

No. 86694

IN THE NEVADA SUPREME COURT

Electronically Filed
Oct 04 2023 08:40 AM
Elizabeth A. Brown
Clerk of Supreme Court

John Seka,

Petitioner-Appellant,

v.

State of Nevada, et al.

Respondents-Appellees.

Petitioner-Appellant's Appendix
Volume 7 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	
--	--

/s/ Kaitlyn O'Hearn

An Employee of the Federal
Public Defender, District of
Nevada

1
2 **COPY**

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
FEB 23 2001

3 * * * *

SHIRLEY D. PARAGURAE, CLERK
BY LINDA SKINNER
DEPUTY

4
5 STATE OF NEVADA,)

6 Plaintiff,)

7 vs.)

8 JOHN JOSEPH SEKA,)

9 Defendant.)

Case No. C159915
Dept. XIV

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 Thursday, February 22, 2001

18 At 2:00 p.m.

19 **APPEARANCES:**

20 For the State:

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

22 For the Defendant:

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

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

MAUREEN SCHORN, CCR NO. 496, RPR

APP1287

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E X H I B I T S

<u>STATE'S</u>	<u>DESCRIPTION</u>	<u>REF OR MARKED</u>	<u>ADMITTED</u>
20	Envelope	11	
85	Pawn Shop Records		15

DEFENDANT'S

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1 LAS VEGAS, NEVADA. THURSDAY, FEBRUARY 21, 2001, 2:00 P.M.

2 * * * *

3

4 CONTINUED CROSS-EXAMINATION

5 BY MR. CHRISTIANSEN:

6 Q Let's talk about October of 1998. You know
7 that Mr. Kato came to Las Vegas and took back one of the
8 vehicles that was leased in his name?

9 A That's what he told me, yes.

10 Q Do you know which vehicle he took back?

11 A I do based on information from VIN numbers.

12 Q And that information came from him, correct?

13 A Correct, I believe so.

14 Q He comes back, and I showed you bank records
15 yesterday. In October, was that business being
16 refurbished for the cigar store? Do you know?

17 A I don't know at that point.

18 Q You do know from Jennifer Harrison and
19 Mr. Kato that he was approached by Mr. Limanni and asked
20 to engage in some type of fraudulent credit scam on
21 October the 13th of 1998?

22 A I know that Mr. Kato was approached by
23 Mr. Limanni to invest in the cigar business, and had
24 expressed that if there was a problem he could get some
25 sort of identification that was inappropriate, yes.

1 Q Mr. Kato said Limanni explained that if
2 there was a problem with bad credit, he knew how they
3 could get false identification to access a fresh credit
4 line?

5 A That sounds accurate, yes.

6 Q That sounds familiar. You wrote it?

7 A Yes.

8 Q So Mr. Kato had to repossess one of his
9 vans, he's approached by Mr. Limanni with a scam. And I
10 won't call that a business venture, we'll call that a
11 scam. Is that fair enough?

12 A That's fair enough.

13 Q Now, you also know that another one of the
14 vans was in Lake Tahoe. At this time I'm talking about
15 the middle of October of 1998, right?

16 A I don't know the specific date off the top
17 of my head but, yes, I know there was a van in Lake Tahoe.

18 Q And you know that Mr. Limanni had signed a
19 lease in Lake Tahoe to open a cigar store up there?

20 A Yes.

21 Q And you know from Jennifer Harrison that he
22 wanted to move to Lake Tahoe and get out of Las Vegas?

23 A That's correct.

24 Q He was going to abandon the business here
25 that he had taken \$100,000 of these gentleman's money, and

1 go to Tahoe?

2 A I'm not sure he was abandoning it or
3 expanding it to have two businesses.

4 Q He was not doing a very good job with one,
5 was he?

6 A Didn't look like it, no.

7 Q The bank records didn't seem to indicate
8 that, correct?

9 A Correct.

10 Q So Mr. Kato, in your investigation you found
11 out he was on the lease at 1933 as guarantor, right?

12 A Correct.

13 Q On all four of the vehicles?

14 A Yes.

15 Q The one he repossessed, the one that was up
16 in Lake Tahoe, the two that were at the location, vans,
17 and the truck?

18 A That's correct.

19 Q I guess that's five vehicles. You know also
20 from talking to Ms. Harrison that he was the guarantor or
21 the signer on the Frontier phone book accounts; is that
22 correct?

23 A I believe that's correct, yes.

24 Q That's actually how she meets Peter Limanni,
25 because she calls Mr. Kato, Limanni answers the phone, and

1 he blows up the ad to a full page. Does that sound right?

2 A That sounds accurate, yes.

3 Q There was also a Sprint ad that was a
4 full-page ad, correct?

5 A I don't remember that part.

6 Q All of these things were financial
7 commitments that when the business venture went defunct,
8 Mr. Kato suffered the repercussions of it, correct?

9 A Yes.

10 Q Mr. Kato also was told by Mr. Limanni how he
11 could disappear, that being Mr. Limanni, and this is in
12 mid October of 1998; is that right?

13 A I don't specifically recall the exact words.

14 Q How about Kato said Limanni showed false ID
15 with Limanni's photograph, and said he could become
16 another person. Does that sound familiar?

17 A Yes.

18 Q So this Mr. Kato, he's had to repossess one
19 of his vehicles, he's lost over \$100,000 of money from
20 other peoples' money from Japan. He now can't find one of
21 his vehicles that's in Tahoe, Mr. Limanni has taken it up
22 there. He's a guarantor on all these different money
23 positions, we'll say. And you didn't do anything other
24 than a phone interview with him, right?

25 A That's correct.

1 Q And you didn't even interview
2 Mr. Kato -- I'm sorry, Mr. Toe in any fashion whatsoever,
3 correct?
4 A That's correct.
5 Q And, again, in these two homicides it's your
6 belief that two separate guns were used, correct?
7 A Yes.
8 Q Did you ever interview Tom Creamer yourself
9 in this case; do you recall?
10 A The name Tom Creamer isn't familiar to me.
11 I could look in the file and see if I have an indication
12 of contact with him.
13 Q If I tell you in that same report I've been
14 having you look at his name is not listed, would that
15 pretty much lead you to the conclusion that you didn't
16 interview him?
17 A I have no memory of his name.
18 Q In all your experience as a homicide
19 detective, you like witnesses that tell the same story
20 each time they're interviewed, correct?
21 A I like witnesses that tell the truth no
22 matter what it is.
23 Q And the truth, typically, comes out over and
24 over in a very similar story, correct?
25 A Not usually.

1 Q I'm not talking about identical stories,
2 Detective Thowsen. What I'm talking about is a witness,
3 and you want honest witnesses, right?

4 A I want truthful witnesses.

5 Q And you don't want witnesses who are under
6 the influence of all kinds of drugs, because that distorts
7 perceptions, memory, recall, things of that nature, right?

8 A That is a factor, but sometimes that person
9 is a witness as well.

10 Q And in your experience, if a person who is
11 under these types of drugs tells one story with very
12 specific facts one day, and then tells a 180-degree
13 opposite story the next day, that would cause you concern,
14 would it not?

15 A I'd say probably anybody that told something
16 that far off would cause concern, yes.

17 Q Do you know whether Mr. Toe, the individual
18 who lost a portion of this \$100,000, ever came back to the
19 United States?

20 A Yes.

21 Q You talked to him?

22 A I believe I talked to him and he had sent
23 some correspondence to us that we got in the mail.

24 Q I'll agree with you that Mr. Kato came back
25 to the United States, and that was the person that sent

1 that envelope that you talked about yesterday?

2 A Yes.

3 Q Did you speak to Mr. Toe, the person, the
4 other person that went to Japan?

5 A No, I did not.

6 Q Do you even know whether he ever came back
7 to the United States?

8 A No, I do not. After Mr. Seka told me he had
9 not been around for several weeks and weren't involved in
10 anything, I wasn't concerned with them based on the
11 physical evidence that we had.

12 Q And that concern didn't even rise when you
13 look at Officer Nogues' report to indicate Mr. Seka was
14 staying off and on in Spanish Trails? That raised no
15 issues for you, correct?

16 A I'm sorry?

17 Q Nothing you found out in reading any of the
18 other officers' reports caused you to go look face-to-face
19 with Mr. Kato or Mr. Toe and engage in the same type of
20 gut instinct feeling you did with Mr. Seka?

21 A Correct.

22 Q How was Mr. Kato's English when you talked
23 to him? Did he understand English pretty well?

24 A Yes, he did.

25 Q He spoke very fluent to you back and forth?

1 A Yes.

2 Q And then Mr. Kato at some point sent you
3 that list we talked about yesterday, right?

4 A That's correct.

5 Q And that's the list that somewhere on it it
6 says, "Find a home for Jake" in Jack's handwriting,
7 correct?

8 A Yes.

9 Q And Mr. Kato sent that to you to help or
10 assist you in your efforts in this case?

11 A That's correct.

12 Q Mr. Kato knew the cell phone for Jack Seka
13 as well, did he not?

14 A I believe he did, yes.

15 Q At least back then, you didn't think
16 Mr. Kato needed money, you thought he was going to be able
17 to write this off as a business loss and sort of go
18 further?

19 A Yes.

20 Q He wasn't going to be flat broke after the
21 business venture went sour?

22 A Yes.

23 Q He wasn't the type of person who would need
24 to take a ring off a potential victim and try to hock it
25 and make five, ten bucks, right?

1 A Not from my knowledge of him.

2 Q Do you know how it was that Mr. Kato
3 returned to the office at 1933 Western where he obtained
4 that envelope that was sent to you?

5 A I know it was done, I believe, through the
6 property manager there.

7 Q Through some type of eviction process?

8 A Yes.

9 Q And just so the record is clear, it's
10 Exhibit 20 I keep talking about in terms of the envelope
11 from Mr. Kato, right?

12 A Yes.

13 Q And that's State's Exhibit 20?

14 A Yes, it is.

15 Q And that was sent to you, if I look at the
16 postmark, about December 11, 1998?

17 A Yes, it is.

18 Q When was the first time you found out
19 Mr. Kato went bankrupt as a result of the scam or the con
20 Mr. Limanni had pulled with him?

21 A I found that he went bankrupt as far as this
22 today from you.

23 Q And correct me if I'm wrong, but I think you
24 told me the only reason you didn't get fingerprints or a
25 buckle swab, or doing a face-to face interview is because

1 Jack told you -- with the two Japanese gentlemen -- is
2 because Jack told you he hadn't seen them around for about
3 a month?

4 A He told me he hadn't seen them around. The
5 property manager had the same information. The evidence
6 did not point to them.

7 Q If you were going to come back to town and
8 harm somebody, would you hold up a flag and say: Here I
9 am, everybody, I'm back?

10 A Probably not.

11 MR. CHRISTIANSEN: Thank you,
12 Detective. I appreciate your candor.

13 THE COURT: Redirect?
14

15 REDIRECT EXAMINATION

16 BY MR. FATTIG:

17 Q Detective Thowsen, you remember testifying
18 regarding the defendant's statement on cross-examination
19 regarding his comment that he liked to advertize?

20 A Yes.

21 Q Did the defendant also in a statement
22 indicate to you whether or not the phone to Cinergi had
23 been disconnected?

24 A Yes, he did.

25 Q You actually went out to the scene where

1 Eric Hamilton's body was discovered on November the 16th?

2 A Yes, I did.

3 Q The Becks beer bottles, do you remember how
4 close they were to the actual body?

5 A Off the top of my head, I don't recall. I
6 didn't measure that portion.

7 Q Do you remember whether or not they were
8 real close to the body, or further away?

9 A I believe they were further away.

10 Q On cross-examination you testified about two
11 different guns being used. Is it fair to say that based
12 on your investigation that a .32 caliber weapon was used
13 to kill Mr. Limanni, and a 357 was used to Mr. Hamilton?

14 MR. CHRISTIANSEN: Objection. Leading.

15 THE COURT: Are you recapping the
16 testimony previously given?

17 MR. FATTIG: Yes.

18 THE COURT: Sir, you can answer the
19 question. I'll allow it.

20 THE WITNESS: Yes.

21 Q (By Mr. Fattig) Was that type of ammunition
22 found at 1933 Western?

23 A Both kinds were found at 1933 Western.

24 MR. FATTIG: Nothing further, Your
25 Honor.

1 RECROSS EXAMINATION

2 BY MR. CHRISTIANSEN:

3 Q Detective Thowsen, I neglected one thing.
4 Did you ever have either Mr. Kato or Mr. Toe's criminal
5 history run?

6 A No, I did not.

7 Q Is that something you are capable of doing,
8 or were capable of doing back then in 1998?

9 A If they were thought of as a suspect, yes.
10 I can't just run one on somebody because I want to run
11 one.

12 Q And if you thought to consider them as a
13 suspect, you could have done that?

14 A Yes.

15 MR. CHRISTIANSEN: Thank you, sir.

16 Nothing further.

17 THE COURT: Anything further?

18 MR. FATTIG: No.

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

20 Next witness, please.

21 MR. KANE: Judge, at this time the
22 State would offer, pursuant to stipulation, pawn shop
23 records which have been marked collectively as State's
24 Proposed Exhibit 85.

25 THE COURT: Objection?

1 MR. KENNEDY: No objection, Your Honor.

2 THE COURT: Those are received. Thank
3 you.

4 MR. KANE: Your Honor, the State has no
5 further witnesses to call and no evidence to present. The
6 State would rest its case in chief.

7 THE COURT: Would counsel approach the
8 bench, please.

9 (Whereupon, counsel conferred with the Court.)

10 MR. KENNEDY: Your Honor, we could have
11 a couple of Defense witnesses.

12 THE COURT: That will be fine. We will
13 do that before we have our break for the afternoon.

14 MR. KENNEDY: Margaret Daly.

15
16 Whereupon,

17 MARGARET DALY,
18 was called as a witness by the Defense, and having been
19 first duly sworn, was examined and testified as follows:

20

21 DIRECT EXAMINATION

22 BY MR. KENNEDY:

23 Q Would you please state and spell your last
24 name for the record.

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

1 Q Ms. Daly, do you live here in Las Vegas?

2 A No, I do not.

3 Q Where are you from?

4 A From Philadelphia.

5 Q And do you know an individual named Jack

6 Seka?

7 A Yes, I do.

8 Q How long have you known him?

9 A Since the summer of '94.

10 Q Do you know also an individual named Thomas

11 Creamer?

12 A Yes, I do.

13 Q And how do you know him?

14 A He is my ex-boyfriend.

15 Q And when did you first start a relationship

16 with Mr. Creamer?

17 A In the summer of '94, August of '94.

18 Q And has it been an ongoing relationship

19 since that time? In other words, has it been a constant

20 relationship?

21 A No. I separated with him in January of '99.

22 Q Did something happen in January of '99

23 causing to you separate from Mr. Creamer?

24 A Yes. Mr. Creamer -- I don't know how to

25 explain this. I had to have him committed.

1 Q You had to have him committed?

2 A Yes. I had to have him 302'd.

3 Q 302'd. Is that something --

4 A Involuntary commitment to a psych ward.

5 Q That's under Pennsylvania law?

6 A Under Pennsylvania law.

7 Q And did you also cause a restraining order
8 to be placed against him?

9 A Yes, definitely.

10 Q Do you remember when the first restraining
11 order you had?

12 A It was January 31st, and it ran up to
13 February 1st of 2000. And since then I've gotten one on
14 August 8th of this year.

15 Q Just so I'm clear, did you have a
16 restraining order back in January of 1999 when you had him
17 committed?

18 A Yes.

19 Q And was that the first one?

20 A That was the first one.

21 Q What happened in January of 1999 that caused
22 you to have him 302'd and to cause you to get a
23 restraining order?

24 A He was getting aggressive and angry and
25 violent with lots of people, and was making nuisance. He

1 was heavily medicated, going to several different doctors
2 for the same prescriptions.

3 Q Do you know what kind of medications he was
4 on in January of 1999?

5 A I know he was on Xanax, Paxil, and he was
6 taking muscle relaxers he got from my father.

7 Q How would you describe his behavior during
8 that time frame? And a lot of these questions are from
9 January through April of 1999, the questions I'm going to
10 ask for you. How would you describe his overall behavior
11 that you witnessed during that time?

12 A He was orational, emotional, and he just
13 didn't make any sense.

14 Q Was he aggressive towards you?

15 A He was very aggressive in January when I got
16 the restraining order. Several times before that day that
17 I went to go get it, he pushed me around, he attacked me
18 and threatened to kill several sometimes, including when I
19 went to call my sister, because I told her I would call
20 her, and he said he would strangle me with the telephone
21 cord.

22 Q And all these are factors you used to get
23 your restraining order. Is that a correct statement?

24 A Yes.

25 Q Would you see him on a daily basis before he

1 was committed in January of '99?

2 A Yes.

3 Q And you testified that about his behavior
4 and that he was aggressive, things of that type. Did he
5 suffer from any type of memory loss?

6 A Yes, he did. Frequently, I would just stay
7 with him because I was concerned that he was going to hurt
8 himself, his grandmother, or his best friend, because he
9 would take so many pills that he would be knocked out.
10 And he would wake up hours later, and going to sleep at
11 5:30 and wake up at 3:00 in the morning and say: What
12 happened, what he did, if he ate, because he couldn't
13 remember.

14 Q Was that a frequent occurrence?

15 A That was very frequent.

16 Q He told you he couldn't remember?

17 A Between October and December to January, it
18 was all the time.

19 Q Now, in January of 1999, was John Seka there
20 with you in the home where you were staying?

21 A Yes, he was.

22 Q And why was he at your home? Or, wait a
23 minute, where were you staying? Was it your house, or
24 someone else's house?

25 A Before I got the restraining order I was

1 staying with Tom's grandmother with Tom. After that, I
2 was staying with my mother.

3 Q And Jack Seka was staying with you when you
4 were staying with your mother?

5 A Yes.

6 Q Was there a reason he stayed with you?

7 A He was support for me, as well as for Tommy
8 at the time.

9 Q You didn't have an intimate relationship
10 with Jack Seka, did you?

11 A No, I did not.

12 Q So he was a friend of yours?

13 A He was a very good friend. I had met him
14 when I first met Tommy. Tommy was wanting to know what he
15 thought about me. He thought a lot about what Jack
16 thought because he was his best friend.

17 Q And so you've known Seka throughout the same
18 time that you've known --

19 A I've known him through the same time. He's
20 always been considered family.

21 Q And just so I don't get in trouble with the
22 court reporter, wait until I get done with my question and
23 then you can answer.

24 A Okay.

25 Q Now, did you know Jack Seka was in Las Vegas

1 for a period of time in 1998?

2 A Yes.

3 Q Did you know why he was out here?

4 A I thought he was working out here.

5 Q Did you know anything about who he was
6 working with, or what type of work he was doing?

7 A No. I just know that he came back for every
8 holiday to visit.

9 Q Do you know an individual named Peter
10 Limanni?

11 A No.

12 Q During the time frame that Jack stayed at
13 your home, this is from January 1999 until, I suppose, the
14 end of March, would you see Jack Seka on a regular basis,
15 a daily basis in the home?

16 A Yeah, yeah.

17 Q Did you ever have any conversations with
18 Jack about what happened in Las Vegas, what he was doing
19 in Las Vegas, or about Peter Limanni?

20 A He told me that -- well, he told Tommy and I
21 that he was questioned here. And he said on one of his
22 visits when he came back that he had given them numbers to
23 contact him if they had any questions. So as far as --

24 Q Well, did Jack tell you why he was
25 questioned by the authorities here?

1 A Yeah. He said that it was about two murders
2 that had happened here.

3 Q Did he make any statements to you saying
4 that he admitted he had any involvement in either one of
5 those murders?

6 A Not at all.

7 Q Now, in January of 1999, how long was
8 Mr. Creamer committed?

9 A He was due to get out the day after my
10 restraining order was finalized.

11 Q So he went in early to mid January and got
12 out early February?

13 A Yes.

14 Q Of your own knowledge, did you know whether
15 or not Mr. Creamer was aware that Jack Seka was staying
16 with you at your grandmother's house?

17 A Yeah.

18 Q He did know?

19 A He did know. He did know. He had someone
20 call the house.

21 Q Would Mr. Creamer call the house and speak
22 with you during this time frame?

23 A He attempted to, but my sister always
24 intercepted knowing that I had the restraining order.

25 Q So you never spoke with him?

1 A No.

2 Q Were you aware of your own knowledge whether
3 Mr. Creamer was upset that Jack was staying with you in
4 your home?

5 A Yes, yes. He was very upset. He didn't
6 want him around.

7 Q And is that -- I guess, I'm trying to
8 understand how did you learned this, without telling what
9 someone else said, how did you learn that Creamer was
10 upset that Jack Seka was there with you?

11 A Well, I could tell that he was upset because
12 the night before I had him 302'd, he was really paranoid:
13 What are you talking about? What are the talking about?
14 He just was paranoid. And I want to say that he told my
15 sister to get him out.

16 And when I did talk to him on the phone
17 before, I had a day before I got the restraining order he
18 called his grandmother's house where I was staying at the
19 time to watch her, that he wanted him out of the house. I
20 had to get him out the house.

21 Q He wanted Jack out?

22 A He wanted Jack out of the house.

23 Q Now, you've talked about this 302 process.
24 Obviously, did something happen to trigger this that he
25 would be committed?

1 A Yes, yes.

2 Q Was there an incident?

3 A There was an incident. He was off all
4 weekend, like, terrorizing his grandmother and myself,
5 threatening us and tearing the house apart, very
6 aggressive and violent behavior.

7 And I had asked Jack to come over several
8 times to help me talk him out of a trait. I knew that he
9 wasn't getting better, and he wouldn't go to his
10 counselor. And the medicine he was taking I was told was
11 supposed to mellow him out, and it wasn't mellowing him
12 out, it was making him more angry.

13 And they were upstairs and I heard all this
14 commotion up and down the stairs all night long, and he
15 threw Jack down the stairs.

16 Q Did you witness him throwing Jack down the
17 stairs?

18 A I saw Jack falling down the stairs at the
19 very bottom.

20 Q Did you hear anything that was said
21 preceding Jack falling down the stairs?

22 A Tommy had come downstairs and he started
23 screaming how dare he tell me to --

24 Q What, exactly, did he say?

25 A He said, told me to shut the fuck up. Who

1 the hell does he think he is.

2 Q Referring to Jack?

3 A Referring to Jack.

4 Q Did Mr. Creamer tell you at that time that
5 Jack Seka had threatened him in some way?

6 A Not at all.

7 Q That Jack Seka said he would harm him in
8 some way?

9 A No. He just was furious that Jack was
10 disrespectful to him.

11 Q And it was later on that night that you
12 started this process to get him committed; is that
13 correct, or shortly thereafter?

14 A Well, it ended up being that I told Jack to
15 go. Jack didn't go. Tom tried to get him -- to be
16 aggressive with him, but Jack wouldn't. He just sat in
17 the chair and said: I don't want to do this, I don't want
18 to do this. And they went back upstairs and Tom was
19 completely calm like nothing had ever happened.

20 And next thing I know, Jack is down the
21 stairs again, and I'm up the stairs pushing Tommy up, and
22 he locked us in there and he left. Then Tom calmed down
23 again. And when we got downstairs out the door he was,
24 like: Okay, baby, now I'm going to walk the dog. I think
25 the dog has to go to the bathroom, like nothing

1 happened, like completely normal.

2 And I opened the door and noticed that Jack
3 was trying to get into the car, our car to go to get out of
4 there because Thomas was upset. And I stood in the door,
5 and then he kept saying: What's wrong? What's wrong?
6 What's wrong?

7 And I said nothing, and I tried to close the
8 door and acted like nothing was going on, and he saw Jack
9 standing outside. And he just lost his mind and he
10 started attacking me. And I put myself in the doorway and
11 held on as long as I could until he got me -- physically
12 forced me to the floor and started hitting me in the head
13 until I couldn't hold on.

14 Q And you were able to get yourself free of
15 him?

16 A And then he took off out the door with the
17 dog and was chasing after Jack. And I turned around and
18 locked the door, called my sister and told her to call
19 911. I told her I couldn't talk about it right now, just
20 do it. And I went back and I used my body to brace the
21 door shut.

22 Q So the authorities did come and that's what
23 started it?

24 A The authorities did come, and I wouldn't let
25 him in until they arrived.

1 Q Now, the records that we have show that on
2 March 31st, either the FBI or the Philadelphia Police
3 arrested Jack at your home; is that right?

4 A Yes.

5 Q Were you there at that time?

6 A No, I was not.

7 Q Did you come home later and find out?

8 A I found out right away. My sister had
9 called me.

10 Q Was it at that time that you learned that he
11 was arrested for incidents here in Las Vegas?

12 A Yes.

13 Q Before that time, had you known of any
14 problems that were in Las Vegas that would cause him to be
15 arrested?

16 A Well, I had known. Tommy had talked about
17 that that was Jack's problem, because Jack called him from
18 the office where they were and he had mentioned this to
19 talk to someone. And that's as far as I know, that that's
20 where he got this from. That's where I think he got it
21 from.

22 Q Do you have any knowledge as to why the
23 authorities showed up at your home on March 31st as to who
24 had been there?

25 A I had known it was coming. I knew before I

1 was -- they actually told me who did.

2 Q They being the authorities?

3 A The Philadelphia homicide detectives who
4 questioned all of us.

5 Q And did you give a statement to the
6 Philadelphia authorities?

7 A Yes, I did.

8 Q And do you still have a restraining order
9 against Mr. Creamer to this day?

10 A Yes, I do.

11 Q So you don't have a relationship with him,
12 do you?

13 A No, not at all.

14 MR. KENNEDY: Pass the witness, Your
15 Honor.

16 THE COURT: Cross-examination?

17

18 **CROSS-EXAMINATION**

19 BY MR. KANE:

20 Q You've known Mr. Seka for the same length of
21 time that you've known Mr. Creamer, correct?

22 A Yes.

23 Q Did Mr. Creamer and Mr. Seka know each other
24 before you met them both?

25 A Many, many years before that.

1 Q Do you know how long?

2 A Probably about six or seven years before
3 that.

4 Q Do you know how they first met?

5 A I'm not sure how they met. I just know that
6 they have been -- I was told that they were best friends
7 for a long time, and that he wanted to know what Jack
8 thought of me because he thought highly of what Jack
9 thought.

10 Q So at least up to the time that you first
11 met them they were best friends, and had been so for a
12 long time?

13 A Yes.

14 Q Did you they remain best friends after you
15 and Tom started going out?

16 A Yeah. I mean, because I've known him from
17 the time I started going out with Tom until the time I
18 left. He was always there, he came for holiday visits and
19 birthday visits.

20 Q And except for the erratic behavior that you
21 talked about around the end of 1998 and the beginning of
22 1999, had they stayed friends all that period of time?

23 A They were friends that whole time.

24 Q And the incident where Tom threw Jack down
25 the stairs, your testimony is that Tom did that because

1 Jack was disrespectful to him?

2 A Yes.

3 Q And can I ask you what address it was that
4 Jack was arrested at? What the street address was?

5 A Yeah. It was [REDACTED] Street, my
6 mother's house, [REDACTED]

7 MR. KANE: Thank you. Nothing further,
8 Your Honor.

9 THE COURT: Anything further?

10 MR. KENNEDY: No redirect.

11 THE COURT: Thank you very much.

12 You're excused. Next witness, please.

13 MR. KENNEDY: Your Honor, the Defense
14 was call Christine Caterino.

15
16 Whereupon,

17 CHRISTINE CATERINO,
18 was called as a witness by the Defense, and having been
19 first duly sworn, was examined and testified as follows:

20

21 DIRECT EXAMINATION

22 BY MR. KENNEDY:

23 Q If you could state your name and spell your
24 last name for the record.

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

1 Q Ms. Caterino, where are you from?
2 A Philadelphia.
3 Q And do you know Jack Seka?
4 A Yes.
5 Q And how long have you known him?
6 A About five years.
7 Q And do you have any sort of special
8 relationship with Mr. Seka?
9 A He's the father of my daughter.
10 Q And what's your daughter's name?
11 A [REDACTED] Seka.
12 Q And when did you and Jack have this child?
13 A On [REDACTED] 1997.
14 Q Are you married to Mr. Seka?
15 A No.
16 Q Since 1997, has Mr. Seka helped support
17 [REDACTED]?
18 A Yes.
19 Q Financially?
20 A Uh-huh.
21 Q Is that a yes for the court reporter?
22 A Yes, sorry.
23 Q Were you aware that in 1998 Jack came out to
24 Las Vegas to do some work?
25 A Yes.

1 Q Did he explain to you, did Jack tell you he
2 was going to Las Vegas for some particular purpose?

3 A Yes.

4 Q Did he say who he was going to Las Vegas
5 with to do this work?

6 A He was going out there to work, and he was
7 going to stay with Pete Limanni.

8 Q Did you know Peter Limanni?

9 A I didn't know him. I had heard of him,
10 heard Jack talk about him, but I didn't actually meet him
11 until I came out here.

12 Q So you came out here on a visit?

13 A Yes.

14 Q What month was that in 1998?

15 A September.

16 Q And where did you stay when you came out in
17 September of '98?

18 A I stayed for two or three nights at the shop
19 where they worked and lived in the back of. And then I
20 stayed another seven days at Bally's.

21 Q Do you remember the address of that shop?

22 A No. I don't remember the address.

23 Q Had you been to Las Vegas before?

24 A No.

25 Q And so you stayed at the shop for three days

1 or so?

2 A Yes.

3 Q Was Peter Limanni there during these first
4 three days?

5 A Yes. He was there. He wasn't there the
6 first day. He was in Lake Tahoe with his girlfriend, and
7 then he came while I was there.

8 Q Who was his girlfriend at the time? Did you
9 know her?

10 A Jennifer. I don't know her last name.

11 Q Did you get a chance to meet her while you
12 were here on this trip?

13 A Yes.

14 Q So when he got back -- so you were there in
15 the office with Jack and, I guess, Peter for at least two
16 days out of that three; is that correct?

17 A Right.

18 Q Did you notice anything unusual about the
19 relationship? Would they argue or fight?

20 A No, not at all.

21 Q Did you ever hear during that trip that
22 Peter used any type of disparaging words against Jack, or
23 ordered him around, or do anything one would consider
24 mean-spirited?

25 A No.

1 Q The balance of your trip, did you all go out
2 together, or did you do any gambling?

3 A We went out to kind of, like, in between
4 lunch, dinner. We went out to a restaurant and had a meal
5 together.

6 Q And you said together; yourself, Jack,
7 Peter?

8 A Yeah; my daughter and his girlfriend. We
9 all went.

10 Q How would you describe that dinner or
11 luncheon you went to?

12 A It was fine. He just told us about how
13 their trip was at Lake Tahoe, things that they did, asked
14 about the baby, you know, just said how cute she was, and
15 everything was fine. We just had normal conversation.

16 Q And after you returned to Philadelphia from
17 that trip in September, did you have regular contact with
18 Jack?

19 A Yeah.

20 Q On the telephone, I assume?

21 A Right. We would talk back and forth once or
22 twice a week.

23 Q And on those once or twice a week phone
24 conversations, would Jack ever mention how Peter was
25 treating him, that he was just upset or pissed off about

1 how he was being treated?

2 A No.

3 Q Did you ever hear Peter Limanni in the
4 background on any of those phone conversation yelling at
5 Jack: Get off the phone, you've got things to do, things
6 like that?

7 A No.

8 Q Now, Jack went back to Philadelphia towards
9 the end of October; is that right?

10 A Yeah. He was there for Halloween.

11 Q Do you remember how long he was there?

12 A He was there -- I don't know if it was
13 Halloween day, or maybe the day before, and he stayed
14 until maybe two days after. Probably he went back on the
15 4th or the 5th.

16 Q Are you sure?

17 A Yes. I know -- I'm not exactly sure. I
18 know it was 4th or 5th.

19 Q About that time frame?

20 A Right.

21 Q And when he got back to Las Vegas did you
22 contact him by phone?

23 A Yeah. We talked on the phone maybe the day
24 after he had got back, and just asked how the flight was,
25 and everything was fine.

1 Q Did you have any later conversations with
2 Jack wherein some problems that were noted?

3 A I talked to him probably two days after he
4 had gone back, you know, and I just remember him saying
5 that Pete wasn't there. He was, you know, he left,
6 whatever, in the morning and he hadn't come back.

7 And there was a later conversation that we
8 had that he said, you know, that he got a notice that he
9 only had five days to get out of the shop and he didn't
10 have any money, and he wasn't sure. I don't know if the
11 rent wasn't paid, or something like that.

12 Q So you had at least two conversations with
13 him on the phone after he got back from the trip to see
14 you?

15 A Right.

16 Q And he told you Peter was gone?

17 A Uh-huh.

18 Q And he was telling you about these problems
19 he was having?

20 A Right.

21 Q Did he ever tell that you he knew where
22 Peter Limanni was?

23 A No.

24 Q Did he ever indicate to you that he had done
25 something to Peter Limanni?

1 A No.

2 Q On one of those conversations, or perhaps a
3 subsequent one, did he mention to you where he was living?
4 You said that he got a five-day notice to evict from the
5 office where they were living in the back. Did he tell
6 you that he was living somewhere else?

7 A He said that he was staying at a place. I
8 don't remember the name of it. He was staying with
9 friends that he had met while he was out there, someone
10 that he knew while he was there, that he was staying there
11 because he didn't have any place else to go, that he had
12 to be out the shop and he only had five days.

13 Q Do you remember Jack telling you that he was
14 staying at a home in Spanish Trails?

15 A That was it, yes.

16 Q Did he tell you who lived at that home?

17 A I don't remember names.

18 Q After those first couple of conversations
19 when he got back, did you have later conversations with
20 him on the phone, regular contact?

21 A Yeah, we always talked. I mean, ever since
22 we got out there we always kept in touch.

23 Q And, of course, he did come back to
24 Philadelphia later on in '98?

25 A Right. He came back and he was there for

1 Thanksgiving and Christmas.

2 Q And did he spend some time with you around
3 Thanksgiving?

4 A Yes. He stayed at my parents' house with me
5 while he was there. He was kind of back and forth. He
6 stayed with me at my parents house, and he stayed some
7 with Margaret and Tommy.

8 Q Did you know Tommy Creamer?

9 A Yes.

10 Q Do you know him very well?

11 A No. I didn't know him very well. I met him
12 a few times, like, in Atlantic City, and just because him
13 and Jack were good friends.

14 MR. KENNEDY: Pass the witness, Your
15 Honor.

16 THE COURT: Cross-examination?

17

18 CROSS-EXAMINATION

19 BY MR. KANE:

20 Q Mr. Seka helps with your daughter's support?

21 A Well, he did up until the last two years.

22 Q When did that stop?

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

25 THE COURT: You may.

1 (Whereupon, counsel conferred with the Court.)

2 THE COURT: You may proceed, counsel.

3 Q (By Mr. Kane) If I tell you that there was
4 testimony in this trial that after Jack came back from the
5 Halloween visit back east, that he was upset because he
6 had had some sort of altercation with his girlfriend, do
7 you know who they would be talking about?

8 A Altercation?

9 Q Did Jack have a girlfriend when he was back
10 for the Halloween visit back in Philadelphia?

11 A No. Not that I know of, unless he was
12 talking about me. We were still kind of on and off as far
13 as our relationship went.

14 Q And did anything awful happen in terms of
15 your relationship during that Halloween visit?

16 A No, not at all.

17 Q So if I told you that there was testimony
18 that when he came back here he was really upset over
19 something that had happened with his girlfriend, either
20 the person was incorrect, or they weren't talking about
21 you; is that correct?

22 A Right.

23 MR. KANE: Nothing further.

24 THE COURT: Anything further?

25 MR. KENNEDY: Briefly.

REDIRECT EXAMINATION

BY MR. KENNEDY:

Q Ms. Caterino, when you came out here on your trip in September of '98 and you stayed at the business, the days you stayed, was it during the business week between Monday and Friday?

A Actually, no. It was -- when I got there I believe that it was a Friday, because they went to Lake Tahoe over the weekend and then came back Sunday night, and that's when I was there.

Q And so you were there from Friday through Sunday?

A Actually, I was there, I think, until the following night. I think I left on a Monday.

Q And so these three days, or two or three days you were there by yourself with Jack; is that right?

A Right.

Q Did you notice any other people coming and going from the store?

A Yeah. There were guys. I mean, I'm not sure if they were the men that worked there, but there was people coming in and out and: Hi, how are you doing, and he talked to people a lot.

Q Jack would talk to people?

A Yes.

1 Q Did you notice any individuals that appeared
2 Asian, of Asian descent?

3 A Yeah, there was. Actually, I didn't know if
4 they were Asian, Chinese, something, but I met him and his
5 wife. He had part of his finger missing or something.

6 Q And were these people customers, or you
7 didn't know?

8 A No. As far as I know, he worked for them.
9 I mean, he drove one of the work trucks.

10 Q And how did you get that impression?

11 A Well, we had gone out to lunch with him one
12 day. We had gone out to lunch and he wore, like, work
13 clothes, I guess, like a uniform or whatever.

14 Q And is this an Asian man?

15 A He would tell Jack: I have this call at
16 this place, so that's how I got the impression that he
17 worked for them.

18 Q Did you see any people that appeared to be
19 customers coming and going from the store?

20 A There was lots of people. I really don't
21 know who everyone was.

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

24 THE COURT: Anything further?

25 MR. KANE: No, Your Honor.

1 THE COURT: Ma'am, thank you very much.
2 You're excused.

3 Is there another witness available at this
4 time?

5 MR. KENNEDY: Lee Polsky.

6
7 Whereupon,

8 LEE POLSKY,
9 was called as a witness by the Defense, and having been
10 first duly sworn, was examined and testified as follows:

11
12 DIRECT EXAMINATION

13 BY MR. KENNEDY:

14 Q Would you please state your name and spell
15 your last name for the court reporter here.

16 A Lee Polsky, P-o-l-s-k-y.

17 Q Mr. Polsky, where are you from?

18 A Woodbury, New Jersey.

19 Q Is that near Philadelphia?

20 A Yes.

21 Q How close is that from Philadelphia?

22 A Probably about 11 miles.

23 Q You know an individual by the name of Jack
24 Seka?

25 A Yes.

1 Q And how do you know him?

2 A He worked for me.

3 Q What did he do for you?

4 A Little bit of everything. I had a car lot,
5 a car business, automobile business, and he helped me out.
6 He was a salesman.

7 Q How long did he work for you?

8 A I guess all told, probably about four years.

9 Q Do you know an individual named Tom or
10 Thomas Creamer?

11 A Vaguely.

12 Q Did you ever met him?

13 A Once or twice; perhaps twice.

14 Q How do you know him? What was the tie?

15 A I knew him through Jack.

16 Q As a friend of Jack's?

17 A He was a friend of Jack's, yes.

18 Q Now, are you aware that in 1998 that Jack
19 came out to Las Vegas, came out here to work?

20 A Yes.

21 Q Did he tell you, is it something where he
22 said: Hey, I'm going to Vegas, I've got a job opportunity
23 out here?

24 A Yes.

25 Q Were you that close to him that you would

1 see him?

2 A Sure.

3 Q Did he tell you who he came out here to work
4 with?

5 A Yes.

6 Q Who was that?

7 A Pete Limanni.

8 Q Do you know Pete Limanni?

9 A Yes.

10 Q And how did you know him?

11 A I knew Pete. I've known Pete since he was a
12 kid; well, younger. But Pete grew up in the area, and we
13 had mutual friends, and Pete had done some work for me at
14 my house.

15 Q So you were aware that Pete was bringing
16 Jack out to Las Vegas to start up a business, or were you
17 aware of that?

18 A I remember when Jack left, sure.

19 Q And when Jack was in Las Vegas, were you
20 close enough to him that he would call you now and then
21 and tell you what's going on as a friendly call?

22 A They both used to call me.

23 Q Pete would call you as well?

24 A They must have had two phones, because I
25 would speak to both of them at once.

1 Q Did you ever hear Jack complain to you on
2 any of these phone calls that Peter was treating him very
3 badly?

4 A No, not at all.

5 Q Would he ever complain to you at all about
6 Pete, that Pete was making him do work he didn't want to
7 do, or things of that type?

8 A No.

9 Q Now, in November of 1998, a sequence of
10 events happened and I just want to understand, did you
11 come to learn in November of 1998 that something happened
12 in Las Vegas involving Mr. Limanni and Jack?

13 A I had heard.

14 Q What was your -- did you have a conversation
15 or a phone call with Jack Seka in early '98?

16 A Yes.

17 Q Do you remember when that was? Do you
18 remember what day it was, or time frame?

19 A It was right after -- it was probably -- I
20 know he was home for Halloween. I know that, and I think
21 his daughter's birthday was then. But I remember he was
22 in for Halloween and he went back shortly thereafter, then
23 he called me.

24 Q So he left Philadelphia and gave you a call
25 a few days later?

1 A Yeah. I think it was a few days later.

2 Q More than three?

3 A I don't recall. It could have been, but it
4 could have been right in that area.

5 Q Okay. Do you remember what Jack told you on
6 that first phone call?

7 A Yeah. We were talking and he said that he
8 didn't know where Pete was. And I said, "What do you mean
9 you don't know where he is?" He said, "I don't know where
10 he is." And I said, "Maybe he left while you were away."
11 And he said, "No. He picked me up at the airport."

12 Q Peter picked him up at the airport and
13 brought him back?

14 A Brought him back. And I'm just trying to
15 recall the sequence. He picked him up at the airport and
16 maybe they went home and went to sleep. Maybe they went
17 to work the next day. They worked the next day together,
18 and then the next morning Jack woke up and Pete wasn't
19 there.

20 And he said, "I thought he went out for
21 coffee," because he always goes out for coffee in the
22 morning.

23 Q Jack told you that?

24 A Yes. And he says, "He's not back and I've
25 been trying to reach him." And I said, "Maybe he took off

1 and went on vacation. Who knows what Pete would do."
2 And he said, "No, he wouldn't go anywhere because his dog
3 is here. He wouldn't go anywhere without his dog, and the
4 dog is here."

5 Q And, obviously, this was a phone
6 conversation. You've had phone conversations with Jack
7 before; is that right?

8 A Yeah, sure.

9 Q How did he sound on the phone? Did he sound
10 worried or concerned?

11 A I wouldn't say that he sounded worried. I
12 would say that he sounded like -- he sounded like he
13 couldn't believe it, that he couldn't believe Pete wasn't
14 there. The dog was there but he wasn't, and he couldn't
15 believe that he couldn't get a hold of him.

16 Q After this conversation, did you have any
17 other further phone conversations with Jack Seka in
18 November of '98? Did he call you again?

19 A Yeah. He called me. I don't know if it was
20 a week or two weeks afterwards. I really don't remember.

21 Q What did he tell you?

22 A I said, "How did you do with Pete?" And he
23 said, "He's not around. I don't know what happened to
24 him." He said, "The police picked me up and they
25 questioned me for seven or eight hours."

1 I said, "About what?" And I think he said
2 about a guy who worked close to them, a guy who worked
3 close to them. And I said, "What did they question you
4 for?" And he said, "They just questioned me and I don't
5 know what's going on."

6 And I said, "What about Pete?" And he said,
7 I don't know." I said, "You haven't heard from him?" And
8 he said no.

9 And I think he even said that he checked
10 Lake Tahoe, because they were going to -- or they, or Pete
11 was going to open up a business there, and he thought he
12 might have went there. And he even checked there and
13 there was no Pete.

14 Q Did you have any other conversations with
15 Jack after that one on the phone in November of '98?

16 A Not that I recall; no, I don't think so.

17 Q Did there come a point in time in either
18 November or early December of '98 that you called Tom
19 Creamer?

20 A Yes.

21 Q And why did you do that?

22 A I had heard around town -- I live in a small
23 town. I know everybody. I was born and raised there.
24 And I am in the automobile business, for the most part,
25 along with some real estate. But be that as it may, in

1 our town there's different car dealers and we all know
2 each other.

3 And a friend of mine who owns a car
4 dealership which was catty-corner from mine called me and
5 he said, "Hey, did you hear that Jack killed Pete
6 Limanni?" And I said, "What are you talking about?" And
7 he said, "Well, I was talking to Pete's brother, Steve."

8 Q Do you know Peter's brother?

9 A Sure. This fellow -- well, I was talking to
10 Pete's brother, and Pete's brother said the detective
11 called and said that they know that his brother is dead,
12 but they can't find him and that Jack shot him, or did
13 something to him. I don't know.

14 Q And that's what you heard from an auto
15 dealer where Steve Limanni works; is that correct?

16 A Not where Steve Limanni works, he's friends
17 with him. Steve Limanni is in the fuel oil business, and
18 this guy is a car dealer.

19 Q Did you also hear amongst the scuttlebutt in
20 the town that Jack was dead?

21 A Yes.

22 Q You heard that too?

23 A Uh-huh. That's, I think, I had called Tommy
24 Creamer because I knew that Creamer and him were friends.
25 And I figured if anybody would have heard, Creamer would

1 hear, or Jack's girlfriend. And I guess that was a circle
2 there, they all knew each other.

3 Q So when you called Tommy Creamer, you were
4 just trying find out where Jack was?

5 A Yes.

6 Q Did you call Tommy Creamer and tell him that
7 Jack had killed Peter Limanni?

8 A No, I would never do -- no, I would never
9 do that.

10 Q In other words, you didn't know what
11 happened to Pete Limanni, did you, at that time?

12 A No, no.

13 Q Did you see Jack when he did come back in
14 December of '98? November, December of '98, did you see
15 him when he came back after he came back to Las Vegas?

16 A Yeah. I think I did see him.

17 Q Did you have a chance to meet with him, or
18 just see him on the street and say hi or something?

19 A I saw him. I think I had coffee with him.

20 Q Did you see him on more than one occasion
21 in, say, December of '98?

22 A I don't think so.

23 Q The conversation you had with Tommy Creamer,
24 did you have another conversation, or was that the only
25 one?

1 A I could have had another conversation but
2 I'll be truthful, I don't recall. I don't remember it. I
3 could have had another conversation and said: Hey, have
4 you heard from Jack? I might have, but I don't know.

5 MR. KENNEDY: Pass witness, Your Honor.

6 THE COURT: Cross-examination?

7 THE WITNESS: I am on the phone all day
8 long with people.

9 THE COURT: Cross-examination?

10 MR. FATTIG: No, Your Honor.

11 THE COURT: Thank you very much, sir.
12 You're excused. What's the status?

13 MR. CHRISTIANSEN: Judge, we have
14 Richard Ferguson as the next witness.

15 THE COURT: Very good.

16
17 Whereupon,

18 **RICHARD FERGUSON,**
19 was called as a witness by the Defense, and having been
20 first duly sworn, was examined and testified as follows:

21

22 **DIRECT EXAMINATION**

23 BY MR. CHRISTIANSEN:

24 Q Good afternoon, again, Mr. Ferguson.

25 A Good afternoon.

1 Q Mr. Ferguson, you're the gentleman that owns
2 the trophy shop that was right next door to Cinergi, and
3 you testified last week for the State, correct?

4 A Correct.

5 Q And after your testimony you had occasion to
6 meet with my investigator and he came and asked you some
7 questions, and that's this gentleman right here, correct?

8 A Yes.

9 Q On the day you called the police about the
10 broken window in 1929, which is November the 17th, 1998;
11 is that right?

12 A Correct, yes.

13 Q Did you have any conversations with any
14 police officers or anybody from Metro about a dumpster in
15 the back being empty?

16 A No conversation with them about it.

17 Q You never told any police officer that
18 dumpster behind your business had been empty?

19 A No. I didn't tell them it was empty.

20 Q Now, you looked at the dumpster at some
21 point that day; is that right?

22 A Correct.

23 Q And I think you told us it was about 1:00
24 o'clock?

25 A Somewhere around there.

1 MR. CHRISTIANSEN: May I approach, Your
2 Honor?

3 THE COURT: You may.

4 Q (By Mr. Christiansen) I'm handing you
5 what's been marked for identification purposes as
6 Defendant's Proposed Exhibit EE, and I'll tell you that a
7 crime scene analyst, a Metro employee testified that he
8 took a picture of inside of that dumpster late in the
9 evening, and that's what it looked like.

10 Is that what it appeared to you like at 1:00
11 o'clock when you went out there?

12 A Yes. I see the items now that I am
13 specifically looking at them. But I just glanced in there
14 and it was just a little bit of trash in the bottom of it,
15 and I didn't think nothing of it.

16 Q So this is a fair and accurate depiction of
17 what you saw about 1:00 o'clock, November 17th, 1998?

18 A Yes, sir.

19 MR. CHRISTIANSEN: I move for the
20 admission of Defense Proposed Exhibit EE.

21 MR. KANE: No objection, Your Honor.

22 THE COURT: It is received. Thank you.

23 MR. KENNEDY: Nothing further. Pass
24 the witness. Thank you.

25 THE COURT: Cross-examination?

1 MR. FATTIG: No.

2 MR. KANE: No questions, Your Honor.

3 THE COURT: Mr. Ferguson, thank you,
4 sir. You're excused. Counsel?

5 MR. KENNEDY: Your Honor, at this time
6 the Defense has a stipulated exhibit I'd like to admit.
7 It's Defendant's Proposed CC. This is a group of
8 documents which constitute what we'll call the Tahoe lease
9 documents, the lease entered into between Peter Limanni
10 and the leasing company for business location in Tahoe.

11 It includes those documents, as well as some
12 bank records, if I'm not mistaken, and the ultimate
13 complaint for a lawful detainer filed for nonpayment on
14 the lease. So this is a stipulated exhibit and I would
15 move for its admission.

16 MR. KANE: Yes, Your Honor. They're
17 from my files and I have no objection to the admission.

18 THE COURT: It is received. Thank you.
19 Shall we take our break at this point?

20 MR. CHRISTIANSEN: Yes, Your Honor.

21 THE COURT: "Ladies and gentlemen, it
22 is your duty not to discuss among yourselves, or with
23 anyone else, any subject connected with the trial; or
24 read, watch or listen to any report of, or commentary on
25 the trial or any person connected with the trial by any

1 medium of information, including without limitation,
2 newspapers, television and radio; or form or express any
3 opinion on any subject connected with the trial until the
4 cause is finally submitted to you."

5 We'll take 15 or 20 minutes. Court's in
6 recess.

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

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

13 Mr. Seka, could I ask you to stand, please,
14 sir. I want you to be aware of some rights that you have.

15 And I haven't gone over these with you
16 before?

17 THE DEFENDANT: No, sir.

18 THE COURT: You have a right under the
19 Constitution of the United States and under the
20 Constitution of the State of Nevada not to be compelled to
21 testify in this case; do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You may, if you wish, give
24 up this right and take the witness stand and testify. If
25 you do, you will be subject to cross-examination by the

1 District Attorney's, and anything that you may say, be it
2 on direct or cross-examination, would be the subject of
3 fair comment when the District Attorneys speak to the jury
4 in their final argument; do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If you choose not to
7 testify, the Court will not permit the District Attorneys
8 to make any comments to the jury concerning the fact that
9 you have not testified; do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you elect not to
12 testify, the Court will instruct the jury, if your
13 attorneys request, the following instruction. I would
14 read this along with the other jury instructions:

15 Quote: "The law does not compel a defendant
16 in a criminal case to take the stand and testify, and no
17 presumption may be raised, or know inferences of any kind
18 may be drawn from the failure of a defendant to testify,"
19 unquote.

20 That instruction, or something very similar
21 to that, would be read if your attorneys request.

22 Are you with me so far?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you have any questions?

25 THE DEFENDANT: No, sir.

1 THE COURT: The last thing I want you
2 to understand is this: If you elect to testify, the
3 District Attorneys may inquire of you on the stand about
4 any criminal record that you may have stemming back ten
5 years that is criminal in nature, and a felony over the
6 last ten years.

7 They cannot go into it at length, but merely
8 the time of crime, when it was committed, and when you
9 suffered the prosecution, things like that. Of course, in
10 essence, the jury would know your criminal record, if you
11 have one; do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, the last thing I tell
14 people such as yourself in this situation is, simply, that
15 it is your decision to make. It's your right to either
16 invoke or not to testify.

17 I would, however, commend you to whatever
18 advice your attorneys will give you, because it is a very
19 critical strategy. There's a lot involved here. And
20 they're experienced in these kinds of things, so I would
21 suggest that you pay attention to them, and make your
22 decision based on all the factors, okay?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have your seat.

25 Counsel, what witnesses or witness do we

1 have?

2 MR. KENNEDY: We'll be prepared to rest
3 at this point, Your Honor.

4 THE COURT: You've discussed the
5 questions with your client?

6 MR. KENNEDY: Yes, we have. He will
7 not be testifying.

8 THE COURT: Will there be rebuttal?

9 MR. KANE: No, Your Honor.

10 THE COURT: So, essentially, they will
11 come back in and sit down. Do we have our proposed
12 instructions?

13 MR. KANE: Yes, Judge. I exchanged
14 them this morning.

15 THE COURT: I will approach the jury,
16 if you will acquiesce, of them possibly coming in at 10:00
17 o'clock tomorrow. Would that be good?

18 MR. KENNEDY: That's fine.

19 MR. KANE: That's fine with us, Your
20 Honor.

21 THE COURT: Mr. Bailiff, please.

22 (Whereupon, the jury entered the courtroom.)

23 THE COURT: Would counsel stipulate
24 that all members of the jury are present and properly
25 seated?

1 MR. KENNEDY: Yes, Your Honor.

2 MR. KANE: Yes, Your Honor.

3 MR. CHRISTIANSEN: Yes, sir.

4 MR. KENNEDY: Your Honor, the Defense
5 at this time would rest.

6 THE COURT: Any rebuttal, counsel?

7 MR. KANE: No, Your Honor.

8 THE COURT: Ladies and gentlemen,
9 counsel and I are going to utilize the remainder of our day
10 this afternoon formulating jury instructions. You heard
11 me make mention of the jury instructions during our voir
12 dire.

13 They're rather lengthy, it takes some time
14 to tailor each case instructions to fit the situation in
15 each case, so it's a rather lengthy process. There's no
16 need for you to remain here. We will begin tomorrow with
17 the attorney's closing remarks and, of course, I will read
18 you the instructions before they begin those remarks.

19 My preference tomorrow, if it's not an undue
20 hardship to everyone, is to start at 10:00 o'clock in the
21 morning. Would that be a problem for anyone?

22 Be honest and fair to yourself if you have
23 something.

24 JUROR CUSTARD: I can reschedule. I
25 just made my daughter an appointment for 9:45. It's

1 tomorrow, and she's having problems hearing out of one of
2 her ears. I'll try to reschedule for next week.

3 THE COURT: Would you like to use our
4 phones? We will accommodate you any way we can.

5 JUROR CUSTARD: I can arrange it.

6 THE COURT: The reason is, typically my
7 morning calendars are just incredible. There's no sense
8 in trying to come in here and have a trial before noon.
9 We gave that up years ago. Fridays, however, is a
10 different situation, I have a very small calendar. So if
11 I start the calendar at 9:00 I'll be well finished by
12 10:00, so we could begin and get something accomplished in
13 the morning.

14 Now, please, let's not one of us forget.
15 Let me read to you the admonition.

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

24 So 10:00 o'clock tomorrow morning. Please
25 keep that admonition in mind. Court is adjourned.

Counsel, see you in chambers.

ATTEST: Full, true and accurate transcript of
proceedings.


MAUREEN SCHORN, CCR NO. 496, RPR

MAUREEN SCHORN, CCR NO. 496, RPR

APP1347

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DISTRICT COURT
CLARK COUNTY, NEVADA

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FILED IN OPEN COURT
February 26, 2001

SHIRLEY B. PARRAGUIRRE, CLERK
BY *[Signature]*
DEPUTY

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
JOHN JOSEPH SEKA,)
)
Defendant.)

No. C159915
Dept No: XIV

 **COPY**

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

VOLUME I

February 23, 2001
10:10 a.m.
Department XIV

APPEARANCES:

For the State:

MR. EDWARD KANE
MR. TIMOTHY FATTIG
Deputy District Attorneys

For the Defendant:

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

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

1 THE COURT: The continuation of C159915,
2 State versus John Joseph Seka. Let the record reflect
3 the presence - - where is Mr. Seka?

4 MR. CHRISTIANSEN: We'll waive his
5 presence for purposes of resolving jury instructions.

6 MR. KENNEDY: We would.

7 THE COURT: - - the presence of Mr.
8 Christiansen and Mr. Kennedy for the defense will be
9 acknowledged, Mr. Kane and Mr. Fattig for the State. The
10 absence of the jury is noted.

11 Mr. Kane, Mr. Fattig, you are aware, are
12 you not, of the jury instructions the Court indicated it
13 would read, 1 through 39?

14 MR. KANE: Yes, Your Honor.

15 MR. FATTIG: Yes.

16 THE COURT: Do you have any additional
17 instructions to offer?

18 MR. KANE: No, Your Honor.

19 THE COURT: Do you have any objections to
20 any one of those?

21 MR. KANE: No, Your Honor.

22 THE COURT: Mr. Kennedy, you are aware of
23 the jury instructions the Court has indicated it would
24 read?

25 MR. KENNEDY: Yes, your honor.

1 THE COURT: Do you any additional
2 instructions to offer?

3 MR. CHRISTIANSEN: Judge, I have offered
4 to the Court - - I'll start - - there are two
5 instructions which probably, for convenience, should be
6 marked as court's exhibits one and two dealing with
7 exculpatory evidence.

8 The first one reads exculpatory evidence
9 is evidence which tends to excuse or clear the Defendant
10 from alleged fault or guilt.

11 The following instruction reads "If you
12 find the State lost or mishandled evidence which at one
13 time - - which was at one time in its possession and such
14 evidence would be seriously considered by the jury in
15 determining guilt or innocence, then you must presume
16 that such evidence would have been exculpatory evidence
17 in favor of the Defendant."

18 I've offered those with the case law cited
19 on the bottom. The evidence in this case that these
20 cases or that these instructions relate to is the DNA
21 evidence which Mr. Welch admitted he used up entire
22 portions of samples, all dealing with the samples that
23 have proved inculpatory, specifically those that were
24 taken from the 1998 Toyota pickup truck, the bed of that
25 pickup truck and the 1998 van, the back of the van, both

1 of those samples allegedly come back as the DNA or the
2 blood of the two victims, Eric Hamilton and Peter
3 Limanni, respectively, and they were completely used up.

4 We had no ability to test those. Both Mr.
5 Welch as well as other experts, Randy McPhail, who
6 testified on behalf of the State, thought that such a
7 procedure to use them up was fundamentally unfair.

8 This, combined with the fact the State, as
9 we've previously discussed, failed to, per the statute,
10 notify the defense of its intention to call a DNA expert,
11 statute is 174.241, I believe, amounts to severe
12 prejudice to the Defendant.

13 I think a way to potentially cure that is
14 to offer this curative instruction and I would leave it
15 at that.

16 THE COURT: Response?

17 MR. KANE: I don't think that the evidence
18 at trial bears out any misplacing or negligent
19 destruction of evidence.

20 Mr. Welch's testimony was clear that,
21 under the technology available at the time, the samples
22 were used up in testing.

23 He did state that with newer technology
24 less of the sample has to be used and so these days he
25 always makes sure that some is maintained, but he said

1 you couldn't do that back then.

2 Further, the argument, as I understand it,
3 is based on our failure to notify someone that we were
4 doing these tests so they could test them if they wanted
5 to.

6 These tests were done, first round in
7 December 1998, second round in February of 1999, so all
8 tests were completed and all samples were exhausted by
9 February 9. The charges in this case weren't filed until
10 February 26 of 1999, partially based on the results of
11 these tests.

12 At the time Mr. Seka had left the
13 jurisdiction and was back east there was nobody to
14 notify. So to the extent that if a case was in existence
15 there might have been a duty to notify.

16 There certainly was no such duty there and
17 there's been no mishandling of the evidence.

18 Just to round out this DNA issue, the
19 Court is aware that there was an issue with notice of the
20 DNA expert that ties in with this. I just wanted to
21 complete the record by indicating that last weekend, that
22 is last Saturday, I believe I received a call, a message
23 from Mr. Christiansen asking if I could secure the
24 release and expedited shipment of DNA samples to his
25 expert so they could be examined.

1 I called back on Sunday, was unable to get
2 him, but left a message that, yes, I had no problem with
3 that and I would be at the office all day on Monday, even
4 though Monday was a holiday.

5 On Tuesday morning I got a call from Birch
6 Henry, who is the head of the DNA lab, indicating he was
7 shipping the stuff out Federal Express to Mr.
8 Christiansen's expert and just make sure I had no
9 objection and I told him that sure and go ahead and do
10 that.

11 THE COURT: Good enough.

12 I don't disagree with Mr. Christiansen's
13 statement of law, basically. The thing that troubles me
14 about these instructions is that I have seen nothing that
15 would suggest that the State lost or mishandled these
16 substances.

17 I think the issue of the standard utilized
18 at the time these tests were performed and the science at
19 the time, requiring additional samples to be exhausted,
20 which is what we have heard in the way of evidence,
21 belies any argument of mishandling.

22 I think the law that that the instruction
23 sets forth is designed to prohibit, first of all,
24 probably either a negligent or certainly a purposeful
25 losing or secreting samples, but even if it was

1 inadvertent I think you'd have to show more than we have
2 here in this case. The facts just don't bear out that
3 instruction.

4 For the record, the first instruction will
5 be characterized as A and that is the one beginning with
6 exculpatory evidence.

7 The second, if you find the State lost,
8 that would be B.

9 MR. CHRISTIANSEN: Judge, so the record is
10 complete - - and I understand the Court's ruling - - and
11 I'm not continuing to challenge that - - the harm that's
12 done by not having notice of an expert combined with
13 using up all the samples - - and it's not cured in any
14 way, whatsoever, by giving my expert the data in the
15 middle of trial - - is that I now cannot call and get an
16 expert here and was unable to procure somebody to come
17 here and say how fundamentally unfair it is to use up the
18 these samples.

19 That is the harm to the Defense. I
20 understand the Court's ruling.

21 I wanted to make that clear for the
22 record.

23 THE COURT: Thank you.

24 Additional instructions you would offer?

25 MR. CHRISTIANSEN: Yes, Your Honor.

1 You have two - - and I apologize, I think
2 the Court has my copy - - they are the jurisdictional
3 instructions that correlate to the one that has been
4 numbered as instruction number four. I will submit those
5 on my offer.

6 I would prefer those versus the one that
7 we have, the Court has drafted, which incorporated part
8 of my instruction into the one offered by Mr. Kane.

9 I'd like to offer them as proposed
10 instructions.

11 THE COURT: All right.

12 MR. KANE: I would note for the record,
13 instruction number four as originally proposed by the
14 State was in the exact wording of the jurisdictional
15 statute, but in a compromise I agreed not to oppose the
16 addition of the word "substantial" in the first line of
17 instruction number four, and I believe that makes it an
18 even more fair instruction and makes Defendant's C and D
19 unnecessary.

20 THE COURT: All right.

21 Well, I elected to read the one that was
22 supplied by the District Attorney's office because I
23 think it's clearer. It's more easily understood and it,
24 of course, is the exact language or was, until we amended
25 it, of the statute.

1 In particular, I had some concern with
2 those two instructions and I've characterized them as C
3 and D, proffered by Mr. Christiansen and Mr. Kennedy, in
4 that in line three it talks about such acts being a
5 substantial and an integral part of an overall continuing
6 crime.

7 Then several lines down it talks about
8 acts which were carried out in partial execution of the
9 plan to murder.

10 It looks to me that that could be
11 confusing to a jury and it suggests two standards,
12 different standards. I can see quite a discussion
13 between our jurors as to which is to actually apply.

14 I believe it's confusing and I have
15 elected to read the simpler version. I believe there's
16 one other.

17 MR. CHRISTIANSEN: Yes, Your Honor.

18 The last one, which the Court will I'm
19 sure mark as Exhibit E, is an advisory verdict that is
20 taken directly from our statute.

21 I requested the Court and am requesting
22 the Court giving an advisory verdict on Count III which
23 is the robbery count of Eric Hamilton.

24 There's been no evidence adduced in any
25 part of the case that Mr. Hamilton ever had anything that

1 was taken from him.

2 In fact, the only thing of value which it
3 appears that can be accurately and 100 percent identified
4 as belonging him is the ring that's on his finger when
5 he's found south of town in the desert.

6 So with that I'd submit it. It's a
7 discretionary - - I believe a discretionary decision for
8 the judge to decide on an advisory verdict and I'd ask
9 the Court to give it.

10 MR. KANE: Judge, the jacket found at the
11 scene had bullet holes in it.

12 As I stated before, unless somebody, after
13 shooting Eric Hamilton, decided to put a few bullet holes
14 in the jacket, it was on him and it's a fair inference
15 that it was removed after the use of force was applied.

16 Additionally, there was a bracelet at the
17 scene, along with the jacket and cap. It had been tossed
18 to one side.

19 Dr. Green testified that Eric Hamilton had
20 a mark on his wrist which was not inconsistent with that
21 bracelet having been forcibly removed.

22 I think there's sufficient evidence to
23 present the question of fact and forward this issue to
24 the jury rather than handle it be way of advisory,
25 verdict.

1 THE COURT: I agree.

2 The facts are sufficient to enable a
3 finding and that should remain in the jury's province.
4 So it will be declined.

5 Any others to offer?

6 MR. CHRISTIANSEN: No, sir. Just some
7 objections to the ones the Court is going to give.

8 THE COURT: State those, please.

9 MR. CHRISTIANSEN: Number 13 is the malice
10 instruction. The Defense objects to the malice
11 instruction as given under the cases of Coleman and
12 Wagner which were recently handed down and stand for the
13 proposition that there is no situation in which the State
14 has a right to presume malice to raise an otherwise
15 non-First Degree Murder case to the level of
16 premeditation and malice aforethought and I'd object to
17 the Court giving that instruction.

18 THE COURT: Response?

19 MR. KANE: The cases cited by Defense, I
20 would believe, were specifically relevant to the area of
21 child abuse and not to the Felony Murder Rule itself.

22 I believe this is still a proper
23 instruction under the law of Felony Murder.

24 THE COURT: The Court's determination is
25 that 13 is a proper statement of the law.

1 MR. CHRISTIANSEN: Next objection, Your
2 Honor, is to number 14.

3 That is the unanimity instruction.

4 The Defense objects, under the due process
5 clause, that the unanimity instruction takes away from
6 the jury the onus of having the State prove unanimously
7 one theory of guilt beyond a reasonable doubt.

8 I understand the recent case of Leonard
9 disagrees with my position. However, I think the law in
10 Nevada is inconsistent with the federal law which sets
11 the ceiling or the floor, depending how you look at it,
12 on Constitutional standards and I'd ask that that
13 instruction not be given.

14 MR. KANE: Your Honor, I acknowledge
15 counsel's right to argue for a good faith change in the
16 law, but the law, as it is, says this is a proper
17 instruction and we'll submit it.

18 THE COURT: I agree.

19 Is there another objection?

20 MR. CHRISTIANSEN: Yes, Your Honor.

21 Judge, instruction number 25 deals with
22 the issue of punishment and it instructs the jury not to
23 consider punishment.

24 My objection is to the second sentence of
25 that instruction which states "Your present duty is

1 confined to the determination of the guilt or innocence
2 of the Defendant."

3 That is an incorrect statement of the law.
4 Nowhere in any courtroom that I am aware
5 of is the jury instructed that they are ever to consider
6 innocence. That is typically a media misstatement of the
7 law.

8 The jury is to determine whether the State
9 has met its burden of proving guilt beyond a reasonable
10 doubt.

11 I would ask that the sentence be
12 reconstructed to say "Your present duty is confined to
13 the determination of whether the State has proven the
14 defendant guilty beyond a reasonable doubt.

15 THE COURT: Response?

16 MR. KANE: I think taking the
17 instructions, as a whole, there's no possibility of
18 conviction to the jury.

19 All this instruction tells them is that
20 when making the determination as to guilty or not guilty
21 they are not to consider punishment.

22 THE COURT: As I indicated in chambers,
23 this is an instruction that has been read for some 20
24 years in this Court. I don't think that the word
25 innocence is going to be particularly damning one way or

1 the other. I'm going to read this as written.

2 Anything else?

3 MR. CHRISTIANSEN: Instruction number 30
4 is the instruction offered by the prosecution which is
5 not in compliance with the statute dealing with robbery.

6 Mr. Kane has cited some older cases,
7 specifically a 1950 and a 1976 case from Nevada that are
8 outdated and, in my opinion, not in compliance with the
9 law and not a reflection of the statute.

10 I'd ask 30 not be given and the Court
11 simply rely on the statutory language set forth by our
12 Legislature.

13 THE COURT: Response?

14 MR. KANE: Age in a case is not as painful
15 to an individual as in the law. These cases may not be
16 fresh and new, but they haven't been overruled.

17 This instruction is a proper statement of
18 the law and was, in fact, used in one capital case in
19 which I am aware during the last calendar year.

20 THE COURT: It is that which has been
21 utilized, historically. I'm going to read it.

22 Any other objections?

23 MR. CHRISTIANSEN: The last one, I
24 believe, Your Honor, is instruction number 33.

25 The objection is to the first sentence

1 which reads "The Defendant is presumed innocent until the
2 contrary is proved."

3 The objection is to the word until.

4 Until is a burden-shifting word. It
5 presumes the State is going to meet that burden that is
6 placed upon it.

7 The correct statement of the law is to
8 replace until with unless, so the sentence would read
9 "The Defendant is presumed innocent, unless the contrary
10 is proved."

11 While I will concede that is the statute
12 as set forth by our Legislature, the statute on malice,
13 which has been ruled unconstitutional and is never
14 offered now by the District Attorney's Office has still -
15 - is still on the books and it hasn't been fixed by our
16 Legislature.

17 So just because it's on the books doesn't
18 mean it's a correct statement of the law. Ask the Court
19 to give unless, rather than until, and I will tell the
20 Court in 20 some odd murder cases I've never had a judge
21 deny that request over objection every time by the State.

22 THE COURT: You've never -- in other
23 words, you have prevailed in each instance?

24 MR. CHRISTIANSEN: I've prevailed in every
25 instance, Your Honor.

1 THE COURT: That's impressive.

2 MR. KANE: Much as I hate to ruin a
3 perfect record, this is a correct statement and I think
4 th Nevada Supreme Court has ruled that you tamper with
5 the definition of reasonable doubt and the definition of
6 the presumption over innocence at your peril.

7 I don't want to see the wording changed.

8 Further, to the extent that the single
9 word "until" it could possibly be confusing to the jury
10 and lead them to believe that this instructs them that
11 they are going to find the Defendant guilty.

12 Any of that is taken away by the last
13 sentence which reads "If you have a reasonable doubt as
14 to the guilt of the Defendant he is entitled to a verdict
15 of not guilty."

16 Read as a whole, this instruction can
17 hardly be said to suggest to the jury what they are
18 supposed to find.

19 THE COURT: Thank you.

20 Well, I think it's a minor item. Not to
21 be discourteous, certainly, but Justice Mowbray used to
22 announce from the bench in the Supreme Court occasionally
23 when he was faced with such a circumstance similar to
24 this "Counsel, you seem to be fly specking."

25 I tend to think that's kind of where we

1 are. It will be read in its form as it certainly exists.

2 Any further objections?

3 MR. CHRISTIANSEN: No, sir.

4 THE COURT: All right.

5 MR. KANE: One final thing.

6 In the case that we mentioned - - and I
7 apologize for not having the citation, but the case that
8 said you will give this definition of reasonable doubt
9 and no other, the Nevada Supreme Court also chastised the
10 habit of prosecutors of using examples of what is a
11 reasonable doubt, like reasonable doubt is when a member
12 of your family needs to have surgery and things like
13 that, and found those arguments to be improper.

14 I don't - - I do everything I can to avoid
15 interrupting counsel in closing argument. I'm not sure
16 if Defense counsel plans on using any examples like that,
17 but my position is that they are improper under existing
18 law, that reasonable doubt is what is defined in here and
19 you can argue whether or not it exists in a particular
20 case, but can't use examples as a glossary to further
21 define it.

22 I would make a contemporaneous objection
23 if that argument is made. I mention it now, just hoping
24 to avoid that.

25 MR. CHRISTIANSEN: Your Honor, I think,

1 I've read the case Mr. Kane is referring to.

2 The case says it is improper to tell the
3 jury what is reasonable doubt or what quantifies
4 reasonable doubt. It is not - - and nowhere in the case
5 or any case law I'm familiar with say it is improper to
6 say to the jury "If you believe that something, a weighty
7 affair in your life is buying a house, then you may
8 analogize it here."

9 "If you believe that it is choosing your
10 child's teacher as a weighty affair in your life," which
11 is the part of the instruction that we're talking about,
12 "then you can do or think of it in that fashion."

13 That does not quantify. That says leave
14 it up to you folks in the jury. I don't know what you
15 consider a weight affair in your life.

16 If it's one of these, great. If it's not,
17 then you think of something that's a weighty affair in
18 your life.

19 I use that analogy all the time. I've
20 never, ever in 35 criminal cases had a judge tell me I
21 couldn't do it.

22 THE COURT: Never?

23 MR. CHRISTIANSEN: Never.

24 I know that tempts you, but - -

25 MR. KANE: I think it is precluded by that

1 case. I think that's exactly what they were talking
2 about. The language of the case says every time you get
3 into using a specific example, a specific event, you're
4 seeking to quantify what we've said can only be defined
5 by the words in the statute.

6 Again, I think the Defense is free to
7 argue whether or not reasonable doubt, as defined in the
8 instructions, exists, but not to seek to further narrow
9 or quantify the definition.

10 THE COURT: Well, counsel, specifically
11 what you alluded to initially, Mr. Kane, was an example
12 defining reasonable doubt.

13 What Mr. Christiansen is talking about is
14 the element of a weighty affair.

15 Now, is there a distinction to be made
16 there?

17 MR. KANE: This may be like the debate
18 between until and unless, but I don't think so.

19 The definition of reasonable doubt is
20 composed of a number of words. When you go to define
21 those underlying words or terms you're adding to the
22 definition of reasonable doubt which is what the
23 Legislature and the Supreme Court have said you can't do.

24 THE COURT: What is the need, Mr.
25 Christiansen, to give an example or call to the attention

1 of the jury this weighty affair phrase?

2 MR. CHRISTIANSEN: Because, quite frankly,
3 the juries don't understand the instructions, as written.

4 They are written by lawyers for lawyers to
5 understand and they say, you know, you have to have an
6 abiding conviction as you would in a weighty affair of
7 your life.

8 To the jury an abiding conviction and a
9 weighty affair, I'm entitled to say to them, if a weighty
10 affair in your life is - - and give an example, then that
11 is something you can think of it like.

12 If it's not, then you choose.

13 I tell them in every case, I say I'm not
14 telling you, because I'm not allowed to tell you what is
15 a weighty affair in your life.

16 However, if it is buying a new home,
17 choosing your child's teacher, something of that nature,
18 then you can analogize the situation to that that you can
19 correlate to or, now, that you live with in your everyday
20 life.

21 I never tell them that's what it is. In
22 fact, I tell them right up front, and I will tell them
23 that I can't quantify it for them.

24 THE COURT: Well, I'm going to allow you
25 to go ahead and utilize the argument. I hope it's more

1 effective to the jury than it is to me.

2 I don't quite see why this has anything to
3 do with anything. I'll leave that up to you.

4 MR. CHRISTIANSEN: Thank you, judge.

5 MR. KANE: Giving with one hand and taking
6 away with the other.

7 MR. KENNEDY: Yesterday the Defense
8 closed. There were two exhibits we failed to put in,
9 Defendant's proposed H which is a guarantee document that
10 was shown to Takeo Kato and Defendant's proposed exhibit
11 BB, which are the records of Nevada State Bank from Peter
12 Limanni.

13 The State has agreed to admit these
14 without objection.

15 MR. KANE: That's correct.

16 In fact the jail records which were marked
17 as Defense exhibits, Mr. Kennedy told me they were going
18 to offer those.

19 I have no objection to those either.

20 MR. KENNEDY: No objection?

21 MR. KANE: That's right.

22 MR. KENNEDY: Also move for the admission
23 of the jail records.

24 THE COURT: Do you have them labeled Ms.
25 Ms. Clerk?

1 MS. CLERK: Yes.

2 MR. KENNEDY: Which are, for the record,
3 Defendant's proposed exhibit A.

4 Move for their admission.

5 THE COURT: Those items are received.

6 Will counsel stipulate the jury
7 instructions have been settled in open court?

8 MR. KENNEDY: Yes.

9 MR. KANE: Yes, Your Honor.

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

12 MR. KANE: Yes.

13 MR. KENNEDY: Yes.

14 THE COURT: For the record, Mr. Seka is
15 present in the courtroom at this juncture. I believe,
16 Mr. Christiansen, you indicated you waived his presence
17 during our argument on the instructions.

18 MR. CHRISTIANSEN: I did. I'm sorry, Your
19 Honor, yes.

20 THE COURT: For the record, he had not
21 been brought over from the jail quite at the time we
22 started. He was brought in in mid argument.

23 Anything else outside the presence of the
24 jury?

25 MR. KENNEDY: No, sir.

1 MR. CHRISTIANSEN: No, sir.

2 MR. KANE: No.

3 THE COURT: Mr. Bailiff, please.

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

6 (Whereupon the clerk of the court called
7 the roll of the jury.)

8 MS. CLERK: The panel is present, Your
9 Honor.

10 THE COURT: Very good. Good morning,
11 Ladies and Gentlemen.

12 The time has come, Ladies and Gentlemen,
13 for me to read to you the jury instructions that you've
14 heard me make mention of. I will read them slowly so you
15 could be follow along as I read them.

16 They are somewhat complicated, certainly
17 at the first reading. You will have the actual copy that
18 I'm reading from to take with you when you retire to the
19 jury room to begin your deliberation.

20 I'm not at liberty to explain or repeat
21 the instructions at this juncture, merely to read them
22 the one time.

23 As you probably have noticed in the last
24 few days, my voice is not the best. If you cannot hear,
25 because I won't be looking at you, I'll be reading, if

1 you can't hear, someone just say something.

2 A JUROR: A little louder.

3 THE COURT: You're saying something
4 already. Bear with me. I will repeat - - if I can't be
5 heard, I will re-read that portion that you haven't
6 heard, certainly.

7 (Whereupon, the Court read the
8 instructions to the jury.)

9 THE COURT: Closing remarks, counsel?

10 MR. FATTIG: May it please the Court,
11 counsel, Ladies and Gentlemen of the Jury.

12 The instructions that you just heard might
13 have sounded a little bit intimidating, but at this point
14 keep in mind that the essence of what you have to do as a
15 jury is the same in this case as it is in any other case.

16 Essentially at this point in time there
17 are two main questions that you need to consider and
18 answer.

19 One is what crimes were committed, if any,
20 and number two is who committed them?

21 Now, these questions must be answered by
22 any jury. However, a murder case can be a little bit
23 different than a more mundane case, say a burglary,
24 shoplifting-type case.

25 The way you go about answering those two

1 questions might be a little bit different in a murder
2 situation.

3 Obviously in a murder case the most
4 important witnesses, often times the only eye witnesses
5 cannot testify. They are deceased. The perpetrator has
6 made sure that the main eye witnesses against him or her
7 can't come into court and testify.

8 People don't generally go around
9 committing murders in front of other people. It's
10 usually a crime done in secret. It's a crime done out
11 of, say, a surveillance camera's reach.

12 Consequently, the instruction dealing with
13 common sense becomes very important. It becomes very
14 important for each one of you in the deliberating room to
15 go in there and bring what you have to the table about
16 what you know about how the world works.

17 Specifically instruction 37 deals with
18 that. And it deals with the fact that you need to use
19 your common sense. It tells you that you are to use your
20 common sense to draw reasonable inferences as to what you
21 believe happened.

22 The the instructions also talk about two
23 different types of evidence that the law recognizes.
24 That would be direct evidence and circumstantial
25 evidence.

1 Instruction 34 explicitly tells you that
2 direct evidence is the testimony of a person who claims
3 to have personal knowledge of a given event.

4 Now, in this particular case there
5 obviously wasn't a lot of direct evidence because you
6 didn't have any eye witnesses to the murders.

7 However, you did hear from many witnesses
8 that told you what they saw and what they did regarding
9 the particular piece of evidence. You heard from a
10 couple witnesses about what they observed between the
11 relationship between the Defendant and Peter Limanni.

12 You heard several witnesses tell you what
13 they heard from the Defendant, statements the Defendant
14 made to them, certain statements that were inconsistent
15 with other evidence in this case.

16 You heard of statements he made to Thomas
17 Cramer, his a long time friend, a statement of confession
18 that he killed Peter Limanni. Some of that direct
19 evidence is necessary to put in context. The
20 circumstantial evidence which is the other kind of
21 evidence you have heard in this case.

22 Specifically instruction 34 tells you what
23 circumstantial evidence is. It is the proof of a chain
24 of facts and circumstances which tend to show whether the
25 Defendant is guilty or not guilty.

1 Now, sometimes circumstantial evidence
2 gets a bad wrap. I'm sure you've heard the phrase "It's
3 just a circumstantial case", as if it's a derogatory type
4 term.

5 It's important to recognize that the law
6 and instruction 34 specifically talks about this,
7 recognizes that circumstantial evidence can be just as
8 compelling and just as important as direct evidence.

9 The law recognizes that direct evidence
10 can have just as many faults. People obviously are human
11 beings. Their recollection of events can be wrong.

12 Now, at times when the only eye witness to
13 the actual events are either dead or on trial it is
14 necessary for you to use the reasonable inferences and
15 your common sense about the evidence in the case to reach
16 a specific conclusion.

17 Now, what is the evidence, what has the
18 evidence showed in this case?

19 How does it show that John Seka committed
20 the murder of Eric Hamilton and Peter Limanni?

21 What evidence did you hear concerning 1933
22 Western, the Sinergi office building, in the Fall of
23 1998?

24 What was going on?

25 You heard from Jennifer Harrison. Do you

1 remember her? She was the former girlfriend of Peter
2 Limanni.

3 Jennifer testified that she was dating
4 Peter and was around him quite a bit and around the
5 offices of Sinergi quite a bit, between August 1,
6 November 4th of 1998.

7 Now, granted it didn't sound like the two
8 of them, Jennifer and Peter, had a perfect relationship.
9 She did testify that she was planning on breaking it off
10 about the time all this came down.

11 She testified, however, that she was
12 around quite a bit, so she was aware of the relationship
13 between Jack and Peter.

14 Now, also from the evidence I think it was
15 clear that Peter Limanni was no angel. He treated the
16 Defendant in a way that the Defendant was somehow beneath
17 him.

18 The evidence was that Peter was very
19 controlling when it came to all sort of things with
20 regards to the Defendant in this case. Peter controlled
21 the money, how much money the Defendant got and when.

22 He gave him orders, he gave him lists of
23 things to do, errands to run for the business, getting
24 coffee, those sort of things. Remember a couple specific
25 incidents that Jennifer talked to you about that she

1 witness that Fall.

2 She testified about an incident at the
3 airport. She testified that her and Peter were going to
4 Lake Tahoe on a trip and Jack, the Defendant in this
5 case, drove them to the airport.

6 When they were getting out of the car she
7 testified that Peter ordered Jack to take the luggage
8 out. Jack said no.

9 Peter ordered him again. He did it.
10 These are the types of things, the type of relationship
11 they had.

12 She also testified about an incident with
13 some spilled paint and she testified that one time she
14 witnessed in the offices of Sinergi the Defendant spill
15 some paint and she said it wasn't that big of a deal, but
16 she witnessed Peter blow it out of proportion and became
17 extremely angered, angry with him and showed his temper
18 towards Jack.

19 She testified that after that incident
20 occurred the Defendant came up to her and the Defendant
21 said "You haven't seen anything. That's just the tip of
22 the iceberg."

23 You also heard testimony from the
24 Defendant's long time friend Thomas Cramer. Mr. Cramer
25 testified that during one of his many conversations with

1 the Defendant, in the Fall of 1998 on the telephone,
2 while Mr. Cramer was back east, he overheard a
3 conversation between the Defendant and Mr. Limanni and
4 Mr. Limanni, if you remember, became enraged that the
5 Defendant was even on the telephone and Mr. Cramer
6 testified that he had not heard someone behave in such a
7 way towards another person before.

8 Now, the evidence in the case is has also
9 shown that the Defendant, in late October, October 29, he
10 stated in his statement to Detective Thowsen, took a trip
11 back east. He arrived back, he told Detective Thowsen,
12 on November 3rd.

13 He - - during the trip - - you heard
14 evidence that the Defendant saw something that, according
15 to Jennifer Harrison, caused him to be very distressed
16 and depressed and upset.

17 She testified that the Defendant told her
18 on a phone conversation on the 5th when she was calling
19 to look for Peter that he was very depressed and upset
20 because he had caught his girlfriend back east in bed
21 with another man.

22 On November 4, 1998, Jennifer Harrison saw
23 Peter Limanni for the very last time. Peter came over
24 that night to her place. She testified that they had a
25 pleasant evening and that they made plans to have lunch

1 together that next day.

2 Again, I don't think you can characterize
3 their relationship as perfect at this time. However, she
4 did testify that her feelings in terms of breaking off
5 the relationship were more internal.

6 They basically had plans to continue to
7 see each other, especially that very next day, that it
8 was a pleasant visit on the 4th.

9 On the morning of November 5th, which was
10 a Thursday, she attempted to get hold of Peter on his
11 cellphone. She testified that normally it was quite easy
12 to get hold of Peter. She talked to him quite a bit.

13 He had given her a cellphone. They
14 contacted each other all the time. She testified it was
15 rare that it was turned off and when she would leave a
16 message he would generally return it.

17 Now, on the morning of the 5th she finds
18 it strange that Peter doesn't return her call. She can't
19 get hold of him.

20 So after failing to contact Peter a couple
21 times she calls the Defendant up at some point that
22 morning and the Defendant tells her that Peter Limanni
23 got up early that morning and he left with someone, but
24 he didn't know who.

25 And again, that was also the conversation

1 that the Defendant said he was very depressed, because he
2 caught his girlfriend in New Jersey, back east, in bed
3 with another man.

4 Now, at around noon on the 5th Jennifer
5 sensed that something wasn't right so she went to 1933,
6 looking for Peter Limanni.

7 She entered the business. She saw the
8 Defendant passed out on the floor. There was a girl in
9 there with him.

10 She went to the bedroom looking for Peter,
11 noticed that the door was locked. She testified that was
12 unusual. She eventually got in the room and when she
13 looked inside she noticed that all of Peter's shoes were
14 still present, and she found that out and she found it
15 odd that Jake was there, alone with the Defendant, but
16 not with Peter.

17 When she went out and she noticed Jack - -
18 she also noticed something unusual and she noticed what
19 she said was about two hundred dollars in cash on the
20 table near where Jack was at. She said that was unusual
21 in Sinergi to have cash laying around.

22 Now, after she left that particular day
23 she kept calling Peter, attempting to contact him, but
24 had no luck.

25 She also looked for Peter by calling the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 It could have been November 4th, a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Use your common sense.

19 What is reasonable?

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

25 The body was found some 30 feet off the

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

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

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

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

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

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

25 Now, the wood is not even close to being

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

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

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

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

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

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

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

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

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

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

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

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

25 Now, the samples were impounded and David

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

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

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

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

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

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

25 He concluded that Mr. Hamilton could not

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

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

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

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

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

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

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

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

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

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

22 How was he killed?

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

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

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

6 Of course we do.

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

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

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

13 Do we have to prove who did it?

14 Once again, of course we do.

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

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

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

1 specifically talks about that.

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

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

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

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

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

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

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

25 Now, Dr. Green testified that it is

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

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

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

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

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

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

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

25 He said Seymour did some work around the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Who had control over the business?

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

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

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

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

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

10 Detective Thowsen said "Yes."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Where and who was Eric Hamilton running

1 from on November 15 or 16?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 there.

2 Well, how did those items get in there?

3 What would be a reasonable explanation for
4 that?

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

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

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

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

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

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

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

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

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

18 What about the bullet that came up
19 missing?

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

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

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

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

11 Now, does that make sense?

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

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

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

20 (Discussion off the record.)

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

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

25 What would explain why police found a .32

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

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

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

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

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

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

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

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

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

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

17 What about Eric Hamilton?

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

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

25 This wouldn't necessarily bother the

1 Defendant either.

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

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

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

18 What did the Defendant do at that point?

19 What could he do, considering the
20 circumstances?

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

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

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

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

4 I find it interesting.

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

7 Irrelevant and improper.

8 THE COURT: Sustained. Proceed.

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

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

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

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

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

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

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

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

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

25 On November 17, after the Defendant came

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

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

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

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

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

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

1 was someone other than Peter Limanni.

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

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

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

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

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

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

11 What did he do instead?

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Limanni was shot multiple times?

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

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

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

11 Thank you.

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

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

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

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

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



COPY

DISTRICT COURT

CLARK COUNTY, NEVADA

FILED IN OPEN COURT

* * * * FEB 27 2001 19

SHIRLEY B. PARRAGUIRRE, CLERK

BY JUDY NORMAN
DEPUTY

STATE OF NEVADA,

Plaintiff,

vs.

JOHN JOSEPH SEKA,

Defendant.

Case No. C159915

Dept. XIV

VOLUME II

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

BEFORE THE HONORABLE DONALD M. MOSLEY

DISTRICT JUDGE

Taken on Friday, February 23, 2001

At 1:30 p.m.

APPEARANCES:

For the State:

EDWARD KANE, ESQ.

TIM FATTIG, ESQ.

Deputy District Attorneys

For the Defendant:

KIRK T. KENNEDY, ESQ.

PETER S. CHRISTIANSEN, ESQ.

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

MAUREEN SCHORN, CCR NO. 496, RPR

APP1421

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

2 * * * *

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

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

11 MR. KENNEDY: Yes, Judge.

12 MR. KANE: Yes.

13 THE COURT: Mr. Christiansen?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 The next instruction I'll draw your

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 that was found in 1929.

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

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

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

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

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

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

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

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

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

1 Why do you kill your friend?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 The same goes for Mr. Hamilton. If they

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And are Jack's fingerprints in the Toyota?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And with all due respect to Detective

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Let's talk about the monetary commitment.

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

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

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

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

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

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

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

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

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

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

25 And if you're trying to disappear and those

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Those two men had access to 1933. Those two

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

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

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

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

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

25 Remember when I asked Mr. McPhail: Did you

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

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

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

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

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

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

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

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

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

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

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

1 you would want the State to meet the burden.

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

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

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

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

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

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

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

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

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

1 excludes people.

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

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

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

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

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

1 this part here, and that's the number, 1.2 in 2.8 million.

2 That's nonsense. This is exclusion, folks, exclusion.

3 How does he know who the other person is?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (Whereupon, counsel conferred with the Court.)

19 THE COURT: Mr. Kane, your rebuttal?

20 MR. KANE: Thank you, Your Honor.

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

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

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

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

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

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

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

25 The deliberation one, especially, says,

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

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

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

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

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

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

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

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

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

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

1 committed in the course of a felony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 detectives.

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

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

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

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

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

1 it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Coincidence was mentioned a time or two in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 You have to decide if the circumstances

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 But they're going to turn it around.

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

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

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

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

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

25 But the last thing I want to say to you

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

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

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

20 THE COURT: Thank you, counsel,
21 Mr. Bailiff, would you come forward and be
22 sworn to take charge of the jury, please.

23 (Whereupon, the clerk swore the bailiff.)

24 / / /

25 / / /

1 / / /

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

5

6

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

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MAUREEN SCHORN, CCR NO. 496, RPR

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MAUREEN SCHORN, CCR NO. 496, RPR

APP1489

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ORIGINAL

1 VER

FILED IN OPEN COURT

MAR 01 2001

11:40 AM

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

SHIRLEY B. PARRAGUIRRE, CLERK

4 BY Judy Norman
JUDY NORMAN DEPUTY

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 JOHN JOSEPH SEKA

9
10 Defendant.

Case No. C159915
Depl. No. XIV

11
12 VERDICT

13 We, the jury in the above entitled case, find the defendant JOHN JOSEPH SEKA, as
14 follows:

15 *(please check the appropriate box, select only one for each count)*

16 AS TO COUNT I (ERIC HAMILTON) -

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

24 AS TO COUNT II (PETER LIMANNI) -

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

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MAR 01 2001

COUNTY CLERK

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APP1490

1 JOC
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 435-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 JOHN JOSEPH SEKA,
13 #1525324

14 Defendant.

Case No. C159915
Dept. No. XIV

16 JUDGMENT OF CONVICTION (JURY TRIAL)

17 The Defendant previously entered plea(s) of not guilty to the crime(s) of COUNTS I &
18 II - MURDER WITH USE OF A DEADLY WEAPON (Felony); and COUNTS III & IV -
19 ROBBERY WITH USE OF A DEADLY WEAPON (Felony), in violation of NRS 200.010,
20 200.030, 193.165, 200.380, 193.165, and the matter having been tried before a jury, and the
21 Defendant being represented by counsel and having been found guilty of the crime(s) of COUNT
22 I - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Felony); COUNT II -
23 SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (Felony); and
24 COUNTS III & IV - ROBBERY (Felony); and thereafter on the 26th day of April, 2001, the
25 Defendant was present in Court for sentencing with his counsel, PETER S. CHRISTIANSEN,
26 ESQ., and KIRK T. KENNEDY, ESQ.; and good cause appearing therefor,

27 THE DEFENDANT HEREBY ADJUDGED guilty of the crime(s) as set forth in the
28 jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee and \$250.00 DNA

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APP1492

1 Analysis Fee, the Defendant is sentenced to the Nevada Department of Prisons as follows:
2 COUNT I - LIFE WITHOUT THE POSSIBILITY OF PAROLE for FIRST DEGREE
3 MURDER plus an equal and consecutive LIFE WITHOUT THE POSSIBILITY OF PAROLE
4 for USE OF A DEADLY WEAPON and pay \$2,825 restitution;
5 COUNT II - LIFE WITH THE POSSIBILITY OF PAROLE for SECOND DEGREE MURDER,
6 plus an equal and consecutive LIFE WITH THE POSSIBILITY OF PAROLE for USE OF A
7 DEADLY WEAPON and pay \$2,500 Restitution, Count II to run CONSECUTIVE to Count I;
8 COUNT III - a MAXIMUM term of ONE HUNDRED FIFTY-SIX (156) MONTHS with a
9 MINIMUM parole eligibility of THIRTY-FIVE (35) MONTHS for ROBBERY, Count III to run
10 CONSECUTIVE to Count II;
11 COUNT IV - a MAXIMUM term of ONE HUNDRED FIFTY-SIX (156) MONTHS with a
12 MINIMUM parole eligibility of THIRTY-FIVE (35) MONTHS for ROBBERY, Count IV to
13 run CONSECUTIVE to Count III.

14 Credit for time served is 720 days.

15 DATED this 3RD day of May 2001.

16
17 Donald M. Mackey
18 DISTRICT JUDGE
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28

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN JOSEPH SEKA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37907

FILED

APR 08 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury trial, for first-degree murder with use of a deadly weapon, second-degree murder with use of a deadly weapon, and two counts of robbery. After finding the defendant, John Joseph Seka guilty of the above charges, the jury was unable to reach a decision as to sentence on the first-degree murder charge during the penalty phase of the trial. Therefore the district court requested the establishment of a three-judge panel pursuant to statute. Prior to the convening of the panel, Seka and the State stipulated to a sentence on Count I of life without the possibility of parole for first-degree murder, plus an equal and consecutive sentence for use of a deadly weapon.

Seka was also sentenced as follows: Count II: life with the possibility of parole for second-degree murder plus an equal and consecutive sentence for use of a deadly weapon to run consecutive with Count I; Count III: a maximum of one hundred fifty-six months with a minimum parole eligibility of thirty-five months to run consecutive to Count II; Count IV: a maximum of one hundred fifty-six months with a minimum parole eligibility of thirty-six months to run consecutive to Count III; \$5,325.00 in restitution and 720 days credit for time already served.

FACTUAL BACKGROUND

John Joseph Seka ("Seka"), also known as "Jack", was convicted of the murder and robbery of two individuals, Peter Limanni ("Limanni") and Eric Hamilton ("Hamilton"). Seka was a friend of Limanni and an employee for Limanni's heating and air conditioning business, Cinergi HVAC, Inc., located at 1933 Western Avenue, Las Vegas, Nevada. Seka and Limanni were in the process of setting up a cigar business out of the same location. Seka and Limanni also resided at 1933 Western Avenue.

Hamilton, an African American gentleman, appeared at Cinergi around the latter part of 1998. He had only recently come to Las Vegas from California and had in his possession approximately \$3,000 (three thousand dollars). Limanni hired Hamilton to do some casual labor (clean-up work) for Cinergi.

On November 16, 1998, pursuant to a report, the police discovered a body that was later identified as Hamilton, with three gun shot wounds. The body was covered with wood, lying face down near a set of tire tracks. Hamilton had a piece of paper in his front pocket with the name Jack written on it and a phone number. Police determined the number was to Jack's (Seka's) cell phone for Cinergi.

The following day, police responded to a call for a possible break-in at a vacant business, located at 1929 Western Avenue, the business next door to Cinergi's office. At the scene, officers Nogess and Kroll observed that glass was broken out of the front of the business and blood was visible on the sidewalk, on the glass and inside the business. Inside, the officers found several items, among which were three spent

bullets, a jacket, a hat and a bracelet. The jacket had three bullet marks in it.

While police were investigating the premises of 1929, Seka arrived at 1933 Western in a small brown pickup. Seka granted the police permission to look inside the business at 1933. While there, police saw what appeared to be a .357 cartridge, which subsequently disappeared.

Later that same day, the premises of 1933 Western were searched a second time pursuant to written consent, after it was decided that the bullets, blood and jacket recovered at 1929 could be related to the homicide of Hamilton, whose body was discovered the day before. During the second search at 1933 Western, the police discovered new lumber that was being used to build a walk-in humidor. This wood was similar to the wood found on top of Hamilton. Police later determined that the wood on top of Hamilton bore latent fingerprints matched to Seka and Limanni. The police noted several locations with droplets of apparent blood. Also, police recovered a bullet from a piece of drywall directly behind a couch with a hole and a .32 cartridge from the inside of the toilet. In the false ceiling, the police also found .357 ammunition, a couple of .32 cartridges and a wallet containing a Nevada driver's license, a social security card, a birth certificate and some credit cards bearing the name Peter Limanni. In a dumpster located out back, which was empty earlier in the day, police located burnt clothing and a checkbook with Limanni's name on them.

As a result of their search and believing the evidence might be relevant to Hamilton's homicide, police asked Seka to come to the detective bureau for questioning. Seka consented, was Mirandized and police conducted a taped interview. During the interview, Seka explained that Limanni owned the business at 1933, but that Seka had not seen

Limanni since November 5, 1998. This was about the time Limanni's landlord had seen Limanni with \$2,000 to \$3,000 (two to three thousand dollars) cash in his possession. Seka also informed police that a black male named Seymour (Hamilton) had done some odd jobs at 1933 Western, but that he had last seen Seymour about a month before. He further explained to police that Cinergi had two white Dodge vans and a brown Toyota pickup that they utilized.

After questioning, police explained to Seka that while he was a suspect in the killing of Hamilton, they would not arrest him because they had to wait for the return of all the forensic evidence. The police drove Seka back to 1933 Western. Seka claimed he had a dinner appointment, but he would return to the premises later. Police allowed Seka to leave in one of the white vans belonging to Cinergi, but impounded the brown truck and the remaining white van after they discovered blood in both vehicles. Seka never returned to the premises.

That evening, Seka spoke with Limanni's girlfriend, Jennifer Harrison ("Harrison"), and told her that some black guy had been killed and he had to get out of town. He wanted to borrow Harrison's car because he was being followed; she declined, and he left. Several weeks later, Seka called Harrison and indicated that he was "going underground".

In the meantime, on December 23, 1998, police found Limanni's decomposing body, partially buried and partially uncovered. The body was discovered in California, approximately five miles from the California-Nevada state boundary, roughly a forty-five minute drive from Las Vegas and a several hour drive from any city in California. The San Bernadino County Coroner's Office ruled that Limanni died from gunshot

wounds; 10 (ten) in all. They also estimated that Limanni had been dead for several weeks.

Thereafter, Seka was charged with: (1) one count of murder with use of a deadly weapon, alleging the murder of Hamilton; (2) one count of murder with use of a deadly weapon, alleging the murder of Limanni; and (3) two counts of robbery with use of a Deadly Weapon, alleging Hamilton and Limanni were robbed as part of each murder. In March of 1999, Seka was arrested in Pennsylvania and stood trial on these charges.

At trial, the prosecution presented testimony supporting the above-referenced facts. The prosecution also presented the results of the forensic analysis conducted on the items of evidence, as follows:

1. DNA testing conducted on the blood recovered from glass fragments at 1929 Western revealed that Hamilton could not be excluded as the source;

2. The bullet holes in the jacket found at 1929 Western were consistent with the gunshot wounds in Hamilton's body;

3. DNA testing on the blood from the white Cinergi van revealed that Limanni could not be excluded as the source;

4. DNA testing on the blood from the brown Toyota pickup revealed that Hamilton could not be excluded as the source;

5. The tire marks found at the location of Hamilton's body were consistent with the type of tire on the brown Toyota pickup;

6. A .32 caliber weapon was used to kill Limanni, and the .32 bullets recovered from Limanni's body matched some found at 1933 Western; and

7. A .357 magnum was used to kill Hamilton, and a bullet fragment from 1933 Western matched the bullet recovered from Hamilton's body.

Additionally, the prosecution offered testimony from a friend of Seka's, Thomas Cramer ("Cramer"), which indicated Seka's responsibility for Limanni's murder. Cramer testified that, on January 23, 1999, during a fight with Seka, Seka asked Cramer, "Do you want me to do to you what I did to Pete Limanni?" Cramer also testified that Seka had told him that Limanni came at him with a gun over missing money and that he wrestled the gun from Limanni and shot him several times. As a result of his wounds, Limanni began to gurgle blood out of his mouth, at which point Seka continued to shoot.

After hearing this evidence, the jury returned a verdict on March 1, 2001, finding Seka guilty of: (1) count one - first degree murder with use of a deadly weapon; (2) count two - second degree murder with use of a deadly weapon; and (3) counts three and four - robbery.

DISCUSSION

Seka first contends that the district court improperly admitted evidence that Seka left Nevada for Pennsylvania in order to avoid criminal prosecution. We disagree. Evidence of flight may be admissible to demonstrate consciousness of guilt.¹ This court has reviewed flight

¹See Walker v. State, 113 Nev. 853, 870-71, 944 P.2d 762, 773 (1997) (quoting Miles v. State, 97 Nev. 82, 85, 624 P.2d 494, 496 (1981)).

instructions to ensure that the record supported the conclusion that the defendant's leaving the scene was with a consciousness of guilt and for the purpose of avoiding arrest.²

In the present case, the record supports the inference that Seka's flight to Pennsylvania was related to his criminal involvement in the murders of Limanni and Hamilton. Seka's conversation with LVMPD demonstrates that he was on notice that he was a target of a pending criminal investigation into the disappearance and murders of Limanni and Hamilton. Also, Seka's request to borrow Harrison's car because he was wanted for murder and his subsequent call to her a few weeks later informing her of his plans to go "underground" clearly indicate an intent to evade the police. Thus, we conclude that the district court properly admitted evidence of Seka's flight from the police.³

Next Seka argues that the district court lacked jurisdiction to prosecute him for Limanni's murder, because the State did not prove that Limanni was murdered in California, not Nevada. We disagree. Pursuant to NRS 171.020, any person who commits a crime within Nevada may be

²See id.

³Additionally, we conclude that Seka's position that his case is factually inapposite to that in Santillanes v. State, 104 Nev. 699, 700, 765 P.2d 1147, 1148 (1988), is without merit. In Santillanes, we concluded that flight evidence was properly admitted where the defendant twice consented to meet with authorities and after failing to appear for both meetings, fled the jurisdiction. Here, Seka expressly promised the police that he would return to the scene of the crime after attending a dinner appointment. Seka subsequently disappeared before reemerging in Pennsylvania a year later. Thus, we find Seka's situation analogous to that in Santillanes and evidence pertaining to his flight properly admitted.

punished for that crime in Nevada.⁴ Notwithstanding a lack of direct evidence, we conclude that there was sufficient circumstantial evidence admitted at trial to support the conclusion that Limanni was killed in Las Vegas, his body loaded into a Cinergi Dodge van, and then dumped over the border in California.

DNA testing revealed that Limanni's blood was found inside the Dodge van located at 1933 Western Avenue. Several expended bullets matching those found in Limanni's body were located at 1933 Western Avenue. Limanni's body was discovered in a remote area only five miles from the Nevada state line. The location where his body was found was approximately forty-five minutes away from Las Vegas. Lastly, Limanni's body was situated a great distance away from any California city. Thus, we conclude that there is sufficient evidence to support a finding that the murder of Limanni was committed in Nevada and the district court's exercise of jurisdiction on the Limanni murder was proper.

Seka's next assertion of error involves the joinder of the Limanni and Hamilton charges. Seka argues that the charges against him for the robbery and murders of Limanni and Hamilton were improperly joined by the district court. We disagree. NRS 173.115 defines

⁴NRS 171.020 states:

Whenever a person, with intent to commit a crime, does any act within this state in execution or part execution of such intent, which culminates in the commission of a crime, either within or without this state, such person is punishable for such crime in this state in the same manner as if the same had been committed entirely within this state.

when joinder of charges is appropriate.⁵ Decisions to sever charges “are within the sound discretion of the trial court and will not be reversed absent an abuse of discretion.”⁶ We review alleged errors by the district court under a harmless error analysis.⁷

However, even if joinder is permissible under NRS 173.115, it may still be inappropriate if joinder would have unfairly prejudiced the defendant.⁸ To establish that joinder was prejudicial “requires more than

⁵NRS 173.115 states:

Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are:

1. Based on the same act or transaction; or
2. Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

⁶Robins v. State, 106 Nev. 611, 619, 798 P.2d 558, 563 (1990) (citing Lovell v. Sate, 92 Nev. 128, 132, 546 P.2d 1301, 1303 (1976)).

⁷See Robins, 106 Nev. at 619, 798 P.2d at 563 (citing Mitchell v. State, 105 Nev. 735, 738, 782 P.2d 1340, 1342-43 (1989)).

⁸See NRS 174.165(1), which provides in pertinent part:

If it appears that a defendant or the State of Nevada is prejudiced by a joinder of offenses or of defendants in an indictment or information, or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

See also Middleton v. State, 114 Nev. 1089, 1107, 968 P.2d 296, 309 (1998).

a mere showing that severance might have made acquittal more likely.”⁹ Reversal for misjoinder is required only if the error “has a substantial and injurious effect on the jury’s verdict.”¹⁰

In the present case, we conclude that the district court did not err in finding that there was sufficient evidence to support a conclusion that the murders of Limanni and Hamilton were conducted and concealed by Seka in roughly the same manner as part of a common scheme or plan for financial gain. Both individuals disappeared in November of 1998. Both bodies were transported in Cinergi vehicles and were discovered partially concealed by dirt or wood in shallow graves. An intensive amount of forensic evidence was introduced at trial, including bullets, fingerprint evidence, and DNA evidence indicating that both men were murdered at the businesses owned by Limanni at 1929 and 1933 Western Avenue. Also, both victims died as a result of gunshot wounds. Lastly, witnesses testified that both victims had large amounts of cash in their possession shortly before they were missing and no such cash was found on their bodies or amongst their personal possessions. Finally the State presented evidence linking Seka to the victims, Cinergi and the Western Avenue locations.

We also conclude that the district court’s decision to join charges was appropriate because evidence of Limanni’s murder would have been cross-admissible in a separate trial for Hamilton’s murder.

⁹Floyd v. State, 118 Nev. ___, ___, 42 P.3d 249, 255 (2002) (quoting United States v. Wilson, 715 F.2d 1164, 1171 (7th Cir. 1983)).

¹⁰Middleton, 114 Nev. at 1108, 968 P.2d at 309 (citing Mitchell, 105 Nev. at 739, 782 P.2d at 1343).

This court has held that, "if . . . evidence of one charge would be cross-admissible in evidence at a separate trial on another charge, then both charges may be tried together and need not be severed."¹¹ Evidence of Limanni's murder would have been admissible in a separate trial for Hamilton's murder to prove the identity of his killer, pursuant to NRS 48.045(2).¹² Both victims were robbed, shot, stripped naked, and left covered by dirt or wood in shallow graves and there is evidence from which a reasonable trier of fact could conclude that the murders took place at the same time and place. Thus, we conclude that the district court did not abuse its discretion in joining charges against Seka for the murders of Hamilton and Limanni.

Next Seka contends that he was prejudiced because the State exhausted the blood samples that were identified at trial as belonging to Limanni and Hamilton. We disagree. This court has held that the State's failure to preserve evidence does not warrant dismissal unless the defendant can either show: (1) bad faith by the government or (2) prejudice from the loss of the evidence.¹³

¹¹Tillema v. State, 112 Nev. 266, 268, 914 P.2d 605, 606 (1996) (quoting Mitchell, 105 Nev. at 738, 782 P.2d at 1342.)

¹²NRS 48.045(2) states:

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

¹³See Williams v. State, 118 Nev. ___, ___, 50 P.3d 1116, 1126 (2002) cert denied ___, U.S. ___, 123 S. Ct. 569 (U.S. 2002); Leonard v. State, 117
continued on next page . . .

Seka does not show that the State acted in bad faith. Dr. Welch, a forensic chemist with LVMPD, testified that at the time the DNA samples were tested, the department's testing system required a large amount of a sample. Also, Dr. Welch testified that at the time the samples were tested there was no formal or informal procedure in place to alert the district attorney's office before using the entire sample. Currently, according to Dr. Welch, the department tries to preserve at least half the sample for the defense. Therefore, we conclude that the record demonstrates that the State did not destroy the DNA samples in bad faith.

Also, Seka does not show that he was prejudiced by the loss of the evidence. Other blood samples were available from the various crime scenes that contained DNA of both Limanni and Hamilton, which Seka could have re-tested. In addition, Seka does not point to any evidence that demonstrates that the first tests done on the DNA samples that matched Seka's DNA were flawed. Thus, we conclude the destruction of these samples, which clearly identify both Seka's and the victims' DNA, did not prejudice his case.

Finally Seka asserts that the record contains insufficient evidence to support the jury's verdicts. We disagree. "We review a claim of sufficiency of evidence by looking at the facts in the light most favorable


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Nev. 53, 68, 17 P.3d 397, 407 (2001); see also Arizona v. Youngblood, 488 U.S. 51, 57-58 (1988).

to the State.”¹⁴ In addition, this court has specifically stated that “[c]ircumstantial evidence alone may sustain a conviction.”¹⁵

The jury convicted Seka of all four counts after considering the evidence presented by the parties. After examining the facts in the light most favorable to the State, we conclude that sufficient evidence exists for the jury to have convicted Seka of the robbery and murder of Limanni and Hamilton.

Accordingly, we ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Kajioka, Christiansen & Toti
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁴Grant v. State, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001) (citing Koza v. State, 100 Nev. 245, 250-51, 681 P.2d 44, 47 (1984)).

¹⁵McNair v. State, 108 Nev. 53, 61, 825 P.2d 571, 576 (1992) (citing Deveroux v. State, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980); Crawford v. State, 92 Nev. 456, 457, 522 P.2d 1378, 1379 (1976)).