 41, Your Honor.

18 THE COURT: Objection?

19 MR. CHRISTIANSEN: No, sir.

20 THE COURT: It is received. Thank you.

21 Q (By Mr. Kane) Would you open those up, and
22 if you can then answer my question about whether they bear
23 anyone's name?

24 A Yes. Two of them have the name Peter
25 Limanni on them, and one of them I can't see a name on it

1 at all.

2 Q Okay. If you would replace those in the
3 envelope. Next, I want to show what's been marked for
4 purposes of identification as State's Proposed 42, and ask
5 you if you recognize that?

6 A Yes, sir.

7 Q And what is 42?

8 A These would be two complete .32 caliber
9 cartridges that were recovered from 1933 South Western,
10 and three cartridge cases that were recovered from the
11 scene we talked about, and also one bullet.

12 Q Do they bear your signature and seals?

13 A Yes.

14 Q Any signatures other than your other than?

15 A Yes. It looks like, again, forensics.
16 Looks like Fred Boyd signed one of them off, and the other
17 looks like it might be Torrey Johnson.

18 Q And do you know who Torrey Johnson is?

19 A He's a firearms examiner from the
20 Criminalistics Bureau.

21 Q Other than Boyd and what appears to you to
22 be Johnson's signature, does that appear to be in the same
23 condition as when you first observed it?

24 A Yes, sir.

25 MR. KANE: Offer 42, Your Honor.

1 MR. CHRISTIANSEN: No objection.

2 THE COURT: It is received. Thank you.

3 Q (By Mr. Kane) I show you next what's been
4 marked for purposes of identification as State's Proposed
5 Exhibit 43, and ask if you recognize that?

6 A Yes, do I.

7 Q What is 43?

8 A It's a package bearing my label that I made
9 for it and indicating the inside is a wall calendar, black
10 leather business card holder, athletic shoe, red plastic
11 cartridge holder, and a press board piece of cedar wood,
12 and a piece of pine wood.

13 Q And does that item bear your signature?

14 A Yes.

15 Q Any signatures other than your own?

16 A No, sir.

17 Q Does it appear to be in the same condition
18 as it was when you observed it back on November the 17th
19 of 1998?

20 A Essentially, yes.

21 Q I'm going to ask you to extract the
22 contents, but if you could open it in case the ladies and
23 gentlemen of the jury should want to view the items later.

24 And, also, would you indicate for the ladies
25 and gentlemen of the jury by reference to the diagram

1 where that item fits in.

2 A I would have to step down. I spoke of this
3 before. We talked about the wall calendar that was on
4 this wall. We also had the business card holder inside
5 that was inside the ceiling area above this desk in that
6 office. It has pieces of wood that came from this area
7 here. And it has a tennis shoe, a H-Swiss tennis shoe
8 that came from the northeast office here.

9 Q I want to show you next what's marked for
10 purposes of identification as State's Proposed Exhibit 44,
11 and ask if you recognize that?

12 A Yes.

13 Q What is 44?

14 A It's a pair of Levis blue jeans.

15 Q Does that item bear your signature?

16 A Yes, sir.

17 Q Does it bear signatures or seals of anybody
18 else?

19 A Yes. It looks like Dave Welch examined this
20 as well.

21 Q And aside from the addition of Mr. Welch's
22 signature, is it in the same condition as it was when you
23 saw it on November 17th of 1998?

24 A Yes.

25 MR. KANE: Offer 44, Your Honor.

1 MR. CHRISTIANSEN: No objection.

2 THE COURT: It is received. Thank you.

3 Q (By Mr. Kane) Without opening it, could you
4 refer to your diagram and just indicate where in the
5 business you found that, either a number or location.

6 A In the south central office there's a
7 picture of a couch there, and it was right on the left arm
8 of that couch where this was recovered from.

9 Q Showing you next what's been marked for
10 purposes of identification as State's Proposed Exhibit 45,
11 do you recognize that?

12 A Yes.

13 Q What is 45?

14 A Forty-five is a package containing numerous
15 samples of blood, apparent blood. Normally we don't have
16 them this large, they're usually on Q-tips. And I'm sure
17 there was a significant amount of Q-tips with blood
18 samples on them. This actually contains a section of that
19 cardboard box located in front of the store that had
20 apparent blood on it, and that's why it's shaped like
21 this.

22 Q Does 45 bear your signature and seal?

23 A Yes, sir.

24 Q Anyone's signature or seals in addition to
25 your?

1 A Dave Welch.

2 Q And other than the addition of Mr. Welch's
3 signature and seal, does it appear to be the same
4 condition as when you saw it on November 17th, 1998?

5 A Yes, sir.

6 MR. KANE: Offer 45, Your Honor.

7 MR. CHRISTIANSEN: No objection.

8 THE COURT: It is received. Thank you.

9 Q (By Mr. Kane) Showing you next what's been
10 marked for purposes of identification as State's Proposed
11 Exhibit 46, do you recognize that?

12 A Yes, sir.

13 Q What is 46?

14 A It's a sample of apparent blood, four
15 different samples that, again, was labeled 1933 South
16 Western, and bears my signature and seal.

17 Q Any signature or seals in addition to yours?

18 A Yes, sir; Dave Welch.

19 Q And other than Mr. Welch, is that in the
20 same condition when you last saw it in on November the
21 17th, 1998?

22 A Yes, sir.

23 MR. KANE: Offer 46, Your Honor.

24 MR. CHRISTIANSEN: No objection.

25 THE COURT: Received. Thank you.

1 Q (By Mr. Kane) Will you tell the jury the
2 specific location from which the items in 46 were
3 recovered?

4 A Yes. I'm going to have to refer to my notes
5 on this, specifically, to find out, if that would be okay.

6 Q Let me lay the foundation for that. Do you
7 recall from your own independent recollection exactly
8 where those items were recovered from?

9 A No.

10 Q Did you prepare a report after recovering
11 it?

12 A Yes.

13 Q Would referring to that report refresh your
14 recollection?

15 A Yes.

16 Q Do you have a copy of your report if front
17 of you?

18 A Yes.

19 Q Would you refer to it, please.

20 A Did you want me to step down?

21 Q If you need to demonstrate it on the
22 diagram, I'd appreciate it.

23 A I have four samples inside this package.
24 The first one labeled 44A, slash, B is a sample of the
25 blood or apparent blood with the sample control. We

1 always take the two of them together. This 44A was on the
2 south wall of the rear hallway east of the drinking
3 fountain. So it's going to be this one right here, B9.

4 The next one was 45A, slash, B. That's on
5 the east wall of the northeast bedroom. I call that the
6 bedroom on my report, because it was being used as such,
7 apparently. And there was approximately 81 inches high,
8 that was the one that was up off the floor on this east
9 wall here.

10 46, the sample of reddish/brown stain on the
11 fabric. I call that one a reddish/brown stain because it
12 did not test positive for apparent blood. But I did pick
13 it up because I photographed it earlier, and that was on
14 the armchair here. And the last one in this package,
15 again, is on the fabric of this armchair.

16 Q If you would resume your seat, please.

17 Next, I want to show what has been marked
18 for purposes of identification as State's Proposed Exhibit
19 39 and 40. And let's start with 39, do you recognize
20 that?

21 A Yes.

22 Q Does it bear your signature?

23 A Yes.

24 Q Any signatures or seals besides your own?

25 A No, sir.

1 Q And does it appear to be in the same
2 condition as when you first observed it on November the
3 17th of 1998?

4 A Yes.

5 Q What's in it?

6 A There are photos and personal papers, a
7 three-and-a-half computer disc, MCI Friends and Family
8 phone card, a New Jersey Boat Operator's License, and
9 checks labeled Cinergi, a blue checkbook, black-colored
10 appointment book, and keys.

11 And this came from the general area -- or it
12 came from inside the dumpster.

13 MR. KANE: Offer 39, Your Honor.

14 MR. CHRISTIANSEN: No objection.

15 THE COURT: Received.

16 Q (By Mr. Kane) I won't ask you to remove the
17 contents, but would you open that in the event the jury
18 may want to look at it. And, again, there's no biohazard
19 sticker there?

20 A No, sir.

21 Q And with respect to State's Proposed Exhibit
22 40, do you recognize that?

23 A Yes, sir.

24 Q Does that also bear your signature and
25 seals?

1 A Yes.

2 Q Any signature or seals besides your own?

3 A No.

4 Q Does it appear to be in the same condition
5 as when you last saw it on November the 17th of 1998?

6 A Yes.

7 Q What's in that package?

8 A There's a K-Swiss tennis shoe, right one.
9 There is a burnt blue Limanni mechanical shirt inside of
10 it. There's a brass-colored belt buckle, and a
11 green-colored shirt that has burn marks on it.

12 MR. KANE: Offer 40, Your Honor.

13 MR. CHRISTIANSEN: No objection.

14 THE COURT: It is received.

15 Q (By Mr. Kane) Would you open that and
16 display the items of clothing that you described as
17 appearing to be burnt to the jury.

18 A Here's the green shirt. And here's the blue
19 one.

20 Q And, again, that material does not bear the
21 biohazard sticker, and it's safe to handle?

22 A Correct.

23 MR. KANE: Your Honor, the clerk was
24 kind enough to indicate that I forgot to move the
25 admission of State's Exhibit 43, and I would do so at this

1 point.

2 THE COURT: Objection to 43?

3 MR. KANE: It was the stuff on the
4 wall.

5 MR. CHRISTIANSEN: No objection.

6 THE COURT: It is received. Thank you.

7 Q (By Mr. Kane) I talked to you about some
8 photographs. Let me just give you the stack and have you
9 look through them, and I'll ask you some general questions
10 about them and get more specific.

11 Now, are all those photographs that I've
12 shown you, and I'll identify them for the record, but are
13 they all photographs of the area of 1933 Western as you
14 observed it back on November 17th of 1998?

15 A Yes; with the possible exception of the van
16 that may have been taken at the crime lab, the interior
17 sides of that.

18 Q I apologize. I'll pull those out. Exhibit
19 62, 63 and 64 were photographs taken at another location?

20 A Possibly. I couldn't tell by looking at
21 them, but they possibly were.

22 Q Let me cover the ones that you do recognize,
23 and those are for purposes of identification, 25, 50
24 through 59, 61, 77, and 78. Are those all pictures from
25 1933 Western?

1 A Yes, sir.

2 Q And do they fairly and accurately depict the
3 areas that are depicted in the photographs as you observed
4 them back on November the 17th of 1998?

5 A Yes, sir.

6 MR. KANE: Your Honor, I would offer
7 those just listed exhibits, and I can relist them.

8 MR. CHRISTIANSEN: Judge, I don't have
9 an objection. May I just approach and flip through them
10 real quickly?

11 No objection, Your Honor.

12 THE COURT: Those are the received.
13 Thank you.

14 Q (By Mr. Kane) Now, the jury will have
15 access to these photographs at a later point, so you
16 needn't display them to the jury. But for their benefit,
17 if you could go through them, read the number from the
18 back, and then tell them what's depicted in the
19 photograph.

20 A No. 25 is showing the south central office.
21 No. 25 is showing specifically the desk that was in the
22 northwest corner of that office.

23 Q If it would help at any time to refer to
24 your diagram as you're explaining, please do so.

25 A Thanks. No. 50 is showing the exterior

1 front side of the business, so we're looking at the west
2 side of the business. And it also has three vehicles in
3 front; a Cinergi van, a 1998 Toyota pickup truck, golden
4 in color, and an additional van.

5 No. 51, again, same shot, but it has more of
6 the other side, so it shows a different van in front of
7 the business.

8 No. 52 is showing the south central office.
9 Once again, this would be the east wall. It's showing the
10 location of the calendar that was collected or recovered.

11 And No. 53, that would be the south central
12 office again.

13 No. 54 is showing a picture of the toilet
14 bowl with the cigarette butt inside of it, and .32 caliber
15 cartridge complete.

16 No. 55 is showing the rear side of the
17 business just to the south of the door that was in here.
18 So it's just this area here, the southeast office area on
19 the exterior east side of the building.

20 No. 56 is a view of the couch in south
21 central office against the west wall. And there's a scale
22 in there showing where a bullet hole is in the top cushion
23 of the couch.

24 No. 57 shows the bullet hole going through
25 the couch and into the wall. And you can see a mass of

1 material in the wall, and that's what the bullet had
2 enshrouded itself in as it traveled through the couch.

3 No. 58 is showing a complete cartridge that
4 was a .32 caliber. That was in that northeast office
5 above the chair in the northeast corner of the office.

6 No. 59 shows a view of the rear side of the
7 business. It shows where the dumpster is, the pile of
8 wood that was in one of these other photos also that we
9 talked about earlier.

10 No. 60 shows the overall condition of the
11 dumpster, showing the beer bottles inside, clothing items,
12 burnt items, and the items in that bag that we talked
13 about earlier.

14 No. 61 is a photo of a birth certificate and
15 social security card, other cards in the name of Peter
16 Limanni. And it would also have the shoe that was
17 recovered from -- I believe it's a left shoe, so that
18 would be from the office, the inside office, not the
19 dumpster. The dumpster had the right shoe in it.

20 No. 77 has the gaming cards we opened up
21 here, and they were located just on the north side of the
22 dumpster near the side of the building.

23 And No. 78 shows the burnt clothing items
24 that we just pulled out of the bag.

25 Q Now, in addition to the crime scene sketch

1 and the items of physical evidence that you recovered from
2 1933 Western, did you participate in processing that scene
3 for the recovery of latent fingerprints?

4 A Yes.

5 Q And were you able to recover any?

6 A I don't think so. No, I didn't recover any.

7 Q I want to next talk to you about November
8 the 18th. On that date, did you participate in the
9 processing of a 1998 Dodge van?

10 A Yes, sir.

11 Q And did you recover certain items of
12 physical evidence in the course of that process?

13 A Yes.

14 Q Where did it take place?

15 A We processed the van, like we do most
16 vehicles, at the Criminalistics Bureau garage. We have a
17 garage attached to our facility that we can have a
18 controlled environment in and examine these vehicles.

19 Q Let me show you those photographs again, the
20 ones marked for purposes of identification as State's 62,
21 63 and 64, and ask if those depict the van whose
22 processing we were just talking about?

23 A Yes, sir, they do.

24 Q And do those fairly and accurately depict
25 the condition of the van as you observed it at the police

1 garage on November 18th of 1998?

2 A Yes, sir.

3 MR. KANE: Offer 62, 63 and 64, Your
4 Honor.

5 MR. CHRISTIANSEN: No objection, Your
6 Honor.

7 THE COURT: Received. Thank you.

8 Q (By Mr. Kane) Next show you what has been
9 marked for purposes of identification as State's Proposed
10 Exhibit 47 and 47A. Do you recognize those?

11 A Yes, sir.

12 Q And what are they?

13 A They're samples of apparent blood recovered
14 from the interior side of the van.

15 Q And each of them contains some of the
16 samples that you recovered from the van on that date?

17 A Yes, sir.

18 Q Does each envelope bear your signature and
19 seal?

20 A Yes.

21 Q Does each envelope bear an additional
22 signature and seal, other than your own?

23 A No. The second envelope doesn't. The 47A
24 does not, but 47A does. And it would be Dave Welch that
25 sealed and signed it.

1 Q Officer, which one does bear Mr. Welch's
2 seal?

3 A Forty-seven.

4 Q And other than the addition of Mr. Welch's
5 seal to 47, do both 47 and 47A appear to be in the same
6 condition as when you last saw them back in November of
7 1998?

8 A Yes.

9 MR. KANE: Offer 47 and 47A.

10 MR. CHRISTIANSEN: I'm confused, Your
11 Honor. I thought he said that Mr. Welch's signature was
12 not on 47A. I may have just misheard.

13 MR. KANE: That's correct.

14 MR. CHRISTIANSEN: No objection.

15 THE COURT: Those items are received.

16 Thank you.

17 Q (By Mr. Kane) As to 47, the envelope which
18 does appear to bear Mr. Welch's signature, could you
19 indicate where those samples that are contained in there
20 were recovered?

21 A Yes, I could. To do it correctly I would
22 have to look at my notes.

23 Q Again, you have no independent recollection
24 of it?

25 A Not specifically.

1 Q Would referring to your report refresh your
2 recollection?

3 A Yes.

4 Q Would you do so.

5 A Okay. With respect to 47, sample 1A would
6 be the interior side of the removed plastic threshold
7 cover to the right side doors of the '98 Dodge van. And
8 2B is also on the interior side of that threshold.

9 On the side of van as you step up into the
10 cargo area, there's a threshold or step. And on the step
11 it's covered -- this particular step was covered with a
12 plastic material. I removed that plastic material, and
13 there was large blood stain underneath the bottom side of
14 that plastic material. And that's what these samples
15 represented.

16 No. 3 was the interior side of the rear left
17 door near the bottom of the leading edge, and that's the
18 very rear side of the van far behind driver of the cargo
19 door.

20 No. 4 was the interior side of the right
21 wall of the rear cargo area, and it was right above the
22 rear right wheel well in the van.

23 No. 5 was on the floor to the left and
24 behind the rear wheel well inside the rear cargo area. So
25 it was on the left side behind the rear wheel well of the

1 van.

2 No. 6 was on the floor in the rear cargo
3 area, and it was near the center of the right rear wheel
4 well.

5 No. 7 was on the floor near the center of
6 the rear cargo area of the van, so it was more toward the
7 front, but it was near the center of the van.

8 No. 8 was on the floor in the rear section
9 of the van, and it was in front. No. 7 was more toward
10 the front of the van.

11 Q Next I want to show you what's been marked
12 for purposes of identification as State's Proposed Exhibit
13 48, and ask if you recognize that?

14 A Yes, I do.

15 Q What is 48?

16 A It's a package bearing my signature and my
17 seal, including Cinergi magnetic business cards with
18 apparent blood on them.

19 Q Any signatures or seals in addition to your
20 own?

21 A Yes, sir; Dave Welch.

22 Q Other than Mr. Welch's signature, does that
23 appear to be in the same condition as when you observed it
24 back on November 18th of 1998?

25 A Yes.

1 MR. KANE: Offer 48, Your Honor.

2 MR. CHRISTIANSEN: No objection, Your
3 Honor.

4 THE COURT: 48 is received. Thank you.

5 Q (By Mr. Kane) I want to switch scenes for a
6 minute. On December the 29th of 1998, did you attend the
7 autopsy of Peter Limanni in California?

8 A Yes, sir.

9 Q Did you obtain a DNA kit like the one we've
10 talked about before?

11 A Mr. Limanni was more badly decomposed, and
12 we had to target different areas for DNA than we normally
13 do, but, yes.

14 Q Did you also recover a number of
15 projectiles?

16 A Yes.

17 Q Showing you what's been marked for purposes
18 of identification as State's Proposed Exhibit 49, and ask
19 if you recognize that?

20 A Yes, I do.

21 Q And what's 49?

22 A It's a package bearing my signature and name
23 indicating the location of the San Bernardino Coroner's
24 Office, and containing projectiles and projectile
25 fragments.

1 Q Any signatures and seals in addition to your
2 own?

3 A Yes. And I think it's Torrey Johnson's
4 again.

5 Q And he is a firearms examiner with Metro?

6 A Yes, sir.

7 Q Other than what appears to be Mr. Johnson's
8 signature and seal, is that in the same condition as when
9 you booked it into evidence back on December 29th, 1998?

10 A Yes, sir.

11 MR. KANE: Offer 49, Your Honor.

12 MR. CHRISTIANSEN: No objection.

13 THE COURT: That item is received.

14 Thank you.

15 Q (By Mr. Kane) Finally, would you take a
16 look at that crime scene report. And the one I'm
17 referring to is the crime scene report that you referred
18 to several times, 1933 South Western on November the 17th.

19 And if you flip over to the next to the last
20 page, the section marked fingerprint processing at the
21 bottom of the page, and just read that over to yourself.

22 A Okay.

23 Q Does that refresh your recollection as to
24 whether or not the latent prints were recovered from
25 inside of 1933 Western?

1 A Yes, it does.

2 Q And were they?

3 A Yes.

4 Q And from what location or locations?

5 A The only place we got fingerprints were on
6 beer bottles that were located inside the trash can in the
7 south central office. There's an additional trash can in
8 the southeast office that had beer bottles inside of it,
9 and there was beer bottles in the dumpster in the back.

10 I tried other areas, and that's why I
11 couldn't remember the walls and stuff that I tried proved
12 negative, but the beer bottles I took back to the lab we
13 did get prints on those bottles.

14 Q Now, the jury has heard the way that
15 fingerprint processing is done, is that any of those
16 latents that you lifted that are later examined by a
17 fingerprint technician, would be then retained by that
18 technician. Is that the way you understand the procedure?

19 A If we get fingerprints and turn them in, the
20 latent print section does retain and store those
21 fingerprints for evaluation. Is that what you're asking?

22 Q Right. And on each of the latents that you
23 recovered, did you note on the card that you affixed the
24 latent to where it was recovered from?

25 A Right.

1 Q So if a fingerprint technician came in here
2 and said I matched a particular fingerprint, he would be
3 able to tell by looking at that card from where in the
4 crime scene that had been recovered?

5 A That's correct.

6 Q These trash cans that you've talked about
7 inside the business, not the dumpster now, but the trash
8 cans inside the business where the cans were recovered,
9 could you give us an idea of the size? Were they
10 33-gallon cans? Office-size waste baskets?

11 A I remember the one in the southeast office
12 was not very large. It seems to me -- I'm sorry, the
13 south central office wasn't very large. The one in the
14 southeast office I think was quite a large one, like an
15 outdoor one. But I have a hard time remembering,
16 specifically.

17 MR. KANE: I have nothing further, Your
18 Honor. Tender the witness.

19 THE COURT: Cross-examination?

20

21 CROSS-EXAMINATION

22 BY MR. CHRISTIANSEN:

23 Q Good afternoon, Mr. McPhail. We've got four
24 or so crime scenes to go through, so bear with me on the
25 length of the questions.

1 Mr. Mcphail, did you process any of the
2 areas in the false ceilings where items were located for
3 fingerprints?

4 A I did process the wall that was around the
5 false ceiling in the northeast office for fingerprints,
6 and yielded negative results.

7 Q I think you said you processed the cards, et
8 cetera, that were found out in the back, either on the
9 ground or by the dumpster. I'm speaking of 1933 and the
10 associated exhibit, State's 38. You processed those for
11 fingerprints, correct?

12 A No, sir, I didn't.

13 Q Just so the jury understands, that would be
14 all items that you just talked about with Mr. Kane that
15 were found either in this dumpster or on the ground out
16 here, you failed to process those for fingerprints,
17 correct?

18 A That is correct, but there was a reason for
19 that, too.

20 Q Now, you told the jury there was some burnt
21 items and you even showed them burnt items, I think a
22 couple of shirts, that were taken out of this dumpster,
23 correct?

24 A Correct.

25 Q Now, when items are burnt and they produce

1 soot or carbon, whatever the chemical word is for soot,
2 that is something that can help preserve or identify
3 fingerprints, correct?

4 A No.

5 Q Somebody that touched something with a hand
6 that had soot on it, wouldn't it leave a fingerprint?

7 A No. It's quite the opposite. They have a
8 great chance of destroying fingerprints having any kind of
9 deposit on top of it, including dust, after the print has
10 been placed there.

11 Q Okay. How about the moisture left by a
12 fingerprint or a finger coming into contact with soot or
13 dust? Could that preserve a fingerprint?

14 A If it's been handled after the soot has been
15 there, it's quite possible that it would make it more
16 visible. As far as preservation goes, I don't know that
17 it would make it better or not, but it would certainly
18 make it more visible if somebody handled something after
19 the soot was already on there.

20 Q What time of the day was it that you were
21 called upon to process the rear of 1933, the dumpster and
22 the cards that were on the ground; do you remember?

23 A I don't know exactly what time it was that I
24 did the processing out there at all.

25 Q Do you remember if it was at night?

1 A No. I don't recall.

2 Q If there was a witness that said he saw you
3 processing that scene somewhere between 9:30 and 10:00 at
4 night, would that be inconsistent with your recollection?

5 A I was there quite late, and it's possible I
6 was in the area around that time. Whether I was
7 processing for prints or not, it's hard to say.

8 Q There was no print processing done of these
9 items that Mr. Kane showed you pictures of that came from
10 the dumpster?

11 A That's correct, with the exception of the
12 beer bottles. I saw some photos of beer bottles, and they
13 were processed.

14 Q Now, you found two different types of bill
15 folds or card holders, as you referred to one, within
16 1933. One was found in the dumpster, and one was found
17 in a false ceiling, correct?

18 A Correct.

19 MR. CHRISTIANSEN: Judge, may I
20 approach the clerk?

21 THE COURT: You may.

22 Q (By Mr. Christiansen) You've named all of
23 the items that were located in there, but isn't it true
24 that there were two different pieces of identification for
25 Peter Limanni; one from New Jersey, and one from

why
not?

1 California?

2 A I know there was the New Jersey one. I'm
3 not positive of the California. I didn't note that and
4 I'm not sure.

5 MR. CHRISTIANSEN: May I approach, Your
6 Honor?

7 THE COURT: You may.

8 Q (By Mr. Christiansen) Mr. Kane may have
9 marked this same picture. I'm showing you what's been
10 marked for identification as Defense Proposed P.

11 Do you recognize that?

12 A Yes, I do.

13 Q What is that a photograph of?

14 A It's showing a social security card, a birth
15 certificate, I believe, and several other cards, including
16 a California ID of some sort.

17 Q So does that refresh your recollection that
18 there was California identification found?

19 A Yes, it certainly appears to be.

20 MR. CHRISTIANSEN: Judge, I move for
21 the admission of Defense Exhibit P, please.

22 MR. KANE: No objection.

23 THE COURT: Counsel, that is received.
24 And with that point made, I think we'll make it an
25 evening. Mr. McPhail, could you be here tomorrow at 1:00

1 o'clock?

2 THE WITNESS: Yes, sir.

3 THE COURT: Ladies and gentlemen, let
4 me read you the admonition.

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

13 Thank you your patience. I'll see you
14 promptly at 1:00 o'clock tomorrow. Court is adjourned.

15

16

17 ATTEST: Full, true and accurate transcript of
18 proceedings.

19

20

21


MAUREEN SCHORN, CCR NO. 496, RPR

22

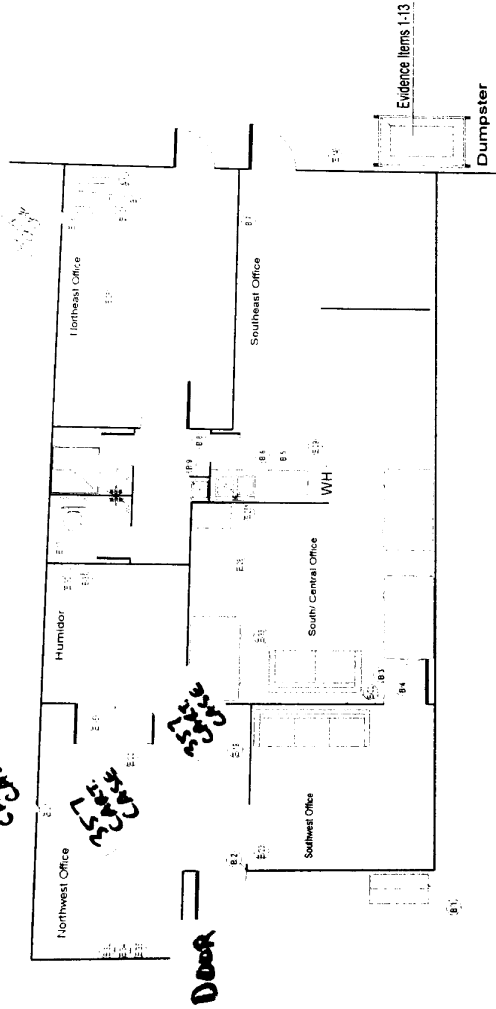
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Homicide Investigation
Event: 981116-0443
Date: 11-17-98
Time: 1402

Victim: John "Lumber" Doe
Location: 1933 S. Western Avenue
CSAs: A. Cabrales #2045
D. Ruffino #1502
R. McPhail #3326



Evidence Items

- E/1 Photos and personal papers in the name of Peter Limanni
E/2 3 1/2 inch computer disk
E/3 MCI phone card
E/4 New Jersey boat operators license
E/5 Two canceled "Cinergi" checks
E/6 Blue check book with "Limanni Mechanical Services" checks inside
E/7 Black appointment book
E/8 Keys
E/10 Right "K-Swiss" athletic shoe
E/11 Blue "Limanni Mechanical Services" shirt
E/12 Brass belt buckle
E/13 Green colored shirt
E/14 Bally's, Sands, and Palace Station slot cards
E/17 32 caliber cartridge
E/18 32 caliber cartridge
E/19 357 Magnum cartridge case
E/20 357 Magnum cartridge case

- E/21 357 Magnum cartridge case
E/22 Bullet
E/23 Broken glass
E/25 Wall calendar
E/26 Multiple photos
E/27 Business card holder
E/28 Left "K-Swiss" athletic shoe
E/29 Plastic cartridge holder
E/30 Piece of press board
E/31 Piece of cedar wood
E/32 Piece of pine wood (1x4x2)
E/33 Pair of "Levi's" blue jeans
E/34 Piece of pine wood (2x4x6)
E/35 Piece of pine wood (2x4x6)
B/1 - B/10 Apparent blood
B/11 Reddish brown stain
B/12 Apparent blood