

**No. 86694**

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IN THE NEVADA SUPREME COURT

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Elizabeth A. Brown  
Clerk of Supreme Court

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**John Seka,**

Petitioner-Appellant,

**v.**

**State of Nevada, et al.**

Respondents-Appellees.

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**Petitioner-Appellant's Appendix**  
**Volume 8 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*

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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

Case No. 59915

Dept. No. XIV

FILED

2004 FEB 13 P 2:02

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF Clark

John Joseph Saka,

Petitioner,

v.

E.K. McDaniel, Warden,

Elko State Prison, et alia,  
Respondent.

PETITION FOR WRIT  
OF HABEAS CORPUS  
(POST-CONVICTION)

INSTRUCTIONS:

(1) This petition must be legibly handwritten or type-written, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence.

1 Failure to raise all grounds in this petition may preclude you  
2 from filing future petitions challenging your conviction and  
3 sentence.

4 (6) You must allege specific facts supporting the claims  
5 in the petition you file seeking relief from any conviction or  
6 sentence. Failure to allege specific facts rather than just  
7 conclusions may cause your petition to be dismissed. If your  
8 petition contains a claim of ineffective assistance of counsel,  
9 that claim will operate to waive the attorney-client privilege  
10 for the proceeding in which you claim your counsel was  
11 ineffective.

12 (7) If your petition challenges the validity of your  
13 conviction or sentence, the original and one copy must be filed  
14 with the clerk of the district court for the county in which  
15 the conviction occurred. Petitions raising any other claims  
16 must be filed with the clerk of the district court for the  
17 county in which you are incarcerated. One copy must be mailed  
18 to the respondent, one copy to the attorney general's office,  
19 and one copy to the district attorney of the county in which  
20 you were convicted or to the original prosecutor if you are  
21 challenging your original conviction or sentence. Copies must  
22 conform in all particulars to the original submitted for  
23 filing.

#### 24 PETITION

25 1. Name of institution and county in which you are  
26 presently imprisoned, or where and how you are presently  
27 restrained of your liberty:

28 Elly State Prison, White Pine County Nevada

1 Name and location of court which entered the judgment  
2 of conviction under attack: Eight Judicial District

3 Courts, Las Vegas Nevada (Dept. No. XIV)

4 3. Date of judgment of conviction: May 9, 2001

5 4. Case number: C159915

6 5. (a) Length of sentence: Two life without parole, two life  
7 with parole two 36 to 156 month  
8 sentences all consecutive.

9 (b) If sentence is death, state any date upon which  
10 execution is scheduled: N/A

11 6. Are you presently serving a sentence for a conviction  
12 other than the conviction under attack in this motion:

1 Yes \_\_\_\_\_ No X. If "yes," list crime, case number and  
2 sentence being served at this time: N/A  
3 N/A  
4 N/A  
5 7. Nature of offense involved in conviction being  
6 challenged: one first degree murder with use, one second  
7 degree murder with use, two robberies  
8 8. What was your plea? (check one)  
9 (a) Not guilty X  
10 (b) Guilty \_\_\_\_\_  
11 (c) Nolo contendere \_\_\_\_\_  
12 9. If you entered a guilty plea to one count of an  
13 indictment or information, and a not guilty plea to another  
14 count of an indictment or information, or if a guilty plea was  
15 negotiated, give details: N/A  
16 N/A  
17 N/A  
18 10. If you were found guilty after a plea of not guilty,  
19 was the finding made by: (check one)  
20 (a) Jury X  
21 (b) Judge without a jury: \_\_\_\_\_  
22 11. Did you testify at the trial? Yes \_\_\_\_\_ No X  
23 12. Did you appeal from the judgment of conviction?  
24 Yes X No \_\_\_\_\_  
25 13. If you did appeal, answer the following:  
26 (a) Name of court: Nevada Supreme Court  
27 (b) Case number or citation: Appeal No. 37907  
28

1 (c) Result: Conviction Affirmed

2 (d) Date of Result: April 8, 2003 Order of Affirmation

3 (Attach copy of order or decision, if available).

4 14. If you did not appeal, explain briefly why you did  
5 not: N/A

6 N/A

7 15. Other than a direct appeal from the judgment of  
8 conviction and sentence, have you previously filed any  
9 petitions, applications or motions with respect to this  
10 judgment in any court, state or federal? Yes X No       .

11 16. If your answer to No. 15 was "yes," give the  
12 following information:

13 (a) (1) Name of Court: Nevada Supreme Court

14 (2) Nature of proceeding: Appeal of proper person  
15 petition for writ of habeas corpus

16  
17 (3) Grounds raised: Trial Court's lack of  
18 jurisdiction over the charges relating  
19 to Mr. Limanni

20 (4) Did you receive an evidentiary hearing on  
21 your petition, application or motion? Yes        No X

22 (5) Result: Appeal was dismissed

23 (6) Date of Result: November 20, 2001

24 (7) If known, citations of any written opinion or  
25 date of orders entered pursuant to each result: Nevada  
26 Supreme Court orders see exhibit

1 (b) As to any second petition, application or motion,  
2 give the same information:

3 (1) Name of Court: N/A

4 (2) Nature of proceeding: N/A

5 (3) Grounds raised: N/A

6 (4) Did you receive an evidentiary hearing on  
7 your petition, application or motion? Yes        No X

8 (5) Result: N/A

9 (6) Date of Result: N/A

10 (7) If known, citations or any written opinion or  
11 date of orders entered pursuant to each result: N/A

12 N/A

13 (c) As to any third or subsequent additional  
14 applications or motions, give the same information as above,  
15 list them on a separate sheet and attach.

16 (d) Did you appeal to the highest state or federal  
17 court having jurisdiction, the result or action taken on any  
18 petition, application or motion?

19 (1) First petition, application or motion?

20 Yes        No X

21 Citation or date of decision: N/A

22 (2) Second petition, application or motion?

23 Yes        No X

24 Citation or date of decision: N/A

25 (3) Third or subsequent petitions, applications,  
26 or motions? Yes        No X

27 Citation or date of decision: N/A

1 e. If you did not appeal from the adverse action on  
2 any petition, application or motion, explain briefly why you  
3 did not. (You must relate specific facts in response to this  
4 question. Your response may be included on paper which is  
5 8 1/2 x 11 inches attached to the petition. Your response may  
6 not exceed five handwritten or typewritten pages in length.)

7 First petition dismissed so that Direct Appeal  
8 could proceed.

9 17. Has any ground being raised in this petition been  
10 previously presented to this or any other court by way of  
11 petition for habeas corpus, motion or application or any other  
12 ~~post~~-conviction proceeding? <sup>No</sup> If so, identify: identify:

13 a. Which of the grounds is the same: N/A

14 N/A

15 b. The proceedings in which these grounds were raised:

16 N/A

17 c. Briefly explain why you are again raising these  
18 grounds. (You must relate specific facts in response to this  
19 question. Your response may be included on paper which is  
20 8 1/2 x 11 inches attached to the petition. Your response may  
21 not exceed five handwritten or typewritten pages in length.)

22 All grounds are fresh and new. This is the first true petition.

23 18. If any of the grounds listed in Nos. 23(a), (b), (c)  
24 and (d), or listed on any additional pages you have attached,  
25 were not previously presented in any other court, state or  
26 federal, list briefly what grounds were not so presented, and  
27 give your reasons for not presenting them. (You must relate

1 specific facts in response to this question. Your response may  
2 be included on paper which is 8 1/2 by 11 inches attached to  
3 the petition. Your response may not exceed five handwritten or  
4 typewritten pages in length.) Issues and claims not  
5 previously presented due to ineffective assistance of counsel  
before and during trial and on Direct Appeal.

6 19. Are you filing this petition more than 1 year  
7 following the filing of the judgment of conviction or the  
8 filing of a decision on direct appeal? If so, state briefly  
9 the reasons for the delay. (You must relate specific facts in  
10 response to this question. Your response may be included on  
11 paper which is 8 1/2 x 11 inches attached to the petition.  
12 ~~Your~~ response may not exceed five handwritten or typewritten  
13 pages in length.)

14 Remittitur issued May 14, 2003. This petition is timely

15 20. Do you have any petition or appeal now pending in any  
16 court, either state or federal, as to the judgment under  
17 attack? Yes \_\_\_\_\_ No X.

18 If yes, state what court and the case number: \_\_\_\_\_

19 N/A

20 21. Give the name of each attorney who represented you in  
21 the proceeding resulting in your conviction and on direct  
22 appeals: Trial attorneys: Kirk Kennedy and Peter

23 Christiansen. Direct Appeal attorney: Peter Christiansen

24 22. Do you have any future sentences to serve after you  
25 complete the sentence imposed by the judgment under attack?

26 Yes \_\_\_\_\_ No X. If yes, specify where and  
27 when it is to be served, if you know: N/A

28 N/A



1 23. State concisely every ground on which you claim that  
2 you are being held unlawfully. Summarize briefly the facts  
3 supporting each ground. If necessary you may attach pages  
4 stating additional grounds and facts supporting same.

5 (a) Ground one: Denial of Sixth and Fourteenth  
6 Amendments to effective assistance of counsel before  
7 trial, due process and a fair trial.

8 Supporting FACTS (Tell your story briefly without citing cases  
9 or law): Supporting facts page 8A

10 (b) Ground two: Denial of Sixth and Fourteenth  
11 Amendment rights to effective of counsel at trial, due  
12 process and fundamental fairness

13 Supporting FACTS (Tell your story briefly without citing cases  
14 on law): Supporting facts page 8F

15 (c) Ground three: Denial of Sixth and Fourteenth  
16 Amendments to effective assistance of counsel on  
17 Direct Appeal and due process.

18 Supporting FACTS (Tell your story briefly without citing cases  
19 or law): Supporting facts page 8I

20 (d) Ground four: Denial of Fifth Sixth and  
21 Fourteenth Amendments to equal protection due process and a  
22 fair trial by DA's failure to disclose Brady material  
23 on Mr. Thomas Creamer.

24 Supporting FACTS (Tell your story briefly without citing cases  
25 or law): Supporting facts page 8K

26 WHEREFORE, Petitioner prays that the court grant  
27 petitioner relief to which he may be entitled in this  
28 proceeding.

## Ground One

Petitioner was denied his rights under the Sixth and Fourteenth Amendments to the U.S. Constitution to effective assistance of counsel, due process and a fair trial by his attorneys failures to investigate material witnesses and facts prior to trial and failure to enlist experts for the defense prior to trial.

WHEREAS, Petitioner hereby swears and alleges he was deprived of effective assistance of counsel, due process and a fair trial by his trial attorneys failures to investigate material witnesses and facts prior to trial and failure to enlist experts for the defense prior to trial. These failures actually caused the jury to convict John Seka (hereafter Seka)

1.) That Seka suffered prejudicial ineffective assistance of counsel before trial and therefore during trial which resulted in his illegal and erroneous convictions in this case. Each instance of alleged ineffective assistance contained within this ground for relief are each presented, and should be considered, as independent and separate acts, events and conduct entitling Seka to relief from conviction as well as together contained herein

2.) That Seka alleges and asserts that his trial attorneys were ineffective due to their failures to conduct adequate investigations and interviews specifically Mr. Thomas Creamer. Mr. Creamer's long

psychological and drug history were not investigated or documented. This failure left unknown many possible and probable adjustments and changes in his testimony beneficial to the defense.

3.) That Mr. Creamers testimony was given while he was under the influence of Remeron, Tranxene, Ritalin and Xanax. Proper cross-examination without pre-trial investigation of Mr. Creamer's medical and drug history was impossible and shows the lack of preparation for this crucial prosecution witness.

4.) That this criminal case was very close and relied virtually entirely on circumstantial evidence is evident from the jury's four plus days of deliberation. Mr. Creamer was a very important prosecution witness and claimed that Seka confessed to him was the only non-circumstantial evidence that pointed at Seka's guilt in this case.

5.) That lack of investigation before trial and therefore inadequate cross-examination for the defense was damning ineffective assistance of counsel which most probably caused the illegal convictions. Based upon this the convictions must be VACATED.

6.) That Seka's trial attorneys failed to adequately investigate, contact or personally interview former Cinergi H.V.A.C. Inc. (hereafter Cinergi) employees, friends and other business associates of Seka and Mr. Limanni.

7.) That during the trial the prosecutor elicited

testimony from Miss Harrison, the three month girlfriend of Mr. Limanni. Miss Harrison's impressions of the relationship between Seka and Mr. Limanni were the only ones presented to the jury.

8) That defense counsel could have and should have interviewed Justin Nguyen, Marilyn Mignone, Amir Mohomic Ken Bates and others that could have been found by obtaining Cinerge's banking and business records. These interviews would have given defense counsel multiple other accounts of the relationship between Seka and Mr. Limanni.

9) That this conduct by defense counsel was clearly ineffective as pre-trial interviews of these people would have provided information and or testimony that, had they been called at trial by defense counsel would have resulted in Seka's acquittal.

10) That due to the ineffective pre-trial performance of Seka's attorneys, Seka was grossly prejudiced at trial and his defense to the Mr. Limanni killing suffered severely. Based upon the alleged failure to investigate, interview and utilize these witnesses, Seka's defense was devastated resulting in his illegal convictions. This now requires the convictions VOIDED

11) That trial counsel again provided ineffective assistance of counsel by the failure to enlist the services of experts in the fields of DNA evidence forensic pathology, for time of death and a  
8c

psychologist regarding the evidence and testimony presented by prosecution experts in a capital case.

12.) That the prosecution neglected to give pre-trial notice that their DNA expert would be testifying at trial was no excuse for defense counsel not to enlist a DNA expert before trial. Especially when the DNA evidence in this case was circumstantial and not overwhelming.

13.) That in the original Criminal Complaint (March 4, 1998) and all superseding Informations Saka was charged with two separate open murders where the State failed to specify an exact time of death. Count I "on or between November 10, 1998 and November 16, 1998"; Count II "on or between November 5, 1998 and December 23, 1998". Yet the prosecution offered and relied on the theories that the death in Count I occurred on November 15, 1998 and the death in Count II occurred on November 5, 1998. Defense counsel's failure to obtain expert testimony regarding times of death in this case was clearly ineffective assistance of counsel.

14.) That the prosecution's most important witness had serious mental, emotional and substance abuse problems should have and could have been explained to the jury through expert testimony from a psychologist.

15.) That the failure of defense counsel to procure such expert testimony before trial was grossly

prejudicial to Seka and complete ineffective assistance of counsel. The failure of Seka's trial attorneys to obtain experts prior to trial and utilize them at trial resulted in the jury's complete reliance upon the expert witnesses that the prosecution presented. This complete ineffectiveness demands that Seka's convictions be VACATED.

16.) That trial counsel also performed ineffective pre-trial investigations and research by failing to obtain Cimergi's bank and phone records along with Mr. Limanni's correct cell phone records. Documents that could have contained exculpatory evidence and impeachment evidence for cross-examination.

17.) That the State's theory that Mr. Limanni disappeared and was killed on November 5, 1998 would have been questionable if his cell phone records showed use after November 5, 1998. Without these records defense attorneys were unable to effectively defend against the prosecution's theory of Mr. Limanni's time of death.

18.) That the State obtained someone else's cell phone records and never obtained the correct records for Mr. Limanni's are no excuse for defense attorneys not obtaining the correct cell phone records for Mr. Limanni.

19.) That defense counsel was totally unprepared for this Capital Murder Trial after nearly two years of continuances and left the jury with many

unanswered questions is clearly shown by the four plus days the jury deliberated and the confused verdict they returned. A verdict that was completely inconsistent with the state's theory. This pre-trial ineffectiveness as well as those previously asserted doomed Seka's chances at trial and led to his illegal convictions. This now requires the illegal convictions VACATED.

### Ground Two

Petitioner was denied his rights under the sixth and Fourteenth Amendments to the U.S. Constitution to effective assistance of counsel, due process and of fundamental fairness at trial by trial attorney's failure to meaningfully challenge the state's case with expert testimony and adequate cross-examination and impeachment of prosecution witnesses.

WHEREAS, Petitioner swears and alleges that he suffers the deprivation of effective assistance of counsel and a fair trial by the failures of his trial attorneys to meaningfully challenge the state's case.

WHEREFORE, Petitioner hereby incorporates all relevant facts contained within the other grounds, above and below, as though the same were fully set forth herein, in support of this claim, AND:

20.) That trial counsel failed to adequately subject the State's case to meaningful adversarial testing in regards to the evidence and cross-examination and impeachment of the State's witnesses.

21.) That the incorporated facts show that trial counsel failed to consult and present any expert witnesses to challenge the State's case illustrates complete ineffective assistance of counsel

22.) That consistent with the above, trial counsel should have at a minimum presented at trial:

(a) ~~IAA~~ expert (b) Forensic pathologist (c) Psychologist Lack of these experts for the defense left the jury to rely exclusively on the prosecution's experts. This ineffective assistance of counsel caused Seka's illegal convictions. This now requires the conviction

VACATED

23.) That trial counsel's failure to investigate and obtain Mr. Creamer's psychiatric and substance abuse history and records results in his complete failure to adequately cross-examine this vital State witness. Mr. Creamer's long mental history should have been explained to the jury by a psychologist

24.) That had Seka's trial attorneys effectively impeached Mr. Creamer by revealing his extensive mental and drug history the trial result would have been different and Seka would not have been convicted erroneously. This now requires the convictions VACATED



25.) That the State presented Dr. Green M.D., coroner for Clark County, Nevada in the death of Eric Hamilton, Dr. Trenkle M.D., coroner for San Bernardino, California in the death of Peter Limanni. Both of these prosecution witnesses tried to support the state's theories on the times of death.

26.) That defense counsel was ineffective in the cross-examinations of both doctors is shown by the record. Dr. Green was cross-examined for eight pages of testimony, Dr. Trenkle was cross-examined for four pages of testimony.

27.) That defense counsel presented no experts in the field of forensic pathology along with nominal cross-examination of prosecution experts was blatant ineffective assistance of counsel in a capital murder trial leaving the jury to again rely solely on the prosecution's experts resulting in severe prejudice to Seka, causing Seka's illegal convictions. Therefore based upon this ineffective assistance of counsel Seka's convictions must be VACATED.

28.) That the State, without pre-trial notice, presented DNA expert David Welch, an employee of the Las Vegas Metropolitan Police Department, who had only testified three or four times as an expert on the type of DNA testing done in this case. Furthermore Mr. Welch exhausted five of the twelve samples presented to him for testing in this case.

29.) That given the above it was complete ineffecti-  
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assistance of counsel for Seka's defense attorney not to present a DNA expert at trial. Once again the jury was left to rely only on a prosecution expert during their four plus days of deliberations.

3c) That due to the ineffective assistance of Seka's trial attorneys, here as asserted above, Seka was grossly prejudiced at trial and his defense suffered severely. Based upon the alleged failures of trial counsel, Seka's defense was devastated resulting in his illegal convictions. This now requires the convictions VACATED.

### Ground Three

Petitioner was denied his rights under the Sixth and Fourteenth Amendments to the U.S. Constitution to effective assistance of counsel and due process on Direct Appeal by his direct appeal attorney's failure to identify and raise meritorious claims and issues within petitioners only Direct Appeal of Constitutional right to a criminal defendant and while under a conflict of interest.

WHEREAS, Petitioner swears and alleges that he suffered the deprivation of effective assistance of counsel on his direct appeal, his only appeal of Constitutional right to a criminal defendant, by direct

appeal attorney Peter Christiansen due to his failure to review the trial record and raise meritorious issues, and due to his conflict of interest on appeal in the case.

WHEREFORE, Petitioner Seka hereby incorporates all relevant facts and allegations contained within the other grounds for relief, above and below, as though the same were fully set forth herein and in support hereof, AVID:

31.) That attorney Peter Christiansen was both trial counsel and also counsel on direct appeal for Seka on Appeal number 37907 to the Nevada Supreme Court

32.) That due to Mr. Christiansen's role as trial counsel, he labored under a conflict of interest later while preparing the direct appeal in this case. The result of Mr. Christiansen being both trial and appellate counsel, as the courts are starting to acknowledge, is that such attorney's ability to objectively analyze, discover and raise issues of error and ineffective counsel conduct is precluded. This is because, obviously, acting as appellate counsel would require the lawyer to lodge claims, issues and errors against himself, wherein the conflicting interests manifest.

33.) That the conflicting interests of competently representing Seka on direct appeal and raising challenges against his own trial representation deprived Seka of effective assistance of counsel

On his direct appeal. The multiple issues presented, above and below in this petition could, and should have been litigated in Seka's Direct Appeal. In the State of Nevada, the Direct Appeal is the only review of a criminal conviction wherein a person possesses the Constitutional right to counsel.

34.) That the deprivation of effective assistance of counsel on Seka's only Direct Appeal as of right prejudiced Seka as the many issues of Constitutional error raised herein, above and below, were not located, presented and reviewed on Direct Appeal which would have resulted in reversal of Seka's illegal convictions. This failure now requires Seka's convictions VACATED.

#### Ground Four

Petitioner's convictions and sentence are invalid and unconstitutional in violation of the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution to due process, a fundamentally fair trial and equal protection due to the State's failure to disclose material exculpatory and impeachment evidence on Mr. Thomas Creamer.

WHEREAS, Petitioner hereby swears and alleges that he was deprived of due process, a

fundamentally fair trial and equal protection by the State's failure to produce, before trial, Mr. Thomas Creamer's psychiatric, substance abuse and recent criminal histories to the defense. This failure caused the jury to convict Seka.

WHEREFORE, Petitioner hereby incorporates all relevant facts and allegations contained within the other grounds for relief, above and below, as though the same were fully set forth herein, in support hereof AND:

35.) That before trial the State knew that its most important witness, Mr. Creamer, had a long psychiatric and substance abuse history as well as a recent criminal history. This information with documentation is Brady material.

36.) That Mr. Creamer testified at trial while under the influence of Remeron, Tranxene, Zitalin and Xanax. And under the care of one or more physicians for alcohol addiction and depression.

37.) That at trial Mr. Creamer testified that Seka allegedly confessed to him, on one occasion while Mr. Creamer was in a mental institution that Seka had him committed to against Mr. Creamer's will.

38.) That Mr. Creamer's testimony was very

important to the state's case against Seka as he was the only witness who made direct assertion of Seka's guilt. This makes the Brady material even more important to the defense.

9.) That Mr. Creamer's psychiatric, substance abuse and recent criminal histories are important impeachment and exculpatory Brady materials that must be given to the defense as part of discovery.

10.) That the suppression of this Brady material directly affecting the credibility of the state's most important witness violated Seka's constitutional rights to due process, fundamental fairness and equal protection and caused Seka's convictions.

11.) That without this Brady material Seka's defense attorneys were unable to meaningfully cross-examine Mr. Creamer, or subpoena one or more of Mr. Creamer's mental health physicians to testify, leaving the jury with many unanswered questions during their four plus days of deliberation. This now demands that Seka's convictions be VACATED.

## Ground Five

Petitioner is in custody in violation of his rights to due process and a fair trial as guaranteed by the Fifth and Fourteenth Amendment to the U.S. Constitution due to the trial court's erroneous instructions on lesser included offences.

WHEREAS, Petitioner hereby swears and alleges that he was deprived of due process and a fair trial by the erroneous instructions on lesser included offences.

WHEREFORE, Petitioner hereby incorporates all relevant facts and allegations contained within the other grounds for relief, above and below, as though the same were fully set forth herein, in support hereof AND:

12.) That petitioner's trial was a Capitol Murder Trial where a death qualified jury was seated and the State sought first degree murder convictions and the death penalty from their opening statements.

13.) That the State sought first degree convictions on two separate counts of murder with use of a deadly weapon and two counts of robbery with use of a deadly weapon, alleging the respective victims were robbed as part of each murder.

14.) That the State used the felony murder rule as part of its reasoning to seek the death penalty. Using the theory that each of the

victims was robbed as part of each murder making the alleged murders first degree by law 45) That from opening statements through the trial and in closing arguments the State sought only first degree murder convictions and robbery convictions both with use of a deadly weapon 46) That after four plus days of deliberation the jury returned a confused verdict unsupported by the evidence or the theory presented by the State during the trial. The jury's verdict shows that they did not understand their instruction. The jury's verdict was: Count I First degree murder with use of a deadly weapon. Count II Second degree murder with use of a deadly weapon. Count III Robbery. Count IV Robbery. The lack of the with the use of a deadly weapon on the robberies but on the alleged murders also shows the jury's confusion as does the second degree murder conviction on count II.

47) That the instructions on lesser included offense completely confused the jury is obvious from their verdict. The inclusion of these instructions denied Seka of due process and a fair trial resulting in his illegal convictions. The unreliability of the jury's verdict now requires Seka's convictions VOIDED.



## Ground Six

Petitioner was denied his rights under the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution to due process, equal protection and a fair trial by the improper jury instruction on Reasonable Doubt which illegally lowered the State's burden.

WHEREAS, Petitioner hereby swears and alleges that he was deprived of due process, equal protection and a fair trial because the jury instruction on Reasonable Doubt raised which a jury must have before acquitting a criminal defendant.

WHEREFORE, Petitioner hereby incorporates all relevant facts and allegations contained within the other grounds for relief, above and below, as though the same were fully set forth herein, in support hereof AND:

48) That jury instruction number thirty-three (33) illegally defines Reasonable Doubt by presuming the State is going to meet the burden of proof placed upon it and raising the level of doubt which a jury must harbor before acquitting Seka, or any criminal defendant. There are three portions of language in charge number 33 which deny due process, equal protection and a fair trial by confusing the legal standard of proof, those parts are:

"The defendant is presumed innocent until the contrary is proved... is such a doubt as would govern or control a person in the more weighty affairs of life, ... (and then) can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt."

Instruction 33 in part

49.) That the words, until; and; is; in the opening sentence of charge number 33 are burden-shifting words. They presume the state will meet the burden placed upon them.

50.) That the standard set forth in charge number 33, calling for a jury not to find doubt until they are governed or controlled illegally sets the scale in violation of the Fourteenth Amendment.

51.) That the language of "feel an abiding conviction of the truth of the charge", first provides improper emotional "feelings" to accumulate in the mind of the jury similar to the offending wording of "to a moral certainty", and secondly this allows for such "feelings" about "the truth of the charge" to sway a juror into allowing a release of the state of its burden to prove each element of the crime through evidence simply because they feel and believe in the truth of the indictment or information<sub>82</sub> which are only

allegations. This allowed Seka's conviction upon insufficient evidence and the deprivation of due process.

52.) That due to the illegal operation of jury instruction number 33 the jury in this case was confused during their four plus days of deliberations and were hoodwinked into illegally rendering a discombobulated conviction unsupported by the State's theory of the case. The resulting impact of instruction number 33 on the jury and the violations of the Fifth, Sixth and Fourteenth Amendments make Seka's convictions illegal and mandates the convictions VACATED.

### Ground Seven

Petitioner is in custody in violation of his right to due process of law under the Fifth and Fourteenth Amendments to the U.S. Constitution by the trial Court erroneously giving the jury Instruction number Fourteen (14) on a unanimous verdict.

WHEREAS, Petitioner hereby swears and alleges that he was deprived of his rights to due process of law by the trial Court's giving jury instruction number 14 on a unanimous verdict.

WHEREFORE, Petitioner hereby incorporates all relevant facts and allegations contained within the other grounds for relief, above and below, as though the same were fully set forth herein, in support hereof AND:

53.) That the language in jury instruction number 14 "...you do not have to agree on the theory of guilt..." illegally reduced the burden of proof for the State.

54.) That the complicated nature of this case involving two separate incidents of alleged murder and robbery, was effected very critically by this jury instruction.

55.) That the unanimous instruction violated Seke Constitutional rights to due process, confused the jury as shown by their four plus days of deliberation, and led to an unreliable confused verdict, inconsistent with the State's theory, the must now be VALATED.

### Ground Eight

Petitioner's convictions and sentences are invalid under the Federal Constitutional guarantees of the Fifth and Fourteenth Amendments of the U.S. Constitution to due process, equal protection, and trial before an impartial jury because the Malice Aforethought, Express Malice, Deliberation,

and Premeditation jury instructions given at trial improperly lowered the state's burden of proof.

WHEREAS, Petitioner hereby swears and alleges that he was denied due process, equal protection and a trial before an impartial jury by the jury instructions on Malice Aforethought, Express Malice, Deliberation and Premeditation, which lowered the State's burden of proof and confused the jury.

WHEREFORE, Petitioner hereby incorporates all relevant facts and allegations contained within the other grounds for relief above and below, as though the same were fully set forth herein, in support hereof AND:

56) That jury instructions six (6), Seven (7), Ten (and Eleven (11) presume malice aforethought, Express malice, Deliberation and Premeditation which lowered the state's burden of proof.

57) That by lowering the burden of proof for the state in this confusing, circumstantial case these jury instructions mislead the jury into rendering a confused unreliable verdict.

58) That these jury instructions violated Seka's constitutional rights of due process, equal protection and trial before an impartial jury

making the resulting convictions unconstitutional  
Seka's convictions must now be VACATED

### Ground Nine

Petitioner's convictions and sentence are invalid under the Federal Constitutional guarantees of the Fifth and Fourteenth Amendments to the U.S. Constitution to due process because the Las Vegas Metropolitan Police Department failed to adequately investigate the murders of Peter Limanni and Eric Hamilton as well as the alleged robberies.

WHEREAS, Petitioner, hereby swears and alleges that he was denied due process because the investigation done by the Las Vegas Metropolitan Police Department (hereafter LVMPD) was wholly inadequate.

WHEREFORE, Petitioner, hereby incorporates all relevant facts and allegations contained within the other grounds for relief, above and below, although the same were fully set forth herein in support hereof AND.

51) That this was a Capital Murder Trial where a death qualified jury was impanelled and the state sought the ultimate penalty of Seka's death.

2.) That fingerprints and DNA reference samples of Mr. Kato and Mr. Toe, the Japanese investors from whom Mr. Limanni scammed over one hundred thousand dollars (\$100,000.00), were never obtained to compare to identifiable latent prints never identified on items found with Mr. Hamilton's body.

21.) That during the course of detective Thowson's investigation of Mr. Hamilton's death he never discovered that when Mr. Hamilton was arrested on November 6, 1998 Mr. Hamilton had no money or wallet in his possession or when released on November 12, 1998.

22.) That detective Thowson never followed up on a witness statement of a Mr. Banks who voluntarily made a statement to LVMPD about a brown van he had seen at 1:20 AM on November 10, 1998 near the area Mr. Hamilton's body was discovered.

23.) That on December 14, 1998 detective Thowson subpoenaed the records of four cellphones, one of which he believed to be Mr. Limanni's a cellphone number he had. Not until February 22, 2001 while testifying did detective Thowson realize he had subpoenaed the wrong cellphone records twenty-five (25) months earlier. The right cellphone records for Mr. Limanni were never obtained.

24.) That detective Thowson directed Mr. Limanni's sister to call the LVMPD and file a missing persons report on her brother with the LVMPD.

25.) That officers Nogués and Kroll did not do reports on the events of November 17, 1998 until directed to by detective Thowson on December 5, 1998.

26.) That the LVMPD failed to find out where and when Mr. Limanni died leaving Count II to read "... on or between November 5, 1998 and December 23, 1998..."

27.) That the LVMPD failed to adequately investigate or interview Mr. Limanni's business partners Mr. Kato and Mr. Tak, from whom Mr. Limanni scammed over one-hundred thousand dollars. Only talking to Mr. Kato by phone and never to Mr. Tak because he had gone back to Japan. Never checked to see if either had a criminal history. And not knowing till told at trial that Mr. Kato had to declare bankruptcy because of Mr. Limanni's scam.

28.) That these omissions and mistakes plus any other unknown omissions of investigation leave unknown any exculpatory evidence and other evidence favorable to the defense.

29.) That Seka's constitutional rights to due

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process were violated in this capital case and now require Seka's convictions VACATED.

### Ground Ten

Petitioner's convictions and sentence are unconstitutional under the Federal guarantees of the Fifth and Fourteenth Amendments of the U.S. Constitution to due process by prosecutorial misconduct before and during trial.

WHEREAS, Petitioner hereby swears and alleges that he was deprived of due process by prosecutorial misconduct before and during trial.

WHEREFORE, Petitioner hereby incorporates all relevant facts and allegations contained within the other grounds for relief, above and below, as though the same were fully set forth herein, in support hereof AND:

10) That the State failed to give notice before trial that their DNA expert would be testifying for the State at trial. Denying Seka's defense attorneys the opportunity to have a rebuttal DNA witness prepared to testify. Trial transcript (here after TT) February 13<sup>th</sup> Vol. I p. 25 LL 12-18. TT February 14<sup>th</sup> Vol I p. 3 through 15 Inclusive

11.) That before trial the State never disclosed to the defense that their main witness has a long psychiatric and substance abuse history as well as a recent criminal history.

12.) That the prosecutor elicited prejudicial, irrelevant and hearsay testimony from Mr. Creamer. Testimony that was so improper that Sekas attorneys made a formal motion for a mistrial, which was denied. TT February 20 Vol. I p 7 LL 5-23, p 8 LL 22-25, p 9 LL 1-4, p 11 LL 11-25, p 13 LL 1-15, p 14 LL 1-24, p 17 LL 17-25, p 18 LL 1-9. TT February 20 Vol II pp 8 through 15

13.) That the prosecutor improperly told the jury that Mr. Limanni was already killed when that fact was never established during the trial. TT February 23 Vol I p 34 LL 14-16 "He wanted to hide the fact that Peter Limanni had already been brutally murdered and left in a gravesite over the border in California."

14.) That the prosecutor improperly expressed his personal opinion, finding the manner in which the bodies were discarded "interesting." TT February 23 Vol I p 67 LL 2-4 "what about the way, the manner in which the bodies were discarded? I find that interesting."

15.) That the prosecutor improperly told the jury that one of their own witnesses

was wrong about the date that witness thought he last saw Mr. Limanni alive and told the jury the date the witness really went. TT February 23 Vol I p 34 L 17 to p 36 L 11 76) That the prosecutor improperly vouched for the truthfulness of his LVMPD witnesses TT February 23 Vol II p. 54 LL 14-19 "The patrol guys who appeared at the scene, Counsel says I'm not condemning Officer Nogues. He's not? Officer Nogues said on the stand that he took an oath to tell you the truth, and he knew when he did that that this man was on trial for murder facing a possible death sentencing" TT February 23 Vol II p 55 LL 2-10. "If Defense counsel is to be believed, he perjured himself. He sat up on the stand, put his career on the line, lied under oath with a man's life at stake. You had a chance to see him, to observe his demeanor and his partner's demeanor. Did he look like that to you? Did he look like a boy scout, or did he look like somebody who would come in here and lie with somebody's life at stake because he didn't want homicide detectives to be mad at him?"

77) That the prosecutor asked his own DNA expert if the defense could have tested the evidence illegally shifting the burden to the

defence which was completely improper. TT February 16 Vol II p.22 LL 23-24. "So the defense could have done a re-test on those two?"

78.) That the prosecutor opposed suggested changes, by Seka's attorneys, to the jury instructions. Jury instructions that improperly lowered the State's burden of proof.

79.) That the multiple instances of intentional prosecutorial misconduct cannot be found harmless beyond a reasonable doubt and require Seka's convictions VACATED.

### Ground Eleven

Petitioner's convictions and sentence are invalid under the Federal Constitutional guarantees of the Sixth and Fourteenth Amendments to the U.S. Constitution to effective assistance of counsel and due process by appellate counsel's failure to present issues on Direct Appeal as U.S. Constitutional violations.

WHEREAS, Petitioner hereby swears and alleges that he was denied due process and effective assistance of counsel on direct appeal by counsel's failure to present issues as U.S. Constitutional violations.

WHEREFORE, Petitioner hereby incorporates all

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relevant facts and allegations contained within the other grounds for relief, above and below, as though the same were fully set forth herein, in support hereof AND:

30.) That appellate counsel Peter Christiansen presented five issues to the Nevada Supreme Court for review:

- (1) Was it error for the court to allow the State to introduce flight evidence as an indicia of guilt.
- (2) Did the Court lack jurisdiction to hear the charges of murder with the use of a deadly weapon and robbery with use of a deadly weapon of Peter Limanni.
- (3) Was it improper for the District Court to allow the State to join the charges against Mr. Seka for the charges pertaining to Peter Limanni and Eric Hamilton.
- (4) Did the State's failure to preserve evidence violate Mr. Seka's constitutional right to due process.
- (5) Does the State's failure to produce sufficient evidence to support a conviction, beyond a reasonable doubt, require Mr. Seka's convictions be reversed.

Only issue number four (4.) can even remotely be said to have been presented as a constitutional question for the Nevada Supreme

Court to answer.

81.) That all five issues, above, presented on Seka's Direct Appeal should have been presented as U.S. Constitutional violations. Because they were not the Nevada Supreme Court was not required to address them as Constitutional violations denying Seka an adequate review.

82.) That by failing to present the issues in Seka's Direct Appeal as violations of U.S. Constitutional rights Peter Christiansen in effect waived Seka's fundamental Constitutional right to seek review of the Constitutional violations in the Federal Courts due to 28 U.S.C. § 2254 requiring that a state prisoner first present the alleged violations of the U.S. Constitution to the state courts before seeking review in the Federal Courts. The issues are now presented here as U.S. Constitutional violations for consideration herein this petition as well as to preserve them for Federal Court consideration.

(1) Petitioner is in custody in violation of his rights to due process and a fair trial as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution by the trial Court erroneously allowing the State to introduce flight  
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evidence as an indicia of guilt and by giving the jury instruction number thirty-one (31) on flight.

(2.) Petitioner's convictions and sentence are invalid under the Federal Constitutional guarantees of the Sixth and Fourteenth Amendments to the U.S. Constitution to due process, equal protection and the right to trial in the State and District where the crime was committed because petitioner was convicted and sentenced in Clark County, Nevada for offenses over which the Court had no jurisdiction.

(3.) Petitioner's convictions and sentence are invalid under the Federal Constitutional guarantees of the Sixth and Fourteenth Amendments to the U.S. Constitution to due process and equal protection because the trial Court allowed the State to join the charges pertaining to Mr. Limanni and Mr. Hamilton.

(4.) Petitioner's convictions and sentence are invalid under the Federal Constitutional guarantees of the Fifth and Fourteenth Amendments to the U.S. Constitution to due process a fair trial and equal protection by the State's failure to preserve evidence. 800

(5.) Petitioner's convictions and sentence are invalid under the Federal Constitutional guarantees of the Fifth and Fourteenth Amendments to the U.S. Constitution to due process due to the State's failure to produce sufficient evidence to support a conviction beyond a reasonable doubt.

33) That the above five issues are now presented as U.S. Constitutional violations of Seka's rights.

34) That by failing to present the original issues on Seka's Direct Appeal as Constitutional violations, Peter Christiansen has shifted the burden to Seka to show cause and prejudice for the failure to present them on Seka's Direct Appeal. Whereas had Peter Christiansen presented the issues as Constitutional violations and the Nevada Supreme Court agreed that one or more of the issues was error, the State would have the burden of proving the errors were harmless rather than the burden being on Seka as it now is. This is clearly ineffective assistance of Counsel and requires that Seka's convictions now be VACATED.



## Ground Twelve

Petitioner's convictions and sentence are invalid under the Federal Constitutional guarantees of the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution to due process, equal protection, the effective assistance of trial and direct Appeal counsel, a fair trial and an impartial jury due to the cumulative errors in the admission of evidence, misconduct by the prosecutor, the improper jury instructions, the investigative failures of the State and the ineffective assistance of counsel before, during and after trial.

WHEREAS, Petitioner hereby swears and alleges he was denied a constitutionally fair trial due to the extensive instances of prejudicial cumulative errors before, during and after trial.

WHEREFORE, Petitioner hereby incorporates all of the facts and allegations contained within the eleven grounds for relief above as though each were fully set forth herein and in support hereof.

§5) That the cumulative errors laid out in the above eleven grounds and the fact that Seka is actually innocent denied petitioner a fair trial, that would have resulted in a not guilty verdict, now require Seka's convictions to be VACATED

1 EXECUTED at Ely State Prison on the 9<sup>th</sup> day  
2 of February, 2004.  
3

4 JO Sika  
5 Signature of Petitioner  
6 John Joseph Sika Doc # 69025  
7 Ely State Prison  
8 Address  
9 P.O. Box 1989  
10 Ely Nevada 89301

11 Propria Personum  
12 Signature of Attorney (if any)

13 Attorney for Petitioner

14 Address

15 VERIFICATION

16 Under penalty of perjury, the undersigned declares that he  
17 is the petitioner named in the foregoing petition and knows the  
18 contents thereof; that the pleading is true of his own  
19 knowledge, except as to those matters stated on information and  
20 belief, and as to such matters he believes them to be true.

21 JO Sika  
22 Signature of Petitioner

23 N/A  
24 Attorney for Petitioner

25 John Joseph Sika  
26 Ely State Prison  
27 P.O. Box 1989  
28 12000 N. Bothwick Rd  
Ely NV 89301  
Petitioner, Propria Persona

CERTIFICATE OF SERVICE BY MAIL

I, John Joseph Seka, hereby certify pursuant to N.R.C.P. 5(b), that on the 9<sup>th</sup> day of February, 2004, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

E. K. McDaniel Warden  
Respondent prison or jail official  
Ely State Prison  
P.O. Box 1989  
Ely NV 89301  
Address

Brian Sandoval  
Nevada Attorney General  
100 N Carson St  
Carson City NV 89701-4717

Clerk of The Court  
8<sup>th</sup> Judicial District Court  
200 S. Third St.  
P.O. Box 551601  
Las Vegas NV 89155

David Roger  
District Attorney of County of Conviction  
Clark County District Attorney  
200 S Third St.  
Address  
P.O. Box 552212  
Las Vegas NV 89155

John Joseph Seka  
Signature of Petitioner  
John Joseph Seka #69025  
Ely State Prison  
P.O. Box 1989  
Ely, NV 89301

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN JOSEPH SEKA,

No. 37907

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

SEP 17 2001

JANE LEE M. BLUM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
COURT REPORTER

JOHN JOSEPH SEKA,

No. 37937

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

ORDER TO SHOW CAUSE

Docket No. 37907 is an appeal from a judgment of conviction. Docket No. 37937 is a proper person appeal from a decision of the district court denying appellant's proper person petition for a writ of habeas corpus. Our review of the appeal in Docket No. 37937 reveals a potential jurisdictional defect.

On April 24, 2001, prior to sentencing and entry of the written judgment of conviction, appellant filed a proper person petition for a writ of habeas corpus in the district court. Two days later, on April 26, 2001, the district court conducted a sentencing hearing in the underlying case. The minutes of the district court proceedings of April 26, 2001, contain an additional entry dated May 1, 2001, relating to the proper person habeas petition filed on April 24, 2001. That entry states that the petition was not properly brought before the district court for two reasons: (1) the issue had been entertained and denied on two previous occasions, and (2) appellant could not file proper person documents while he was being represented by counsel. A written judgment of conviction was filed in the district court on May 9, 2001, and a timely appeal from the written judgment of conviction was filed and docketed in this court in Docket No.

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37907. Appellant's counsel in the direct appeal in Docket No. 37907 is attorney Peter Christiansen.

On May 24, 2001, appellant filed a proper person notice of appeal from district court's decision of May 1, 2001, denying his proper person habeas corpus petition. The proper person appeal from that decision is docketed in this court as Docket No. 37937.

The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.<sup>1</sup> Appellant's proper person petition for a writ of habeas corpus was filed prior to sentencing and denied prior to the entry of the final judgment. Therefore, it appears that appellant is attempting to perfect a proper person appeal from an interlocutory decision of the district court. No statute or court rule provides for such an appeal.<sup>2</sup> Thus, from our review of the documents before this court, it appears that this court lacks jurisdiction to consider the appeal in Docket No. 37937.

Notably, however, NRS 177.045 permits this court to review in the context of an appeal from a final judgment of conviction any decision of the district court made in an intermediate order or proceeding forming part of the record. It appears that these appeals potentially involve related assignments of error pertaining to several habeas corpus petitions that were filed and resolved by intermediate orders of the district court prior to the entry of the final judgment of conviction. Thus, pursuant to NRS 177.045, it appears that any assignments of error relating to the district court's denial of appellant's proper person habeas petition may be properly raised and considered in the context of the direct appeal from the judgment of conviction.

Accordingly, attorney Christiansen shall have twenty (20) days from the date of this order within which to show cause: (1) why the proper person appeal in Docket No. 37937 should not be dismissed for lack of jurisdiction; and (2) why any assignments of error arising out of the district court's interlocutory denial of the proper person petition for a writ

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<sup>1</sup>Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

<sup>2</sup>See, e.g., Gary v. Sheriff, 96 Nev. 78, 605 P.2d 212 (1980) (no appeal lies from a order denying a pretrial petition for a writ of habeas corpus); see also NRS 34.575 (defining appealable determinations involving petitions for writ of habeas corpus).

of habeas corpus cannot be presented and resolved in the context of the direct appeal from the judgment of conviction.

It is so ORDERED.

Mauger C.J.

cc: Attorney General  
Clark County District Attorney  
Kajioka, Christiansen & Toti  
John Joseph Seka

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN JOSEPH SEKA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37907

**FILED**

NOV 20 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

JOHN JOSEPH SEKA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37937

ORDER DISMISSING APPEAL

Docket No. 37907 is an appeal from a judgment of conviction. Docket No. 37937 is a proper person appeal from a decision of the district court denying appellant's proper person petition for a writ of habeas corpus. Our preliminary review of the appeal in Docket No. 37937 revealed a potential jurisdictional defect.

On April 24, 2001, prior to sentencing and entry of the written judgment of conviction, appellant filed a proper person petition for a writ of habeas corpus in the district court. Two days later, on April 26, 2001, the district court conducted a sentencing hearing in the underlying case. The minutes of the district court proceedings of April 26, 2001, contain an additional entry dated May 1, 2001, relating to the proper person habeas petition filed on April 24, 2001. That entry states that the petition was not properly brought before the district court for two reasons: (1) the issue had been entertained and denied on two previous occasions, and (2) appellant could not file proper person documents while he was being represented by counsel. A written judgment of conviction was filed in the district court on May 9, 2001, and a timely appeal from the written judgment of conviction was filed and docketed in this court in Docket No.

01-19458

APP1552

37907. Appellant's counsel in the direct appeal in Docket No. 37907 is attorney Peter Christiansen.

On May 24, 2001, appellant filed a proper person notice of appeal from district court's decision of May 1, 2001, denying his proper person habeas corpus petition. The proper person appeal from that decision is docketed in this court as Docket No. 37937.

The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.<sup>1</sup> Appellant's proper person petition for a writ of habeas corpus was filed prior to sentencing and denied prior to the entry of the final judgment. Therefore, it appears that appellant is attempting to perfect a proper person appeal from an interlocutory decision of the district court. No statute or court rule provides for such an appeal.<sup>2</sup> Thus, from our review of the documents before this court, it appears that this court lacks jurisdiction to consider the appeal in Docket No. 37937.

Notably, however, NRS 177.045 permits this court to review in the context of an appeal from a final judgment of conviction any decision of the district court made in an intermediate order or proceeding forming part of the record. It appears that these appeals potentially involve related assignments of error pertaining to several habeas corpus petitions that were filed and resolved by intermediate orders of the district court prior to the entry of the final judgment of conviction. Thus, pursuant to NRS 177.045, it appears that any assignments of error relating to the district court's denial of appellant's proper person habeas petition may be properly raised and considered in the context of the direct appeal from the judgment of conviction.

Accordingly, on September 17, 2001, this court ordered Mr. Christiansen to show cause why the proper person appeal in Docket No. 37937 should not be dismissed for lack of jurisdiction and why any assignments of error arising out of the district court's interlocutory denial of the proper person petition for a writ of habeas corpus could not be

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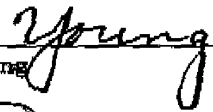

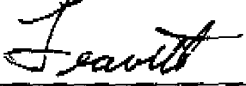
<sup>1</sup>Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

<sup>2</sup>See, e.g., Gary v. Sheriff, 96 Nev. 78, 605 P.2d 212 (1980) (no appeal lies from a order denying a pretrial petition for a writ of habeas corpus); see also NRS 34.575 (defining appealable determinations involving petitions for writ of habeas corpus).



presented and resolved in the context of the direct appeal from the judgment of conviction. On October 10, 2001, Mr. Christiansen filed a response. Mr. Christiansen has offered no explanation for why the appeal in Docket No. 37937 should not be dismissed for lack of jurisdiction.<sup>3</sup> Because no statute or court rule provides for an independent appeal from an interlocutory order of the court and because any issues relating to the denial of an interlocutory order may be raised in the context of a direct appeal, we dismiss the appeal. Further, we reinstate the briefing schedule in Docket No. 37907. Appellant shall file and serve the opening brief on or before December 3, 2001. Thereafter, briefing shall proceed in accordance with the schedule set forth in NRAP 31.

It is so ORDERED.

  
Young J.  
  
Agosti J.  
  
Leavitt J.

cc: Hon. Donald M. Mosley, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Kajioke, Christiansen & Toti  
John Joseph Seka  
Clark County Clerk

<sup>3</sup>Although the response and attached authorization submitted by Mr. Christiansen and appellant are not entirely clear because these documents speak of withdrawing the petition rather than dismissing the appeal, it appears from this court's review of the documents before it that Mr. Christiansen and appellant are in agreement that the appeal in Docket No. 37937 should not proceed further.

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. R. [Signature]*  
JUDICIAL 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 gunshot wounds. The body was covered with wood, lying face down near a set off the 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.<sup>1</sup> This court has reviewed flight

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<sup>1</sup>See 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.<sup>2</sup>

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.<sup>3</sup>

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

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<sup>2</sup>See id.

Additionally, 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.<sup>4</sup> 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

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<sup>4</sup>NRS 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.<sup>5</sup> Decisions to sever charges "are within the sound discretion of the trial court and will not be reversed absent an abuse of discretion."<sup>6</sup> We review alleged errors by the district court under a harmless error analysis.<sup>7</sup>

However, even if joinder is permissible under NRS 173.115, it may still be inappropriate if joinder would have unfairly prejudiced the defendant.<sup>8</sup> To establish that joinder was prejudicial "requires more than

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<sup>5</sup>NRS 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.

<sup>6</sup>Robins v. State, 106 Nev. 611, 619, 798 P.2d 558, 563 (1990) (citing Lovell v. State, 92 Nev. 128, 132, 546 P.2d 1301, 1303 (1976)).

<sup>7</sup>See 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)).

<sup>8</sup>See 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.”<sup>9</sup> Reversal for misjoinder is required only if the error “has a substantial and injurious effect on the jury’s verdict.”<sup>10</sup>

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.

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<sup>9</sup>Floyd v. State, 118 Nev. \_\_\_, \_\_\_, 42 P.3d 249, 255 (2002) (quoting United States v. Wilson, 715 F.2d 1164, 1171 (7th Cir. 1983)).

<sup>10</sup>Middleton, 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."<sup>11</sup> 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).<sup>12</sup> 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.<sup>13</sup>

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<sup>11</sup>Tillema v. State, 112 Nev. 266, 268, 914 P.2d 605, 606 (1996) (quoting Mitchell, 105 Nev. at 738, 782 P.2d at 1342.)

<sup>12</sup>NRS 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.

<sup>13</sup>See 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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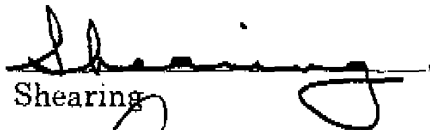
*... continued*


Nev. 53, 68, 17 P.3d 397, 407 (2001); see also Arizona v. Youngblood, 488 U.S. 51, 57-58 (1988).

to the State."<sup>14</sup> In addition, this court has specifically stated that "[c]ircumstantial evidence alone may sustain a conviction."<sup>15</sup>

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

<sup>14</sup>Grant 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)).

<sup>15</sup>McNair 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)).

FILED

2005 JAN 31 P 6:30

1 **ORDR**  
2 **DAVID ROGER**  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 **EDWARD R.J. KANE**  
6 Chief Deputy District Attorney  
7 Nevada Bar #001438  
8 200 South Third Street  
9 Las Vegas, Nevada 89155-2212  
10 (702) 455-4711  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 **JOHN JOSEPH SEKA,**  
16 #1525324

17 Defendant.

CASE NO: C159915

DEPT NO: XIV

18 **FINDINGS OF FACT, CONCLUSIONS OF LAW**  
19 **AND ORDER DENYING DEFENDANT'S**  
20 **PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

21 DATE OF HEARING: 11/5/04  
22 TIME OF HEARING: 9:00 A.M.

23 THIS MATTER having come on for hearing before the above entitled Court on the  
24 5th day of November, 2005, the Defendant being present, in proper person, the Plaintiff  
25 being represented by DAVID ROGER, District Attorney, through EDWARD R.J. KANE,  
26 Chief Deputy District Attorney, upon the Defendant's PETITION FOR WRIT OF HABEAS  
27 CORPUS, filed on February 24, 2004; and the court having reviewed and carefully  
28 considered the defendant's petition, the State's return, and all related filings; and the court  
having received affidavits from both of defendant's trial defense counsel (KIRK T.  
KENNEDY, and PETER S. CHRISTIANSEN); and both Mr. KENNEDY and Mr.  
CHRISTIANSEN having been present at the hearing and examined under oath by all parties  
and by the court; and the Court having heard the arguments of counsel and the defendant,

1 and good cause appearing therefor, the Court now makes the following FINDINGS OF  
2 FACT AND CONCLUSIONS OF LAW and enters the following ORDER.

3 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

4 1. This defendant was charged with two counts of Murder with Use of a Deadly  
5 Weapon and two counts of Robbery With a Deadly Weapon. The case was tried to a jury in  
6 February of 2001, and the jury returned verdicts of guilty of First Degree Murder with Use  
7 of a Deadly Weapon (Count I; victim=Eric Hamilton), guilty of Second Degree Murder with  
8 Use of a Deadly Weapon (Count II; victim=Peter Limanni), guilty of Robbery (Count III;  
9 victim=Eric Hamilton), and guilty of Robbery (Count IV; victim=Peter Limanni). The  
10 defendant was sentenced, on April 26, 2001, to consecutive terms of life without the  
11 possibility of parole for the Hamilton murder, life with the possibility of parole after ten  
12 years for the Limanni murder, and sentences of minimum 35 months, maximum 156 months  
13 on each of the robbery charges. All weapons enhancements ran consecutive to one another  
14 by law; all counts ran consecutive to one another by order of the court. The defendant filed a  
15 direct appeal from his conviction, which resulted in an affirmance by the Nevada Supreme  
16 Court on April 8, 2003. (Two days prior to his sentencing, the defendant had filed a pro per  
17 PETITION FOR WRIT OF HABEAS CORPUS, which was dismissed by the Nevada  
18 Supreme Court, due to the pendency of the appeal.) On February 24, 2004, the defendant  
19 filed the instant PETITION FOR WRIT OF HABEAS CORPUS. On April 6, 2004, the  
20 State filed STATE'S OPPOSITION TO DEFENDANT'S PETITION FOR WRIT OF  
21 HABEAS CORPUS. Additionally, both Mr. KENNEDY and Mr. CHRISTIANSEN filed  
22 affidavits responding to specific allegations involving their preparation and trial defense  
23 work.

24 2. A hearing was held on November 5, 2004. The defendant was present. The State  
25 was represented by EDWARD R.J. KANE. Mr. KENNEDY and Mr. CHRISTIANSEN  
26 (who represented the defendant both at trial and throughout direct appeal) were both present  
27 and were sworn as witnesses. The court discussed and received evidence on each allegation  
28 of error advanced by the defendant. Mr. KENNEDY and Mr. CHRISTIANSEN were both



1 sworn as witnesses, and they addressed each allegation of error in turn. Additionally, both  
2 were questioned by the prosecutor, by the court, and by the defendant. Finally, the court  
3 received representations and argument from the prosecutor and the defendant, and the court  
4 is now prepared to rule on the petition.

5 3. The defendant raises a number of issues, centering around ineffective assistance of  
6 counsel, and prosecutorial errors or misconduct. Each ground will be separately addressed  
7 below.

8 4. The defendant's allegations of ineffective assistance of trial defense counsel (and  
9 direct appeal counsel) are rejected. The court does not decide issues such as this in a  
10 vacuum. That is, the court is well acquainted with counsel who represented the defendant  
11 from the outset of the case through his direct appeal (Messrs. KENNEDY and  
12 CHRISTIANSEN). Both are capable, competent and experienced counsel, and the court has  
13 received no credible evidence that their performance, at any stage of the proceedings, fell  
14 below the required legal standard. Additionally, the court presided over the trial in this  
15 matter, and is familiar, on a firsthand basis, with the quality of the defendant's  
16 representation. Finally, the court received and has considered both the affidavits of Messrs.  
17 KENNEDY and CHRISTIANSEN, and their testimony at the hearing.

18 5. The defendant's allegation that he is entitled to relief because his counsel failed to  
19 adequately investigate and cross-examine prosecution witness Thomas Creamer is rejected.  
20 The record clearly indicates that Mr. Creamer had a history of drug, alcohol and mental  
21 health problems of which all counsel were well aware. Mr. Creamer was extensively, and  
22 effectively, cross-examined on these issues, and the issues were effectively argued to the  
23 jury.

24 6. The defendant's allegation that he is entitled to relief because his counsel failed to  
25 adequately investigate and cross-examine the coroner and the State's DNA expert, is  
26 rejected. As noted by defense counsel, extensive cross-examination of a coroner in a case of  
27 violent death, absent some issue on which the coroner can be helpful to the defense, is more  
28 likely to prejudice the defendant than to help him, as the jury's attention will be even more

1 focused on the injuries suffered by the victims. Additionally, as to the specific issue on  
2 which the defendant wanted more extensive cross-examination (time of death), the coroner  
3 had clearly indicated that the decomposition of the body rendered such an opinion  
4 impossible. As to the DNA expert, the defendant points to no errors in either the DNA  
5 examination or the witness's testimony which could have been effectively attacked by a  
6 hypothetical defense DNA expert.

7 7. The defendant's allegation that he is entitled to relief because his counsel failed to  
8 raise the issue of ineffectiveness of trial defense counsel on appeal is rejected. The proper  
9 forum for addressing a claim of ineffective assistance is not direct appeal, but a Petition for  
10 Writ of Habeas Corpus, such as the one addressed by this order. Counsel did nothing  
11 improper by failing to present a non-cognizable issue on appeal.

12 8. The defendant's allegation that he is entitled to relief because the State failed to  
13 disclose evidence of witness Creamer's prior psychiatric problems is rejected, and is  
14 absolutely belied by the record. Both at preliminary examination and trial, Mr. Creamer's  
15 problems were fully explored on cross-examination. Further, the specific records which the  
16 defendant claims the State failed to turn over to him (Creamer's medical records) were  
17 never, according to the representations of the prosecutor, in the possession of the State.  
18 Thus, there was clearly no **Brady** violation.

19 9. The defendant's allegation that he is entitled to relief because his counsel failed to  
20 object to certain jury instructions, or that the court gave improper instructions, is denied.  
21 Defendant primarily objects to the instruction on reasonable doubt. However, the instruction  
22 given was the statutory definition, which the Nevada Supreme Court has repeatedly ruled is  
23 the only definition to be used in jury instructions. Similarly, the defendant objects to the  
24 instruction stating that, although the jury must unanimously agree on the charge of first  
25 degree murder, they need not unanimously agree on the theory of first degree murder (i.e.,  
26 felony murder or premeditated murder). Again, the Nevada Supreme Court has repeatedly  
27 ruled that this instruction is proper. Finally, the defendant objects to a number of the  
28 instructions defining the elements of a murder charge, despite the fact that the instructions

1 given in this case were precisely those specifically mandated by the Nevada Supreme Court  
2 in Byford.

3 10. The defendant's allegation that he is entitled to relief because the police failed to  
4 conduct a proper investigation is rejected. There is no right, either under statute or case law,  
5 to what a defendant may consider "a proper investigation." If there are shortcomings in an  
6 investigation, the defendant's remedy is acquittal following trial. In this case, as in most  
7 criminal cases, the alleged inadequacies of the police investigation were fully explored on  
8 the record and argued to the jury. The fact that the jury apparently disagreed with the  
9 defendant's assessment of the quality of the police investigation does not entitle the  
10 defendant to any relief.

11 11. The defendant's allegation that he is entitled to relief because the prosecutor  
12 engaged in a variety of improper conduct (withholding evidence, improper argument,  
13 vouching) is rejected. All claims are belied by the record.

14 12. The defendant's allegation that he is entitled to relief because his counsel failed  
15 to specifically state his appeal issues before the Nevada Supreme Court as federal  
16 constitutional issues is rejected. The defendant advances the novel claim that because his  
17 counsel failed to argue federal constitutional issues in State court, he will be somehow  
18 prejudiced in some later federal habeas proceeding. Such claims are wholly speculative, and  
19 this is not the proper forum in which to raise them. The federal courts, at the appropriate  
20 time, can better address the merits, if any, of this issue.

21 13. The defendant's allegation that he is entitled to relief because of the cumulative  
22 effect of the foregoing claims of error is rejected. It is axiomatic that a defendant is entitled  
23 to a fair trial, but not a perfect trial. Indeed, it is difficult to believe that a perfect trial has  
24 ever been conducted. However, the defendant's "flyspecking" cannot accumulate a series of  
25 non-errors (or, at worst errors of little if any consequence) into a cumulative error, entitling  
26 him to relief. There was no ineffective assistance of counsel, such as to require remedial  
27 action; there was no prosecutorial misconduct, such as to require remedial action; there was  
28 no cumulative error, such as to require remedial action.

1 14. The State argued, in its written response to the instant petition, that a number of  
2 issues raised by the defendant were not cognizable, in that they should have been raised on  
3 direct appeal but were not. This court has not ruled on the waiver claim, preferring to  
4 address each and every issue raised by the defendant on the merits. In doing so, this court  
5 neither solicited nor received from the State a waiver of the State's right to argue the  
6 cognizability issue in the course of any appellate review of this Order.

7 **ORDER**


8 NOW, THEREFORE, IT IS ORDERED that, based upon the foregoing FINDINGS  
9 OF FACT AND CONCLUSIONS OF LAW, and upon the entire record in this matter, the  
10 Defendant's PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) is  
11 DENIED.

12  
13 DATED this 11<sup>TH</sup> day of January, 2005.

14   
15 DISTRICT JUDGE 8

16  
17 DAVID ROGER  
18 DISTRICT ATTORNEY  
19 Nevada Bar #002781

20 BY

  
21 EDWARD R.J. KANE  
22 Chief Deputy District Attorney  
23 Nevada Bar #001438  
24  
25  
26  
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IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN JOSEPH SEKA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44690

**FILED**

JUN 08 2005

ORDER OF AFFIRMANCE

BY *[Signature]*  
JANETTE H. GLOVER  
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant John Seka's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On May 9, 2001, the district court convicted Seka, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon, one count of second-degree murder with the use of a deadly weapon and two counts of robbery. The district court sentenced Seka to serve a term of life in the Nevada State Prison without the possibility of parole for the first-degree murder conviction, plus an equal and consecutive term for the deadly weapon enhancement; a term of life with the possibility of parole for the second-degree murder conviction, plus an equal and consecutive term for the deadly weapon enhancement; and two consecutive terms of 35 to 156 months for the robbery convictions. All sentences were imposed to run consecutively. This court affirmed the

judgment of conviction and sentence on appeal.<sup>1</sup> The remittitur issued on May 6, 2003.

On February 13, 2004, Seka filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750, the district court declined to appoint counsel to represent Seka. The district court conducted an evidentiary hearing, and on January 31, 2005, the district court denied Seka's petition. This appeal followed.

In his petition, Seka raised several claims of ineffective assistance of trial counsel. To state a claim of ineffective assistance of trial counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.<sup>2</sup> A petitioner must further establish there is a reasonable probability that in the absence of counsel's errors, the results of the proceedings would have been different.<sup>3</sup> The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.<sup>4</sup> The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>5</sup>

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<sup>1</sup>Seka v. State, Docket No. 37907 (Order of Affirmance, April 8, 2003).

<sup>2</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

<sup>3</sup>Id.

<sup>4</sup>Strickland, 466 U.S. at 697.

<sup>5</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

First Seka claimed that his trial counsel were ineffective for failing to investigate and document Thomas Cramer's psychological and drug history prior to trial. Seka asserts that as a result, his counsel did not conduct a proper cross-examination of Cramer. At the evidentiary hearing, Seka's former trial counsel testified that they repeatedly attempted to obtain Cramer's psychological records but were unable to do so. Further, the record on appeal reveals that Seka's trial counsel cross-examined Cramer regarding his psychological problems, his admittance into psychiatric and alcoholic treatment programs and the drugs Cramer was taking for his psychological problems. Seka failed to demonstrate that his trial counsel were ineffective in this regard. Accordingly, we conclude that the district court did not err in denying this claim.

Second, Seka claimed that his trial counsel were ineffective for failing to retain a psychologist to testify about Cramer's mental, emotional and substance abuse problems. The record reveals that Cramer admitted on the stand that he suffered from severe depression and alcoholism and that he had previously been in three treatment programs for those problems. He further admitted that he was taking several prescription drugs for his problems and testified regarding the effects of those drugs. Seka failed to demonstrate that retaining an independent psychologist to testify about Cramer's problems would have altered the outcome of his trial. Accordingly, we conclude that the district court did not err in denying this claim.

Third, Seka claimed that his trial counsel were ineffective for failing to adequately investigate, contact or personally interview former employees, friends and other business associates of Seka. Seka

specifically alleges that his trial counsel should have contacted Justin Nguyen, Marilyn Mignone, Amir Mohomid and Ken Bates. Seka asserted that all of these individuals would have testified as to the relationship between the victim Peter Limanni and Seka. At the evidentiary hearing, Seka's former trial counsel testified that they attempted to contact all of these individuals, however, they were unable to locate any of them, even with the use of an investigator. Further, Seka testified at the evidentiary hearing that he could not identify any specific testimony that Mignone would have given that could have helped his case. Seka failed to demonstrate that his trial counsel were ineffective in this regard. Accordingly, we conclude that the district court did not err in denying this claim.

Fourth, Seka claimed that his trial counsel were ineffective for failing to retain DNA experts and experts in forensic pathology to challenge the DNA evidence and to testify as to the time of death. At the evidentiary hearing, Seka's counsel testified that although they did not hire a DNA expert, they did consult a forensic pathologist with regard to the case. The record reveals that Seka's trial counsel cross-examined and challenged the State's DNA expert regarding his findings and cross-examined the coroners regarding the times of death. The record further reveals that several of the DNA samples were used in their entirety and therefore independent DNA testing of those samples would not have been possible. Seka failed to demonstrate that his trial counsel were ineffective in this regard. Accordingly, we conclude that the district court did not err in denying this claim.



Fifth, Seka claimed that his trial counsel were ineffective for failing to investigate, research and present at trial Cinergi's bank and phone records and Limanni's correct cell phone records. Seka alleged that these records could have contained exculpatory evidence. At the evidentiary hearing, Seka's former trial counsel testified that they obtained Cinergi's phone records and Limanni's cell phone records prior to trial. Seka's former trial counsel further testified that they made a strategic decision not to present the phone records to the jury. Seka's former trial counsel testified that their strategy was to impeach the State's witness by demonstrating during cross-examination that the detective subpoenaed the incorrect phone records for Limanni. "[T]his court will not second-guess an attorney's tactical decisions where they relate to trial strategy and are within the attorney's discretion."<sup>6</sup> Seka failed to demonstrate that his trial counsel were deficient in this regard. Accordingly, we conclude that the district court did not err in denying this claim.

Sixth, Seka claimed that his trial counsel were ineffective for failing to meaningfully challenge the State's case with expert testimony and adequate cross-examination and impeachment of prosecution witnesses. Seka failed to support this claim with sufficient factual allegations.<sup>7</sup> Further, the record on appeal reveals that Seka's trial counsel engaged in meaningful cross-examination of the prosecution's

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<sup>6</sup>Davis v. State, 107 Nev. 600, 603, 817 P.2d 1169, 1171 (1991).

<sup>7</sup>Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

witnesses. Therefore, Seka's claim is also partially belied by the record.<sup>8</sup> Accordingly, we conclude that the district court did not err in denying this claim.

In his petition, Seka also raised several claims of ineffective assistance of appellate counsel.<sup>9</sup> To establish ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and the deficient performance prejudiced the defense.<sup>10</sup> "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success of appeal."<sup>11</sup> Appellate counsel is not required to raise every non-frivolous issue on appeal.<sup>12</sup>

First, Seka claimed that his appellate counsel was ineffective because his appellate counsel was also his trial counsel. Seka alleged that a conflict of interest arose because his appellate counsel would have had to raise claims against himself and therefore his appellate counsel failed to

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<sup>8</sup>Id., at 503, 686 P.2d at 225.

<sup>9</sup>To the extent that Seka raised any of these claims outside of the context of his ineffective assistance of appellate counsel claims, we conclude that Seka failed to demonstrate good cause for his failure to raise these claims in his direct appeal and they are waived. See NRS 34.810(1)(b)(2).

<sup>10</sup>See Strickland, 466 U.S. 668; Kirksey v. State, 112 Nev. 980, 923 P. 2d 1102 (1996).

<sup>11</sup>Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

<sup>12</sup>Jones v. Barnes, 463 U.S. 745 (1983).

identify and raise meritorious claims on direct appeal. Ineffective assistance of counsel claims are generally not appropriately raised on direct appeal.<sup>13</sup> Thus, Seka did not establish that his appellate counsel was ineffective in this regard, and we affirm the order of the district court.

Second, Seka claimed that his appellate counsel was ineffective for failing to argue that the State failed to disclose Brady material<sup>14</sup> regarding Cramer, including exculpatory and impeachment evidence. At the evidentiary hearing, Seka's counsel testified that they received all documents that the State had pertaining to Cramer. Further, counsel for the State testified that they were unable to obtain any documents regarding Cramer's psychological history or treatment programs. We conclude that Seka did not establish that his appellate counsel was ineffective and the district court did not err in denying this claim.

Third, Seka claimed that his appellate counsel was ineffective for failing to argue that the district court gave erroneous instructions on the lesser included offenses. It appears that Seka was specifically concerned with the jury instructions regarding second-degree murder and the felony murder rule. Our review of the record on appeal reveals that these jury instructions provided a correct statement of the law.<sup>15</sup> Consequently, we conclude that Seka did not establish that his appellate

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<sup>13</sup>See Feazell v. State, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995).

<sup>14</sup>See Brady v. Maryland, 373 U.S. 83 (1963).

<sup>15</sup>See NRS 200.030(1)(b), (2).

counsel was ineffective and the district court did not err in denying this claim.

Fourth, Seka claimed that his appellate counsel was ineffective for failing to argue that the district court's instructions regarding reasonable doubt, malice aforethought, express malice, deliberation and premeditation improperly lowered the State's burden. Our review of the record on appeal reveals that these jury instructions provided a correct statement of the law and did not lower the burden imposed on the State.<sup>16</sup> Consequently, we conclude that Seka did not establish that his appellate counsel was ineffective and the district court did not err in denying this claim.

Fifth, Seka claimed that his appellate counsel was ineffective for failing to argue that the district court erred in giving instruction number 14 regarding a unanimous verdict. Seka argued that the instruction as written reduced the burden on the State. Jury instruction 14 instructed the jury that although their verdict must be unanimous, the jury did not have to be unanimous regarding the theory of guilt as long as all of the jurors agreed that the evidence established that Seka was guilty

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<sup>16</sup>See NRS 175.211(1) (defining reasonable doubt); NRS 200.020 (defining malice); Leonard v. State, 117 Nev. 53, 78-79, 17 P.3d 397, 413 (2001) (concluding that the instructions for express malice and malice aforethought were sufficient); Leonard v. State, 114 Nev. 1196, 1208, 969 P.2d 288, 296 (1998) (approving use of archaic language in instruction for malice aforethought); Byford v. State, 116 Nev. 215, 236-37, 994 P.2d 700, 714-15 (2000) (identifying instructions to be used for premeditation and deliberation).

of first-degree murder. The district court properly gave this instruction.<sup>17</sup> Sufficient evidence was adduced at trial to support either premeditated or felony murder. Consequently, we conclude that Seka did not establish that his appellate counsel was ineffective and the district court did not err in denying this claim.

Sixth, Seka claimed that his appellate counsel was ineffective for failing to argue that the Las Vegas Metropolitan Police Department ("LVMPD") failed to adequately investigate the murders and robberies. Seka alleged that the LVMPD failed to: (1) compare latent prints found at the crime scenes with prints of other possible suspects; (2) discover that the victim Eric Hamilton had no money or wallet just days before his death; (3) follow up on witness statements; (4) timely file incident reports; (5) find out the exact time and place of Limanni's death; (6) adequately investigate two potential suspects; and (7) obtain correct cell phone records for Limanni. Seka also alleged that the LVMPD improperly told Limanni's sister to file a missing person report regarding Limanni. Seka failed to demonstrate that his counsel was deficient or that this claim would have had a reasonable probability of success on appeal. The record on appeal reveals that Seka's trial counsel raised all of these issues at trial and argued all of these purported errors to the jury. Despite being informed of the purported errors, the jury concluded beyond a reasonable doubt that Seka was guilty of the murders and robberies. Consequently, we conclude that Seka did not establish that his appellate counsel was ineffective and the district court did not err in denying this claim.

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<sup>17</sup>Evans v. State, 113 Nev. 885, 944 P.2d 253 (1997).

Seventh, Seka claimed that his appellate counsel was ineffective for failing to argue that the prosecutor committed misconduct. Seka claimed that the prosecutor improperly failed to give notice that a DNA expert would be testifying at trial. The record reveals that although the prosecutor did not notify Seka that a DNA expert would be testifying at trial until the start of trial, the district court held a hearing regarding the late notification and ruled that the failure was inadvertent, not deliberate. Due to the late notice, however, the district court also ruled that the defense would be granted additional time to prepare, if necessary. We conclude that any potential harm caused by the late notification was mitigated by the district court's ruling. Consequently, Seka failed to establish that this issue would have had a reasonable probability of success on appeal, and failed to demonstrate that his counsel was ineffective with regard to this claim.

Seka also claimed that the prosecutor improperly failed to disclose Cramer's psychiatric, criminal and substance abuse history. As noted above, this claim is belied by the record.<sup>18</sup> At the evidentiary hearing, the State testified, and Seka's counsel confirmed, that the State made all documents pertaining to Cramer available to Seka's trial counsel and the State never obtained Cramer's treatment records. Consequently, we conclude that Seka did not establish that his appellate counsel was ineffective and the district court did not err in denying this claim.

Seka also claimed that the prosecutor improperly expressed his personal opinion by stating "I find that interesting" and improperly

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<sup>18</sup>Hargrove, 100 Nev. at 503, 686 P.2d at 225.

shifted the burden to the defense by asking the DNA expert if the defense could have tested the remaining evidence. The record on appeal reveals that Seka's trial counsel objected to both of these statements during trial. These objections were sustained and the statements were never referred to later in argument to the jury. We conclude that Seka failed to establish that this issue would have had a reasonable probability of success on appeal, and failed to demonstrate that his counsel was ineffective with regard to this claim.

Seka also claimed that the prosecutor improperly told the jury that a witness was incorrect when testifying as to a specific date and informed the jury of what date the witness likely meant. The record on appeal reveals that the challenged statement was made by the prosecutor during closing arguments when the prosecutor was summarizing the testimony. The prosecutor argued that the witness might have been mistaken regarding the date he last saw Limanni and the date the police interviewed the witness because all other testimony presented at trial was contradictory. We conclude that trial counsel's argument was not improper. However, even if the prosecutor's comments amounted to misconduct, we conclude that in light of the considerable evidence introduced at trial against Seka, any error would have been harmless. Consequently, Seka failed to establish that this issue would have had a reasonable probability of success on appeal, and failed to demonstrate that his counsel was ineffective with regard to this claim.

Seka also claimed that the prosecutor improperly vouched for the truthfulness of one of the witnesses. The record on appeal reveals that in response to a defense statement in closing arguments that they were

not condemning one of the witnesses, the prosecutor argued that to believe the defense statement the jury would have to believe that the witness, a police officer, perjured himself and put his career on the line when testifying under oath with a man's life at stake. We conclude that the prosecutor's remarks did not rise to the level of improper argument that would justify overturning Seka's conviction.<sup>19</sup> Consequently, Seka failed to establish that this issue would have had a reasonable probability of success on appeal, and failed to demonstrate that his counsel was ineffective with regard to this claim.

Eighth, Seka claimed that his appellate counsel was ineffective for failing to "federalize" his direct appeal issues in order to preserve them for federal appellate review. Seka failed to demonstrate that the results of his direct appeal would have been different if counsel had "federalized" the issues. Accordingly, we conclude that he did not establish that appellate counsel was ineffective on this claim.

Finally, Seka also claimed that due to the cumulative effect of all the errors committed at his trial, his conviction was invalid. To the extent that Seka raised this claim independently of his ineffective assistance of counsel claim, he waived this claim.<sup>20</sup> We further conclude that because Seka's ineffective assistance of counsel claims are without

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<sup>19</sup>See Rowland v. State, 118 Nev. 31, 38, 39 P.3d 114, 118-19 (2002); Greene v. State, 113 Nev. 157, 169-70, 931 P.2d 54, 62 (1997), modified prospectively on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

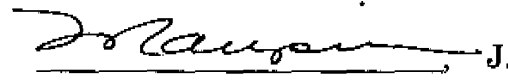
<sup>20</sup>See NRS 34.810(1)(b)(2).





merit, he failed to demonstrate any cumulative error and is therefore not entitled to relief on this basis.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Seka is not entitled to relief and that briefing and oral argument are unwarranted.<sup>21</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Maupin

 J.  
Douglas

 J.  
Parraguirre

cc: Hon. Donald M. Mosley, District Judge  
John Joseph Seka  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>21</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN JOSEPH SEKA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 44690

District Court Case No. C159915

**REMITTITUR**

TO: Shirley Parraguirre, Clark County Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: July 12, 2005

Janette M. Bloom, Clerk of Court

By: J. Richards  
Chief Deputy Clerk

cc: Hon. Donald M. Mosley, District Judge  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
John Joseph Seka

**RECEIPT FOR REMITTITUR**

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on 7-15-05

**DEPUTY**

NORRETA CALDWELL  
County Clerk

05-12797  
APP1587



**PET**  
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*Attorneys for Petitioner John Joseph Seka  
In Conjunction with Rocky Mountain Innocence Center*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOHN JOSEPH SEKA,  
Petitioner,

CASE NO. 99C159915  
DEPT. XIV

vs.

STATE OF NEVADA,  
Respondent,

**POST-CONVICTION PETITION REQUESTING A GENETIC MARKER ANALYSIS  
OF EVIDENCE WITHIN POSSESSION OR CUSTODY OF THE STATE OF NEVADA  
(NRS 176.0918)**

Petitioner, John Joseph Seka ("Mr. Seka"), by and through undersigned counsel, Paola M. Armeni of the law firm of Gentile Cristalli Miller Armeni Savarese and in cooperation with the Rocky Mountain Innocence Center, requests this Court to issue an Order for a Genetic Marker Analysis of Evidence pursuant to NRS 176.0918. The basis for this petition is as follows:

1. Mr. Seka believes, on the basis of police reports, trial testimony, and court documents and alleges in good faith that the State of Nevada, or a political subdivision of the State of

1 Nevada, has possession and control of evidence in the form of Genetic Marker Information  
2 relating to the investigation and prosecution that resulted in Mr. Seka's Judgment of Conviction.  
3 Specifically, the Las Vegas Metropolitan Police Department, Las Vegas Metropolitan Police  
4 Department's Criminalistics Laboratory, and the Las Vegas Justice Court Evidence Vault, is in  
5 possession of biological evidence including, but not limited to, hair samples, bullet casings, one  
6 of the victim's fingernail clippings, lumber with touch DNA, multiple cigarettes butts, a tobacco  
7 container, multiple beer bottles found near the victim Eric Hamilton ("Mr. Hamilton"), and a  
8 white cloth found near the body of the victim Peter Limanni ("Mr. Limanni") (see attached  
9 Exhibit 1 for a more complete list of the physical evidence and its current location).

10 2. Mr. Seka was convicted by jury on March 1, 2001, of the following Category A or  
11 Category B felonies which are the grounds for this request:

12 NRS 200.010 & 200.30	Murder in the First Degree with	Cat. A 1 Count
13 NRS 193.165	Use of a Deadly Weapon	
14 NRS 200.010 & 200.030	Murder in the Second Degree with	Cat. A 1 Count
15 NRS 193.165	Use of a Deadly Weapon	
16 NRS 200.380	Robbery	Cat. B 2 Counts

17 3. Mr. Seka was not sentenced to death. Mr. Seka was sentenced to two consecutive life  
18 sentences without the possibility of parole, two consecutive life sentences with the possibility of  
19 parole, and two consecutive periods of thirty-six (36) to one hundred and fifty-six (156) months.

20 4. Pursuant to NRS § 176.0918(3)(a), the following identifies the specific evidence that Mr.  
21 Seka either knows or maintains a good faith belief to be in the possession or custody of the State  
22 of Nevada that can be subject to Genetic Marker Analysis:

23 a. Mr. Seka's representatives visited the Las Vegas Regional Justice Center,  
24 Evidence Room on December 5, 2015, and viewed items (see attached Exhibit 1 for a more  
25 complete list), in evidence including:

- 26 i. Hairs collected from under Mr. Hamilton's fingernails (see attached  
27 Exhibit 1, no. 52).  
28 ii. Fingernail clipping from Mr. Hamilton with traces of blood (see attached

1 Exhibit 1, nos. 53 and 54).

2 iii. Black "J.C. Penney Construction Arcadia" baseball type cap, found on the  
3 floor of the reception area at the crime scene located at 1929 Western Ave., Las Vegas (see  
4 attached Exhibit 1, no. 127).

5 iv. Seven pieces of lumber found on or near the body of Mr. Hamilton, which  
6 contained fingerprints from an individual other than the victims and Mr. Seka and may contain  
7 touch DNA (see attached Exhibit 1, no. 134).

8 b. Mr. Seka also received documents from the Las Vegas Metropolitan Police  
9 Department, which listed evidence collected from the scene of the crimes. These documents list  
10 evidence collected, a small number of which were submitted to the Crime Lab for testing (see  
11 attached Exhibit 1 for a more complete list). Mr. Seka has good reason to believe that the Las  
12 Vegas Metropolitan Police Department is in possession of the following evidence:

13 i. Hair and debris found on Mr. Hamilton's black colored Levis (see  
14 attached Exhibit 1, nos. 80 and 81).

15 ii. White cotton type material collected from the body of Mr. Limanni (see  
16 attached Exhibit 1, no. 135).

17 iii. Several Marlboro brand cigarette butts found near the body of Mr.  
18 Hamilton, 2.1 miles south of State Route 146 on Las Vegas Blvd (see attached Exhibit 1, nos.  
19 151 and 152).

20 iv. One "Skool" brand long cut spearmint chewing tobacco container with  
21 small amount of tobacco found near the body of Mr. Hamilton, 2.1 miles south of State Route  
22 146 on Las Vegas Blvd (see attached Exhibit 1, no. 153).

23 v. Two empty "Beck's" brand beer bottles with Beck's brand label found  
24 near the body of Mr. Hamilton, 2.1 miles south of State Route 146 on Las Vegas Blvd (see  
25 attached Exhibit 1, nos. 154 and 155).

26 vi. Multiple jacketed bullets found in the floor of the reception room of the  
27 crime scene of 1929 Western Ave., Las Vegas (see attached Exhibit 1, nos. 110, 111, and 114).

28 c. Mr. Seka's representatives received notice from the Officer of the

1 Coroner/Medical Examiner on December 26, 2014 that the evidence in their possession has been  
2 destroyed or preserved electronically.

3 5. Pursuant to NRS § 176.0918(3)(b), and as outlined below, a reasonable possibility exists  
4 that Mr. Seka would not have been prosecuted or convicted if exculpatory results had been  
5 obtained through Genetic Marker Analysis of the evidence identified above in paragraph 4(a)(b)  
6 and displayed in the attached exhibit. Specifically:

7 a. Case facts are as follows:

8 i. Mr. Seka moved from Philadelphia in 1998 to pursue a job in Las Vegas  
9 with his friend, Mr. Limanni. Mr. Limanni owned and operated an air conditioning business  
10 called Cinergi.

11 ii. Cinergi was financially backed by two Japanese investors, Mr. Tak Kato  
12 and Kaz Toe, who resided in California. These investors not only provided capital, but also four  
13 white vans to help operate the business.

14 iii. At the time of Mr. Seka's employment, Mr. Limanni was transitioning the  
15 air conditioning business located at 1933 Western Ave into a cigar shop. Mr. Limanni attempted  
16 to receive more financial backing for the transition from Mr. Kato and Toe.

17 iv. Mr. Limanni received additional capital for the cigar shop from Mr. Amir  
18 Mohammed and his associates, other business investors who resided in Las Vegas.

19 v. When Mr. Kato and Toe visited the business in October 1998, they  
20 became extremely dissatisfied with the use of their finances. Mr. Seka and Mr. Limanni were  
21 squandering the funds on their personal finances. Mr. Kato and Toe wished to end all business  
22 relations with Mr. Seka and Mr. Limanni. Mr. Kato and Toe took one of the work vans back to  
23 California.

24 vi. Around this same time, Mr. Amir Mohammed also became incensed by  
25 Mr. Limanni's use of his financial capital.

26 vii. On November 5, 1998, Mr. Limanni disappeared. Unsure about the  
27 whereabouts of his friend, Mr. Seka searched for Mr. Limanni in areas frequented by Mr.  
28 Limanni. Mr. Seka called several mutual friends on the east coast and informed them that he

1 could not find Mr. Limanni, and he was worried about Mr. Limanni's whereabouts.

2           viii. Shortly thereafter, on November 16, 1998, the body of Mr. Hamilton,  
3 covered with lumber, was found in a desert area 2.1 miles south of State Route 146 on Las Vegas  
4 Blvd. South. The State determined that Mr. Hamilton had suffered multiple gunshot wounds, and  
5 died of his injuries. They estimated his time of death to be from November 10-16, 1998.

6           ix. The police found a note in Mr. Hamilton's pocket with Mr. Seka's phone  
7 number. Mr. Hamilton, a vagrant from California, provided some manual labor for Mr.  
8 Limanni's business transition in exchange for cash.

9           x. On November 17, 1998, the police responded to an alleged break-in that  
10 occurred at 1929 Western Ave (next door to 1933 Western Ave, the location of Mr. Limanni's  
11 business and Mr. Limanni and Seka's temporary residence).

12           xi. After arriving at the scene, the police realized that a violent crime had  
13 occurred at 1929 Western Ave. This crime scene would later be connected to the death of Mr.  
14 Hamilton.

15           xii. While investigating the crime scene, the police found Mr. Limanni's photo  
16 ID, a leather jacket with an apparent bullet hole, and other miscellaneous items in a dumpster  
17 behind the businesses. The police believed all of these belongings to be Mr. Limanni's. Some of  
18 these items had Mr. Limanni's blood on them, and some of the items were partially burned.

19           xiii. Mr. Seka arrived at the air conditioning business after running errands.  
20 Upon Mr. Seka's arrival, the police approached him and asked permission to search the business.

21           xiv. With Mr. Seka's voluntary permission, the police searched 1933 Western  
22 Ave. They found Mr. Limanni's wallet and a purse hidden in the ceiling above Mr. Limanni's  
23 desk.

24           xv. The police subsequently searched the vehicles belonging to Cinergi and  
25 found drops of blood in one of the vans and in the bed of Mr. Limanni's pickup truck. The police  
26 later theorized that the actual perpetrator used these vehicles to transport the bodies to the  
27 dumpsites.

28           xvi. Several other people, including Mr. Kato, Toe, Mr. Mohammed and his

1 associates had access to the business and the business vehicles. In fact, the keys to these vehicles  
2 were located in a bowl in the business.

3 xvii. Mr. Mohammed and his associates abruptly moved out of the state shortly  
4 after Mr. Hamilton's body was discovered and the police investigated the crime scene located at  
5 1929 Western Ave.

6 xviii. Due to the lack of income and the proximity of the holidays, Mr. Seka  
7 moved back to Philadelphia to spend time with his girlfriend and daughter on or about December  
8 23, 1998.

9 xix. On December 23, 1998, the body of Mr. Limanni was found on Nipton  
10 Road, several miles into California and East of the I-15 Freeway.

11 xx. The State determined the time of death to be sometime between November  
12 5, 1998, to December 23, 1998. The apparent cause of death was multiple gunshot wounds to the  
13 head.

14 xxi. On January 23, 1999, Ms. Margaret Daly frantically contacted Mr. Seka  
15 from the residence she shared with her then boyfriend, Mr. Thomas Cramer, and Mr. Cramer's  
16 grandmother. Mr. Cramer suffered from severe drug addiction, and frequently became physically  
17 and emotionally abusive. During these abusive episodes, Ms. Daly would contact Mr. Seka for  
18 assistance in calming Mr. Cramer who was a good friend of Mr. Seka (see attached Exhibit 2).

19 xxii. Mr. Seka attempted to calm Mr. Cramer who inaccurately believed that  
20 Mr. Seka was attempting to start a relationship with Ms. Daly. An altercation ensued and Mr.  
21 Cramer pushed Mr. Seka down the stairs (see attached Exhibit 2).

22 xxiii. Mr. Seka and Ms. Daly contacted the police and a local mental institution.  
23 They committed Mr. Cramer involuntarily into the mental health institution for emergency  
24 psychiatric evaluation for several weeks. Ms. Daly subsequently filed for restraining order  
25 against Mr. Cramer (see attached Exhibit 2).

26 xxiv. Upon his release, Mr. Cramer contacted the authorities and claimed that  
27 Mr. Seka confessed to killing Mr. Limanni during the altercation on January 23, 1999. Ms. Daly,  
28 present during the altercation, stated that no such thing occurred (see attached Exhibit 2).



1           xxv. A Criminal Complaint was then filed on March 3, 1999, against Mr. Seka.  
2 He was later arrested in Philadelphia and extradited to Las Vegas for further proceedings.

3           xxvi. A significant amount of physical evidence was collected in this case, and  
4 only a small portion of it was actually tested. Some of these tests were inconclusive. Other  
5 results contained DNA and fingerprint samples belonging to other unknown person's aside from  
6 Mr. Seka and the victims.

7           xxvii. The limited number of DNA tests performed did not inculcate Mr. Seka  
8 and the vast majority of the DNA tested belonged to the victims.

9           xxviii. No evidence linked Mr. Seka to any crime at 1929 Western Ave. Mr.  
10 Seka's DNA was found only in 1933 Western Ave, next door to the actual crime scene of 1929  
11 Western Ave. Mr. Seka not only worked at 1933 Western Ave., but also maintained his residence  
12 at that location.

13           xxix. While small drops of Mr. Seka's blood were found in 1933 Western Ave.  
14 they came from minor cuts on his hands as the result of the carpentry work he performed there  
15 while transforming the business into a cigar shop. Nevertheless, these drops were not found at  
16 the scene of the crime at 1929 Western Ave.

17           xxx. Furthermore, the fingerprints of an unidentified third person were found  
18 on the lumber covering Mr. Hamilton's body. This lumber was used in the construction of the  
19 business from 1933 Western Ave., the same address where Mr. Seka resided and worked.

20           xxxi. The physical evidence ties Mr. Seka to 1933 Western Ave., not to the  
21 scene of the crime at 1929 Western Ave., nor to the victims, nor to the sites where the actual  
22 perpetrator dumped the bodies.

23           xxxii. Additional testing of the aforementioned items may provide exculpatory  
24 evidence for Mr. Seka, and implicate the actual perpetrator of the crimes.

25           xxxiii. The aforementioned pieces of physical evidence were found at the scene  
26 of the crime at 1929 Western Ave., and where the bodies of Mr. Hamilton and Mr. Limanni were  
27 dumped. These objects likely contain the DNA and fingerprints of the actual perpetrator or of  
28 other involved parties. Such information would have prevented charges from being filed against

1 Mr. Seka, and prevented his prosecution.

2 b. Although Mr. Seka was convicted of first and second-degree murder with the use  
3 of a deadly weapon, and robbery and those convictions were upheld on appeal, he has  
4 continuously denied any involvement in the crimes that occurred in November or December  
5 1998. For eighteen years, Mr. Seka has maintained his claim of innocence. Based on the facts of  
6 the case, the biological evidence should contain a genetic profile of the actual perpetrator who  
7 committed these crimes.

8 c. The testing of physical evidence can establish conclusively that Mr. Seka's claims  
9 of innocence have merit. Significant advances in forensic science allow genetic marker testing  
10 of the physical evidence that was not possible or even contemplated at the time of Mr. Seka's  
11 conviction.

12 d. If the type of genetic marker testing Mr. Seka is requesting had been available  
13 prior to Mr. Seka's conviction, it could have excluded Mr. Seka as a suspect and the presence of  
14 that exculpatory evidence would have created a reasonable possibility that he would not have  
15 been prosecuted or convicted.

16 6. Pursuant to NRS § 176.0918(3)(c), the type of Genetic Marker Analysis that Mr. Seka is  
17 requesting to be conducted on the evidence outlined in paragraph 4(a)-(b) is standard Short  
18 Tandem Repeats (STR) testing using a twenty-one Combined DNA Index System (CODIS) loci.

19 7. Pursuant to NRS § 176.0918(3)(d), the type of Genetic Marker Analysis Mr. Seka is  
20 requesting was not available at the time of trial.

21 a. Mr. David Welch, a criminalist or forensic chemist with the Las Vegas  
22 Metropolitan Police Department testified at trial that the forensic testing was limited to "old"  
23 PCR typing, which could only test to "eliminate, not a test of identification." Furthermore, no  
24 one ever asked Mr. Welch to do an identification statement on any of the PCR testing. (Trial  
25 Transcript, February 16, 2001, I 62:9-63:20; February 16, 2001 II 17:16-19; February 16, 2001  
26 II 18:10-12).

27 b. Mr. Welch testified that no DNA typing results were obtained from the cigarette  
28 butts found near Mr. Hamilton's body. (Trial Transcript, February 16, 2001, I 57:25-58:17).

1 c. Mr. Welch further testified that he was unable to determine if the blood found on  
2 Mr. Hamilton's fingernail clippings belonged to a male or female. (Trial Transcript, February 16,  
3 2001, II 11:20-12:7).

4 d. Only a small fraction of the approximately one hundred and sixty pieces of  
5 physical evidence were tested (see attached exhibit for full and complete list). In the interest of  
6 judicial expediency the above listed twelve pieces of evidence, found in paragraphs 4(a)-(b),  
7 should be tested first. If genetic marker analysis testing of the above-mentioned evidence does  
8 not provide sufficient exculpatory or inculpatory results, additional evidence in the custody of  
9 the State of Nevada may need to be tested.

10 **PRAYER FOR GRANTING OF PETITION**

11 Mr. Seka respectfully requests that the Court, pursuant to NRS § 176.0918, grant his  
12 Post-Conviction Petition Requesting A Genetic Marker Analysis Of Evidence Within The  
13 Possession Or Custody Of The State Of Nevada. Mr. Seka further requests this Court to issue an  
14 Order for a Genetic Marker Analysis of Evidence pursuant to NRS § 176.0918(7) and NRS §  
15 176.0918(9).

16 Dated this \_\_\_\_ day of June, 2017.

17 GENTILE CRISTALLI  
18 MILLER ARMENI SAVARESE

19  
20 PAOLA M. ARMENI  
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22 Tel: (702) 880-0000

23 ROCKY MOUNTAIN INNOCENCE CENTER

24 JENNIFER SPRINGER  
Nevada Bar No. 13767  
358 South 700 East, B235  
25 Salt Lake City, Utah 84102  
26 Tel: (801) 355-1888

27 *Attorneys for Petitioner John Joseph Seka*  
*In Conjunction with Rocky Mountain Innocence*  
28 *Center*

[illegible]

EXECUTED ON this 15<sup>th</sup> day of June, 2017.

APP1597

1 **CERTIFICATE OF REGISTERED MAIL**

2 The undersigned, an employee of Gentile Cristalli Miller Armeni Savarese hereby  
3 certifies that on the 16 day of June, 2017, I served a copy of **POST-CONVICTION**  
4 **PETITION REQUESTING A GENETIC MARKER ANALYSIS OF EVIDENCE**  
5 **WITHIN POSSESSION OR CUSTODY OF THE STATE OF NEVADA (NRS 176.0918)**,  
6 by placing said copy in an envelope, registered mail with return receipt requested, postage fully  
7 prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:  
8

9 Steven B. Wolfson  
10 Clark County District Attorney  
11 Office of the Clark County District Attorney  
12 200 Lewis Avenue  
13 Las Vegas, Nevada 89101  
14 Regional Justice Center  
15 200 Lewis Avenue  
16 Las Vegas, NV 89155

Adam Paul Laxalt  
Nevada Attorney General  
100 N. Carson Street  
Carson City, Nevada 89701-4717

17 Eighth Judicial District Court  
18 200 Lewis Avenue  
19 Las Vegas, Nevada 89101  
20 Attn.: Clerk's Office

21  
22  
23  
24  
25  
26  
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28  
An employee of Gentile Cristalli  
Miller Armeni Savarese

# EXHIBIT 1

# EXHIBIT 1

#	Victim	Physical Evidence	Location Found	Collected	Chain of Custody/ Requested Testing	Custody of Evidence
1	Peter Limanni	9 bullets	Peter's body	Yes	Det. Thowsen requested examination forensic lab (2/18/99). McPhail booked bullets.  Requested: Caliber, fired from same weapon, match bullets from 1933. match bullets from Hamilton's body?	Forensic Lab
2	Peter Limanni	Red/Brown stain on fabric. Item #46 and 41 A/R. Pkg. #3326-14 and #3326-15		Yes	Det. Thowsen requested examination forensic lab (12/31/98). McPhail booked.  Requested: Does it match Limanni DNA?	Forensic Lab
3	Peter Limanni	DNA Kit from Limanni. Pkg. #3326	Peter's body	Yes	Det. Thowsen requested examination forensic lab (12/31/98). McPhail booked.	Forensic Lab
4	Peter Limanni	Mag Bus Cards with blood (DW2) Item #14. Pkg. 3326-?		Yes	Requested: Does it match Limanni DNA? Det. Thowsen requested examination forensic lab (12/31/98). McPhail booked.	Forensic Lab
5	Peter Limanni	One Serology Standards Kit, including samples of pulled pubic hair, and fingernail clippings from both hands. Item #1. Pkg #3326-1	San Bernardino Coroners Office, from the victim's body	Yes	Requested: Does it match Limanni DNA? San Bernardino Coroners Office (12/29/98). Transferred to LVMPD. Booked by McPhail.	LVMPD
6		Photos and personal papers in the name of Peter Limanni. Item #1. Pkg. #3326-1.	1933 S. Western Ave. Inside dumpster.	Yes	Collected by McPhail (11/17/98).	LVMPD
7		One 3 1/2 inch computer disk. Item #2. Pkg. #3326-1	1933 S. Western Ave. Inside dumpster.	Yes	Collected by McPhail (11/17/98).	LVMPD
8		MCI Friends and Family phone card in the name of Tiffany Limanni. Item #3. Pkg. 3326-1	1933 S. Western Ave. Inside dumpster.	Yes	Collected by McPhail (11/17/98). Requested to return to LVMPD (from the Court evidence vault) per request by DA Roper and DA Owens on 8/2/2007. Order signed by District Judge Smiley 8/3/2007. Collected from Evidence Vault 8/9/2007 by A. Thomas P# 7573 LMVPD.	LVMPD

9	New Jersey boat operators license. Item #4. Pkg. 3326-1.	1933 S. Western Ave. Inside dumpster.	Yes	Collected by McPhail (11/17/98). Requested to return to LVMPD (from the Court evidence vault) per request by DA Roper and DA Owens on 8/2/2007. Order signed by District Judge Smiley 8/3/2007. Collected from Evidence Vault 8/9/2007 by A. Thomas P# 7573 LMVPD.	LVMPD
10	Two canceled checks from "Cinergi HV/ACR inc." Item #5. Pkg. #3326-1	1933 S. Western Ave. Inside dumpster.	Yes	Collected by McPhail (11/17/98).	LVMPD
11	Blue check book with checks labeled "Limanni Mechanical Services." Item #6. Pkg. #3326-1	1933 S. Western Ave. Inside dumpster.	Yes	Collected by McPhail (11/17/98).	LVMPD
12	One black colored appointment book (1995-96). Item #7. Pkg. #3326-1	1933 S. Western Ave. Inside dumpster.	Yes	Collected by McPhail (11/17/98). Requested to return to LVMPD (from the Court evidence vault) per request by DA Roper and DA Owens on 8/2/2007. Order signed by District Judge Smiley 8/3/2007. Collected from Evidence Vault 8/9/2007 by A. Thomas P# 7573 LMVPD.	LVMPD
13	One GM key, one loose chrome colored key, and a set of keys with white tag bearing the number 132. Item #8. Pkg. #3326-1	1933 S. Western Ave. Inside dumpster.	Yes	Collected by McPhail (11/17/98).	LVMPD
14	Sample of apparent blood with control. Item #1 A/B. Pkg. #3326-1	LVMPD Criminalistics Bureau. 1998 Dodge Van #514 JME. Interior side of removed plastic threshold cover.	Yes	Collected by McPhail (11/17/98). David P. Welch #1418 received evidence in sealed envelope, tested, and returned it to the evidence vault. (2/9/99) Admitted into evidence in court as Exhibit 47. (Verified 12/5/2014)	Clark County Court Evidence Vault
15	Sample of apparent blood with control. Item #2 A/B. Pkg. #3326-1	LVMPD Criminalistics Bureau. 1998 Dodge Van #514 JME. Interior	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 47. (Verified 12/5/2014)	Clark County Court Evidence Vault



16		Sample of apparent blood with control. Item #3 A/B. Pkg. #3326-1	side of removed plastic threshold cover.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 47. (Verified 12/5/2014)	Clark County Court Evidence Vault
17		Sample of apparent blood with control. Item #4 A/B. Pkg. #3326-1	LVMPPD Criminalistics Bureau. 1998 Dodge Van #514 JME. Interior side of rear/left door	Yes	Collected by McPhail (11/17/98). David P. Welch #1418 received evidence in sealed envelope, tested, and returned it to the evidence vault. (2/9/99) Admitted into evidence in court as Exhibit 47. (Verified 12/5/2014)	Clark County Court Evidence Vault
18		Sample of apparent blood. Item #5. Pkg. #3326-1	LVMPPD Criminalistics Bureau. 1998 Dodge Van #514 JME. On the floor of the left behind right rear wheel well.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 47. (Verified 12/5/2014)	Clark County Court Evidence Vault
19		Sample of apparent blood. Item #6. Pkg. #3326-1	LVMPPD Criminalistics Bureau. 1998 Dodge Van #514 JME. On the floor in the rear cargo area.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 47. (Verified 12/5/2014)	Clark County Court Evidence Vault
20		Sample of apparent blood. Item #7. Pkg. #3326-1	LVMPPD Criminalistics Bureau. 1998 Dodge Van #514 JME. On the floor near center of rear cargo area	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 47. (Verified 12/5/2014)	Clark County Court Evidence Vault

21		Sample of apparent blood with control. Item #8 A/B. Pkg. #3326-1	LVM/DPD Criminalistics Bureau. 1998 Dodge Van #514 JME. On the floor in the rear cargo area.	Yes	Collected by McPhail (11/17/98).	Clark County Court Evidence Vault
22	Eric Hamilton	One Serology Standards Kit, including samples of blood, pulled head hair, combed pubic hair, and pulled pubic hair. Item #1. Pkg #3326-1	CCME. From body of victim.	Yes	Collected by McPhail (11/16/98).	LVM/DPD
23	Eric Hamilton	One DNA Kit, including samples of rib and kidney.	CCME. From body of victim.	Yes	Collected by McPhail (11/16/98).	LVM/DPD
24	Peter Limanni	One DNA kit, including samples of rib and muscle tissue (Psoas Muscle, left side). Item #2. Pkg #3326-2	San Bernardino Coroners Office, from the victim's body	Yes	San Bernardino Coroners Office (12/29/98). Transferred to LVM/DPD. Booked by McPhail.	LVM/DPD
25		Sample of apparent blood. Item #9. Pkg. #3326-2	LVM/DPD Criminalistics Bureau. 1998 Dodge Van #514 JME. On the floor in read cargo area.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 47A. (Verified 12/5/2014)	Clark County Court Evidence Vault
26		Sample of apparent blood with control. Item #10 A/B. Pkg. #3326-2	LVM/DPD Criminalistics Bureau. 1998 Dodge Van #514 JME. To the right of Item #9	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 47A. (Verified 12/5/2014)	Clark County Court Evidence Vault
27		Sample of apparent blood with control.	LVM/DPD Criminalistics Bureau. 1998	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 47A. (Verified 12/5/2014)	Clark County Court Evidence Vault

		Item #11 A/B. Pkg. #3326-2	Dodge Van #514 JME. On the recessed step area for right side doors.			
28		Sample of apparent blood with control. Item #12 A/B. Pkg. #3326-2	LVMPD Criminalistics Bureau. 1998 Dodge Van #514 JME. Interior side of right side doors.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 47A. (Verified 12/5/2014)	Clark County Court Evidence Vault
29		Sample of apparent blood with control. Item #13 A/B. Pkg. #3326-2	LVMPD Criminalistics Bureau. 1998 Dodge Van #514 JME. On floor in rear cargo area	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 47A. (Verified 12/5/2014)	Clark County Court Evidence Vault
30	Peter Limanni	One section of left humerus bone. Item #3. Pkg #3326-2	San Bernardino Coroners Office, from the victim's body	Yes	San Bernardino Coroners Office (12/29/98). Transferred to LVMPD. Booked by McPhail.	LVMPD
31		One metal "brickyard 400" container with seeds and green leafy flakes inside. Item #9. Pkg. #3326-2	1933 S. Western Ave. Inside dumpster.	Yes	Collected by McPhail (11/17/98).	LVMPD
32	Eric Hamilton	One white colored sheet. Item #3. Pkg. #3326-3	CCME. Around victim inside sealed body bag.	Yes	Collected by McPhail (11/16/98).	LVMPD
33	Peter Limanni	One pair of "Joe Boxer" undershorts. Item #2. Pkg # 3326-3	San Bernardino Coroners Office, from the victim's body	Yes	San Bernardino Coroners Office (12/29/98). Transferred to LVMPD. Booked by McPhail.	LVMPD
34		One "K-Swiss" right athletic shoe, size 9 1/2. Item #10. Pkg. #3326-3	1933 S. Western Ave. Inside dumpster.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 40. (Verified 12/5/2014)	Clark County Court Evidence Vault

35		One blue colored "Limanni Mechanical Services" shirt with burn marks. Item #11. Pkg. #3326-3	1933 S. Western Ave. Inside dumpster.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 40. (Verified 12/5/2014)	Clark County Court Evidence Vault
36		One brass colored belt buckle. Item #12. Pkg. #3326-3	1933 S. Western Ave. Inside dumpster.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 40. (Verified 12/5/2014)	Clark County Court Evidence Vault
37		One green colored shirt with burn marks. Item #13. Pkg. 3326-3	1933 S. Western Ave. Inside dumpster.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 40. (Verified 12/5/2014)	Clark County Court Evidence Vault
38		Multiple "Cinergi" magnetic business cards with apparent blood. Item #14. Pkg. #3326-3	LVMPD Criminalistics Bureau. 1998 Dodge Van #514 JME. In interior pocket area of right/rear door.	Yes	Collected by McPhail (11/17/98). Detective Thowsen requested testing. David P. Welch #1418 received evidence in sealed envelope, tested, and returned it to the evidence vault. (12/21/98) Admitted into evidence in court as Exhibit 48. (Verified 12/5/2014)	Clark County Court Evidence Vault
39	Eric Hamilton	One piece of broken glass. Item #4. Pkg. #3326-4	CCME. In chest of victim below the neck	Yes	Collected by McPhail (11/16/98).	LVMPD
40	Eric Hamilton	One piece of broken glass. Item #5. Pkg. #3326-4	CCME. On sheet around victim.	Yes	Collected by McPhail (11/16/98).	LVMPD
41	Peter Limanni	Sample of blood with control Item # 4 A/R. Pkg #3326-4		Yes	Det. Thowsen requested examination forensic lab (12/31/98). McPhail booked.  Requested: Does it match Limanni DNA?	Forensic Lab
42	Peter Limanni	One projectile. Item #5. Pkg #3326-4	San Bernardino Coroners Office, from the victim's body	Yes	San Bernardino Coroners Office (12/29/98). Transferred to LVMPD. Booked by McPhail. Admitted into evidence in court as Exhibit 49. (Verified 12/5/2014)	Clark County Court Evidence Vault
43	Peter Limanni	One projectile. Item #6. Pkg #3326-4	San Bernardino Coroners Office, from the victim's body	Yes	San Bernardino Coroners Office (12/29/98). Transferred to LVMPD. Booked by McPhail. Admitted into evidence in court as Exhibit 49. (Verified 12/5/2014)	Clark County Court Evidence Vault
44	Peter Limanni	Two projectile fragments. Item #7. Pkg. #3326-4	San Bernardino Coroners Office,	Yes	San Bernardino Coroners Office (12/29/98). Transferred to LVMPD. Booked by McPhail. Admitted	Clark County Court Evidence Vault

45	Peter Limanni	One projectile. Item #8. Pkg. #3326-4	45 from the victim's body San Bernardino Coroners Office, from the victim's body	Yes	into evidence in court as Exhibit 49. (Verified 12/5/2014) San Bernardino Coroners Office (12/29/98). Transferred to LVMPD. Booked by McPhail. Admitted into evidence in court as Exhibit 49. (Verified 12/5/2014)	Clark County Court Evidence Vault
46	Peter Limanni	Three projectiles. Item #9. Pkg. #3326-4	San Bernardino Coroners Office, from the victim's body	Yes	San Bernardino Coroners Office (12/29/98). Transferred to LVMPD. Booked by McPhail. Admitted into evidence in court as Exhibit 49. (Verified 12/5/2014)	Clark County Court Evidence Vault
47	Peter Limanni	Multiple projectile fragments. Item #10. Pkg. #3326-4	San Bernardino Coroners Office, from the victim's body	Yes	San Bernardino Coroners Office (12/29/98). Transferred to LVMPD. Booked by McPhail. Admitted into evidence in court as Exhibit 49. (Verified 12/5/2014)	Clark County Court Evidence Vault
48	Peter Limanni	One projectile. Item #11. Pkg. #3326-4	San Bernardino Coroners Office, from the victim's body	Yes	San Bernardino Coroners Office (12/29/98). Transferred to LVMPD. Booked by McPhail. Admitted into evidence in court as Exhibit 49. (Verified 12/5/2014)	Clark County Court Evidence Vault
49	Peter Limanni	One projectile. Item #12. Pkg. #3326-4	San Bernardino Coroners Office, from the victim's body	Yes	San Bernardino Coroners Office (12/29/98). Transferred to LVMPD. Booked by McPhail. Admitted into evidence in court as Exhibit 49. (Verified 12/5/2014)	Clark County Court Evidence Vault
50		One Ballys MVP card with name Peter Limanni, one Sands Ambassador card with name Peter Limanni, and one Palace Station Boarding Pass. Item #14. Pkg. #3326-4	1933 S. Western Ave. On pavement between dumpster and exterior door.	Yes	Collected by McPhail (11/17/98). Admitted as evidence State's Exhibit 41 (Verified 12/5/2014)	Clark County Court Evidence Vault
51		Multiple cigarette butts. Item #15. Pkg. #3326-4	LVMPD Criminalistics Bureau. 1998 Dodge Van #514 JME. Inside ashtray located in front interior engine cover.	Yes	Collected by McPhail (11/17/98).	LVMPD

52	Eric Hamilton	Multiple hairs. Item #6. Pkg. #3326-5	CCME. Under right/little finger of the victim.	Yes	Collected by McPhail (11/16/98). Detective Thowsen requested testing. David P. Welch #1418 received evidence in sealed envelope, tested, and returned it to the evidence vault. (12/21/98) Admitted into evidence in court as Exhibit 36. (Verified 12/5/2014)	Clark County Court Evidence Vault
53	Eric Hamilton	Multiple fingernail clippings. Item #7. Pkg. #3326-5	CCME. The right hand of victim.	Yes	Collected by McPhail (11/16/98). Detective Thowsen requested testing. David P. Welch #1418 received evidence in sealed envelope, tested, and returned it to the evidence vault. (12/21/98) Admitted into evidence in court as Exhibit 36. (Verified 12/5/2014)	Clark County Court Evidence Vault
54	Eric Hamilton	Multiple fingernail clippings. Item #8. Pkg. #3326-5			Admitted into evidence in court as Exhibit 36. (Verified 12/5/2014)	Clark County Court Evidence Vault
55		Ceasars Tahoe claim stub #16684. Item #16. Pkg. #3326-5	LVMPD Criminalistics Bureau. 1998 Dodge Van #514 JME. Inside left drink holder.	Yes	Collected by McPhail (11/17/98).	LVMPD
56		One brown colored "express" purse with wallet and other personal items, including ID. In the name of Lydia Frances Gorzoch. Item #15. Pkg. #3326-5	1933 S. Western Ave. On ceiling tile located above the west doors to the humidor inside northwest office.	Yes	Collected by McPhail (11/17/98).	LVMPD
57	Eric Hamilton	One piece of copper colored scouring pad and one piece of cut clothes from hanger. Item #9. Pkg. #3326-6	CCME. Inside front/left pocket of black Levis	Yes	Collected by McPhail (11/16/98). Admitted into evidence in court as Exhibit 37. (Verified 12/5/2014)	Clark County Court Evidence Vault
58	Eric Hamilton	One green piece of paper with Jack 429-5957 on the front and other writing on rear. Item #10. Pkg. #3326-6	CCME. Inside front/right pocket of black Levis	Yes	Collected by McPhail (11/16/98). Admitted into evidence in court as Exhibit 37. (Verified 12/5/2014)	Clark County Court Evidence Vault

59		One taped footwear lift, numbered "30". Item #17. Pkg. #3326-6	LVMPD Criminalistics Bureau. 1998 Dodge Van #514 JME. On floor in rear cargo area.	Yes	Collected by McPhail (11/17/98).	LVMPD
60		One taped footwear lift numbered "31". Item #18. Pkg. #3326-6	LVMPD Criminalistics Bureau. 1998 Dodge Van #514 JME. On floor in rear cargo area.	Yes	Collected by McPhail (11/17/98).	LVMPD
61		One taped footwear lift, numbered "32". Item #19. Pkg. #3326-6	LVMPD Criminalistics Bureau. 1998 Dodge Van #514 JME. On floor in rear cargo area.	Yes	Collected by McPhail (11/17/98).	LVMPD
62		One taped footwear lift, numbered "33". Item #20. Pkg. #3326-6	LVMPD Criminalistics Bureau. 1998 Dodge Van #514 JME. Under trailing edge of front/left door.	Yes	Collected by McPhail (11/17/98).	LVMPD
63		\$36.06 in currency. Item #16. Pkg. 3326-6.	1933 S. Western Ave. Inside purse (above). On ceiling tile located above the west doors to the humidor inside northwest office.	Yes	Collected by McPhail (11/17/98).	LVMPD
64	Eric Hamilton	Sample of rock, dirt, and other debris. Item #11. Pkg. #3326-7	CCME. From body of victim.	Yes	Collected by McPhail (11/16/98).	LVMPD
65	Eric Hamilton	Sample of rock, dirt, and other debris. Item #12. Pkg. #3326-7.	CCME. From body of victim.	Yes	Collected by McPhail (11/16/98).	LVMPD

66	One set of 4 acetate lifts of tire tread pattern. Item #21. Pkg. #3326-7.	LVMPD Criminalistics Bureau. 1998 Dodge Van #514 JME. From four tires.	Yes	Collected by McPhail (11/17/98).	LVMPD
67	One complete cartridge, head stamped "W.W. 32 S&W" Item #17. Pkg. #3326-7	1933 S. Western Ave. Inside toilet bowl.	Yes	Collected by McPhail (11/17/98). Det. Thowsen requested examination forensic lab. Torrey D. Johnson received evidence in sealed envelope from Evidence Vault, tested and returned it to Evidence Vault. (12/17/98) Released to Latent Print Examiner F. Boyd P#5216 for latent print processing, received back in sealed condition. Admitted into evidence in court as Exhibit 42. (Verified 12/5/2014)	Clark County Court Evidence Vault
68	One complete cartridge, head stamped "W.W. 32 S&W" Item #18. Pkg. #3326-7	1933 S. Western Ave. On ceiling tile, in the ceiling of the northeast bedroom.	Yes	Collected by McPhail (11/17/98). Det. Thowsen requested examination forensic lab. Torrey D. Johnson received evidence in sealed envelope from Evidence Vault, tested and returned it to Evidence Vault. (12/17/98) Released to Latent Print Examiner F. Boyd P#5216 for latent print processing, received back in sealed condition. Admitted into evidence in court as Exhibit 42. (Verified 12/5/2014)	Clark County Court Evidence Vault
69	One cartridge case, head stamped "R-P 357 MAGNUM" Item #19. Pkg. #3326-7	1933 S. Western Ave. On the ceiling tile, in ceiling of northwest office.	Yes	Collected by McPhail (11/17/98). Det. Thowsen requested examination forensic lab. Torrey D. Johnson received evidence in sealed envelope from Evidence Vault, tested and returned it to Evidence Vault. (12/17/98) Released to Latent Print Examiner F. Boyd P#5216 for latent print processing, received back in sealed condition. Admitted into evidence in court as Exhibit 42. (Verified 12/5/2014)	Clark County Court Evidence Vault
70	One cartridge case, head stamped "WINCHESTER 357 MAGNUM" Item #20. Pkg. #3326-7	1933 S. Western Ave. On the ceiling light, inside the ceiling of northwest office	Yes	Collected by McPhail (11/17/98). Det. Thowsen requested examination forensic lab. Torrey D. Johnson received evidence in sealed envelope from Evidence Vault, tested and returned it to Evidence Vault. (12/17/98) Released to Latent Print Examiner F. Boyd P#5216 for latent print processing, received back in sealed condition. Admitted into evidence in court as Exhibit 42. (Verified 12/5/2014)	Clark County Court Evidence Vault



71		One cartridge case, head stamped "NEVINS 357 MAG" Item #21. Pkg. #3326-7	1933 S. Western Ave. On the ceiling tile inside ceiling of the northwest office.	Yes	Collected by McPhail (11/17/98). Det. Thowsen requested examination forensic lab. Torrey D. Johnson received evidence in sealed envelope from Evidence Vault, tested and returned it to Evidence Vault. (12/17/98) Released to Latent Print Examiner F. Boyd P#5216 for latent print processing, received back in sealed condition. Admitted into evidence in court as Exhibit 42. (Verified 12/5/2014)	Clark County Court Evidence Vault
72		One bullet. Item #22. Pkg. #3326-7	1933 S. Western Ave. Inside dry wall, located behind west couch inside south/central office.	Yes	Collected by McPhail (11/17/98). Det. Thowsen requested examination forensic lab. Torrey D. Johnson received evidence in sealed envelope from Evidence Vault, tested and returned it to Evidence Vault. (12/17/98) Released to Latent Print Examiner F. Boyd P#5216 for latent print processing, received back in sealed condition. Admitted into evidence in court as Exhibit 42. (Verified 12/5/2014)	Clark County Court Evidence Vault
73	Eric Hamilton	One pair of black "Rugged" boots (Size 10W). Item #13. Pkg. #3326-8	CCME. On the body of the victim.	Yes	Collected by McPhail (11/16/98).	LVMPD
74	Eric Hamilton	One pair of gray colored undershorts. Item #14. Pkg. #3326-8	CCME. On the body of the victim.	Yes.	Collected by McPhail (11/16/98).	LVMPD
75	Eric Hamilton	One pair of gray socks. Item #15. Pkg. #3326-8	CCME. On the body of the victim.	Yes	Collected by McPhail (11/16/98).	LVMPD
76	Eric Hamilton	One pair of black colored "Levis" size 34/30. Item #16. Pkg. #3326-8	CCME. On the body of the victim.	Yes	Collected by McPhail (11/16/98).	LVMPD
77	Eric Hamilton	One black colored belt. Item #17. Pkg. #3326-8	CCME. On the body of the victim.	Yes	Collected by McPhail (11/16/98).	LVMPD
78	Eric Hamilton	One gray colored "Mission" shirt. Item #18. Pkg. #3326-8	CCME. On the body of the victim.	Yes	Collected by McPhail (11/16/98).	LVMPD
79		One piece of broken glass. Item #23. Pkg. #3326-8	1933 S. Western Ave. On floor in southwest office.	Yes	Collected by McPhail (11/17/98).	LVMPD

80	Eric Hamilton	Sample of hair and debris. Item #19. Pkg. #3326-9	CCME. On the black colored Levis (Item #16 Pkg. #3326-8)	Yes	Collected by McPhail (11/16/98).	LVMPD
81	Eric Hamilton	Sample of hair and debris. Item #20. Pkg. #3326-9	CCME. On the black colored Levis (Item #16. Pkg. #3326-8)	Yes	Collected by McPhail (11/16/98).	LVMPD
82		Sample of light colored dog hair (Jake). Item #24. Pkg. #3326-9	1933 S. Western Ave. From the back of the dog.	Yes	Collected by McPhail (11/17/98).	LVMPD
83		One wall calendar. Item #25. Pkg. #3326-10	1933 S. Western Ave. On east wall in south/central office.	Yes	Collected by McPhail (11/17/98).	LVMPD
84		Multiple pictures in a plastic bag. Item #26. Pkg. #3326-10	1933 S. Western Ave. Trashcan in south/central office.	Yes	Collected by McPhail (11/17/98).	LVMPD
85		One black leather business card holder with contents, including birth certificate in name of Peter Paul Limanni and other personal items. Item #27. Pkg. #3326-10	1933 S. Western Ave. On ceiling tile in the ceiling of south/central office.	Yes	Collected by McPhail (11/17/98). Requested to return to LVMPD (from the Court evidence vault) per request by DA Roper and DA Owens on 8/2/2007. Order signed by District Judge Smiley 8/3/2007. Collected from Evidence Vault 8/9/2007 by A. Thomas P# 7573 LMVPD.	LVMPD
86		One left "K-Swiss" athletic shoe, size 9 1/2. Item #28. Pkg. #3326-10	1933 S. Western Ave. On ironing board in northeast bedroom	Yes	Collected by McPhail (11/17/98).	LVMPD
87		One red plastic cartridge holder with piece of paper labeled "Federal classic pistol	1933 S. Western Ave. On water heater in south east office.	Yes	Collected by McPhail (11/17/98).	LVMPD

		cartridges." Item #29. Pkg. #3326-10					
88		One piece of press board. Item #30. Pkg. #3326-10	1933 S. Western Ave. On east wall of humidor	Yes	Collected by McPhail (11/17/98).		LVMPD
89		One piece of cedar wood. Item #31. Pkg. #3326-10	1933 S. Western Ave. Under Item #30	Yes	Collected by McPhail (11/17/98).		LVMPD
90		One piece of pine wood labeled "Pablo 332 2 = BTR COM and bearing the number 2 handwritten in orange color. Item #32. Pkg. 3326-10	1933 S. Western Ave. On floor near west wall of northwest office.	Yes	Collected by McPhail (11/17/98).		LVMPD
91		One pair of "Levis" blue jeans, size 29/32 with apparent blood on front/right pocket. Item #33. Pkg. #3326-11.	1933 S. Western Ave. On north side of west coach, inside south/central office.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 44. (Verified 12/5/2014)		Clark County Court Evidence Vault
92		One piece of pine wood, with white label/bar code on the end. Item #34. Pkg. #3326-12.	1933 S. Western Ave. On floor near west wall of northwest office.	Yes	Collected by McPhail (11/17/98).		LVMPD
93		One piece of pine wood, with white label/bar code on the end labeled "Pablo 332 Z & BTR COM" on the front. Item #35. Pkg. #3326-13	1933 S. Western Ave. On floor near west wall of northwest office.	Yes	Collected by McPhail (11/17/98).		LVMPD
94		Sample of apparent blood on cardboard. Item #36. Pkg. #3326-14	1933 S. Western Ave. Lid of box located on front/exterior side of business.	Yes	Collected by McPhail (11/17/98). condition. Admitted into evidence in court as Exhibit 45. (Verified 12/5/2014)		Clark County Court Evidence Vault

95	Sample of apparent blood on cardboard. Item #37 A/B. Pkg. #3326-14	1933 S. Western Ave. On wall east of front entry door. Inches above the floor.	Yes	Collected by McPhail (11/17/98). Detective Thowsen requested testing. David P. Welch #1418 received evidence in sealed envelope, tested, and returned it to the evidence vault. (12/21/98) Admitted into evidence in court as Exhibit 45. (Verified 12/5/2014)	Clark County Court Evidence Vault
96	Sample of apparent blood with control. Item #38 A/B. Pkg. #3326-14.	1933 S. Western Ave. On west wall of south/central office. 53 inches above the floor.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 45. (Verified 12/5/2014)	Clark County Court Evidence Vault
97	Sample of apparent blood with control. Item #39 A/B. Pkg. #3326-14	1933 S. Western Ave. On north door jam of southwest door inside south/central office	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 45. (Verified 12/5/2014)	Clark County Court Evidence Vault
98	Sample of blood with control. Item # 40 A/B. Pkg. #3326-14	1933 S. Western Ave. On sink counter inside southeast office.	Yes	Collected by McPhail (11/17/98). Detective Thowsen requested testing. David P. Welch #1418 received evidence in sealed envelope, tested, and returned it to the evidence vault. (2/9/99) Admitted into evidence in court as Exhibit 45. (Verified 12/5/2014)  Requested: Does it match Limanni DNA?	Clark County Court Evidence Vault
99	Sample of apparent blood with control. Item #41 A/B. Pkg. #3326-14	1933 S. Western Ave. On cupboard below sink counter in south east office.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 45. (Verified 12/5/2014)	Clark County Court Evidence Vault
100	Sample of apparent blood with control. Item #42 A/B. Pkg. #3326-14	1933 S. Western Ave. On north wall of southeast office.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 45. (Verified 12/5/2014)	Clark County Court Evidence Vault
101	Sample of apparent blood with control. Item #43 A/B. Pkg. #3326-14	1933 S. Western Ave. On door jam (east side) of northwest	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 45. (Verified 12/5/2014)	Clark County Court Evidence Vault

102		Sample of apparent blood with control. Item #44 A/B. Pkg. #3326-15	door of the southeast office. 1933 S. Western Ave. On south wall of rear hallway.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 46. (Verified 12/5/2014)	Clark County Court Evidence Vault
103		Sample of apparent blood with control. Item #45 A/B. Pkg. #3326-15	1933 S. Western Ave. On east wall of northeast bedroom	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 46. (Verified 12/5/2014)	Clark County Court Evidence Vault
104		Sample of reddish/brown stain on fabric. Item #46. Pkg. #3326-15	1933 S. Western Ave. On the arm chair near the northeast corner of northeast bedroom.	Yes	Collected by McPhail (11/17/98). David P. Welch #1418 received evidence in sealed envelope, tested, and returned it to the evidence vault. (2/9/99). Admitted into evidence in court as Exhibit 46. (Verified 12/5/2014)	Clark County Court Evidence Vault
105		Sample of apparent blood on fabric. Item #47. Pkg. #3326-15	1933 S. Western Ave. On the arm chair near the northeast corner of northeast bedroom.	Yes	Collected by McPhail (11/17/98). Admitted into evidence in court as Exhibit 46. (Verified 12/5/2014)	Clark County Court Evidence Vault
106	Eric Hamilton	Blood and Control. Item # 37 A/B. Pkg #3326-14		Yes	Det. Thowsen requested examination forensic lab (11/23/98). McPhail booked.	Forensic Lab
107	Eric Hamilton	Blood and Control. Item # 3. Pkg #731-1		Yes	Requested: Is DNA from victim or suspect? Det. Thowsen requested examination forensic lab (11/23/98). Reed booked.	Forensic Lab
108	Eric Hamilton	Mag business cards with blood. Item #14. Pkg #3326-3		Yes	Requested: Is DNA from victim or suspect? Det. Thowsen requested examination forensic lab (11/23/98). McPhail booked.	Forensic Lab
109		Large Lead (possible bullet) fragment. Item #1. Pkg #1502-1	1929 Western Ave, in front of the building	Yes	Requested: Is DNA from victim or suspect? Evidence impounded by Ruffino. (11/17/98). Det. Thowsen requested forensic lab examination. Torrey D. Johnson received evidence in sealed envelope from Evidence Vault, tested and returned it to Evidence Vault. (12/17/98) Admitted into evidence in court as Exhibit 19. (Verified 12/5/2014)	Clark County Court Evidence Vault

110	One Jacketed Bullet. Item #2. Pkg #1502-1	1929 Western Ave, floor of reception room	Yes	Ruffino booked. (11/17/98). Det. Thowsen requested examination forensic lab (11/23/98). Torrey D. Johnson received evidence in sealed envelope from Evidence Vault, tested and returned it to Evidence Vault. (12/17/98) Admitted into evidence in court as Exhibit 19. (Verified 12/5/2014)  Requested: What caliber, fired from same weapon, what kind of weapon?	Clark County Court Evidence Vault
111	One Jacketed Bullet. Item #3. Pkg #1502-1	1929 Western Ave, floor of reception room	Yes	Ruffino booked. (11/17/98). Det. Thowsen requested examination forensic lab (11/23/98). Torrey D. Johnson received evidence in sealed envelope from Evidence Vault, tested and returned it to Evidence Vault. (12/17/98) Admitted into evidence in court as Exhibit 19. (Verified 12/5/2014)  Requested: What caliber, fired from same weapon, what kind of weapon?	Clark County Court Evidence Vault
112	Lead/copper bullet fragment. Item #4. Pkg #1502-01	1929 Western Ave, floor of reception room	Yes	Ruffino booked. (11/17/98). Det. Thowsen requested examination forensic lab (11/23/98). Torrey D. Johnson received evidence in sealed envelope from Evidence Vault, tested and returned it to Evidence Vault. (12/17/98) Admitted into evidence in court as Exhibit 19. (Verified 12/5/2014)	Clark County Court Evidence Vault
113	Lead/copper bullet fragment. Item #5. Pkg #1502-01	1929 Western Ave, floor of reception room	Yes	Ruffino booked. (11/17/98). Det. Thowsen requested examination forensic lab (11/23/98). Torrey D. Johnson received evidence in sealed envelope from Evidence Vault, tested and returned it to Evidence Vault. (12/17/98) Admitted into evidence in court as Exhibit 19. (Verified 12/5/2014)	Clark County Court Evidence Vault
114	One Jacketed Bullet (deformed). Item #6. Pkg #1502-1	1929 Western Ave, floor of reception room	Yes	Ruffino booked. (11/17/98). Det. Thowsen requested examination forensic lab (11/23/98). Torrey D. Johnson received evidence in sealed envelope from Evidence Vault, tested and returned it to Evidence Vault. (12/17/98) Admitted into evidence in court as Exhibit 19. (Verified 12/5/2014)	Clark County Court Evidence Vault

					Requested: What caliber, fired from same weapon, what kind of weapon?	
115		Glass fragment with possible blood. Item #7. Pkg #1502-2	1929 Western Ave, outside entry	Yes	Evidence impounded by Ruffino. (11/17/98)	LVMPD
116		Possible blood sample and control. Item #8. Pkg #1502-3	1929 Western Ave, on side walk	Yes	Evidence impounded by Ruffino. (11/17/98)	LVMPD
117		Two glass fragments with possible blood. Item #9. Pkg #1502-4	1929 Western Ave, floor of reception room	Yes	Evidence impounded by Ruffino. (11/17/98). Det. Thowsen requested examination forensic lab (11/23/98). David P. Welch #1418 received evidence in sealed envelope, tested, and returned it to the evidence vault. (12/21/98)	LVMPD – Evidence Vault
118		Three small dark hairs. Item #10. Pkg #1502-5	1929 Western Ave, interior of west point-of-entry window	Yes	Requested: Is DNA from victim or suspect? Evidence impounded by Ruffino. (11/17/98)	LVMPD
119		Several gray or light colored hairs. Item #11. Pkg #1502-5	1929 Western Ave, floor of reception room	Yes	Evidence impounded by Ruffino. (11/17/98)	LVMPD
120		Multiple glass fragment samples. Item #12. Pkg #1502-6	1929 Western Ave, floor of reception room	Yes	Evidence impounded by Ruffino. (11/17/98)	LVMPD
121		Green carpet standard. Item #13. Pkg #1502-7.	1929 Western Ave, floor of reception room	Yes	Evidence impounded by Ruffino. (11/17/98)	LVMPD
122		Small piece of paper with possible blood and "GSI Thunderbird Hotel" printed on it. Item #14. Pkg #1502-8	1929 Western Ave, floor of reception room	Yes	Evidence impounded by Ruffino. (11/17/98)	LVMPD
123		Small piece of paper with "1149 Feet" printed on one side and "Security" printed on the other side. Item #15. Pkg #1502-8	1929 Western Ave, floor of reception room	Yes	Evidence impounded by Ruffino. (11/17/98)	LVMPD

124		Escort advertisement publication. Item #16. Pkg #1502-8	1929 Western Ave, floor of reception room	Yes	Evidence impounded by Ruffino. (11/17/98)	L.V.M.P.D.
125		Gold colored nugget-type bracelet (possibly custom jewelry). Item #17. Pkg #1502-9	1929 Western Ave, floor of reception room.	Yes	Evidence impounded by Ruffino. (11/17/98) Admitted as evidence State's Exhibit 21 (Verified 12/5/2014)	Clark County Court Evidence Vault
126		Four-inch beige toothbrush (enclosed in plastic sleeve). Item #19. Pkg #1502-10	1929 Western Ave, floor of reception room	Yes	Evidence impounded by Ruffino. (11/17/98) Admitted into evidence in court as Exhibit 22. (Verified 12/5/2014)	Clark County Court Evidence Vault
127		Black "J.C. Penney Construction Arcadia" base-ball type cap. Item #19. Pkg #1502-10	1929 Western Ave, floor of reception room	Yes	Evidence impounded by Ruffino. (11/17/98) Admitted into evidence in court as Exhibit 22. (Verified 12/5/2014)	Clark County Court Evidence Vault
128		Blue winter security-type jacket with possible bullet-type holes. Item #20. Pkg #1502-11	1929 Western Ave, floor of reception room	Yes	Evidence impounded by Ruffino. (11/17/98) Admitted into evidence in court as Exhibit 23. (Verified 12/5/2014)	Clark County Court Evidence Vault
129	Peter Limmani	Hair from Levis. Item #19. Pkg #3326-9		Yes	Det. Thowsen requested examination forensic lab (11/23/98). McPhail booked.	Forensic Lab
130		Hair from shirt. Item #20. Pkg #3326-9		Yes	Requested: Is this hair from the same dog? Det. Thowsen requested examination forensic lab (11/23/98). McPhail booked.	Forensic Lab
131		Sample of dog hair. Item #24. Pkg #3326-9		Yes	Requested: Is this hair from the same dog? Det. Thowsen requested examination forensic lab (11/23/98). McPhail booked.	Forensic Lab
132		Tire impressions on paper. Item #12. Pkg 731-6		Yes	Requested: Is this hair from the same dog? Det. Thowsen requested examination forensic lab (11/23/98). Reed booked. Requested: Is this from the same tire?	Forensic Lab



133		Cast of tire impressions. Item #6. Pkg 714-4		Yes	Det. Thowsen requested examination forensic lab (11/23/98). Roberts booked. Admitted into evidence in court as an Exhibit. (Verified 12/5/2014)	Clark County Court Evidence Vault
134	Eric Hamilton	7 pieces of lumber. Item #11-AG. Pkg #5714-6		Yes	Requested: Is this from the same tire? Det. Thowsen requested examination forensic lab (11/17/98). Roberts booked. Admitted into evidence in court as an exhibit. (Verified 12/5/2014). Finger prints lifted from lumber admitted into evidence in court as Exhibit 81. (Verified 12/5/2014).	Clark County Court Evidence Vault
135	Peter Limanni	White cotton type material from berm - Placard 07, 1538. Item A-1. Barcode 9842021123	Nipton road, 1 Mile. East of I-15	Yes	Requested: LP Processing Recovered by J. Smink 51537 of San Bernardino Sheriff's Department (12/23/98). Delivered to Sheriff's Central Property by Forensic Specialist J. Smink (12/29/98). Transferred to LVMPD.	LVMPD
136	Peter Limanni	Standard soil sample from berm, north of victim - 1539, Item A-2, Barcode 9842021123	Nipton road, 1 Mile. East of I-15	Yes	Recovered by J. Smink 51537 of San Bernardino Sheriff's Department (12/23/98). Delivered to Sheriff's Central Property by Forensic Specialist J. Smink (12/29/98). Transferred to LVMPD.	LVMPD
137	Peter Limanni	Tire impression in the shoulder soil. Placard 01-02	Nipton road, 1 Mile. East of I-15	Yes		
138	Peter Limanni	Tire impression in the shoulder soil. Placard 03-04	Nipton road, 1 Mile. East of I-15	Yes		
139		Apparent blood sample and control. Item #1. Pkg. #3731-1	LVMPD Crime Lab from 1998 Toyota Tacoma Pick up 720 JJM.	Yes	Collected by Reed. (11/19/98). Detective Thowsen requested testing. David P. Welch #1418 received evidence in sealed envelope, tested, and returned it to the evidence vault. (12/21/98). Admitted into evidence in court as Exhibit 26. (Verified 12/5/2014)	Clark County Court Evidence Vault
140		Apparent blood sample and control. Item #2. Pkg. #3731-1	LVMPD Crime Lab from 1998 Toyota Tacoma Pick up 720 JJM.	Yes	Collected by Reed. (11/19/98) Detective Thowsen requested testing. David P. Welch #1418 received evidence in sealed envelope, tested, and returned it to the evidence vault. (12/21/98) Admitted into evidence in court as Exhibit 26. (Verified 12/5/2014)	Clark County Court Evidence Vault

141		Apparent blood sample and control. Item #3. Pkg. #3731-1.	LVMPD Crime Lab from 1998 Toyota Tacoma Pick up 720 JJM.	Yes	Collected by Reed. (11/19/98). Detective Thowsen requested testing. David P. Welch #1418 received evidence in sealed envelope, tested, and returned it to the evidence vault. (12/21/98) Admitted into evidence in court as Exhibit 26. (Verified 12/5/2014)	Clark County Court Evidence Vault
142		Apparent animal hair (short white). Item #4. Pkg. #3731-2	LVMPD Crime Lab from 1998 Toyota Tacoma Pick up 720 JJM.	Yes	Collected by Reed. (11/19/98)	LVMPD
143		Apparent animal hair (short white) Item #5. Pkg. #3731-2	LVMPD Crime Lab from 1998 Toyota Tacoma Pick up 720 JJM.	Yes	Collected by Reed. (11/19/98)	LVMPD
144		Address label on tom white paper Item #6. Pkg. #3731-3	LVMPD Crime Lab from 1998 Toyota Tacoma Pick up 720 JJM.	Yes	Collected by Reed. (11/19/98)	LVMPD
145		Eleven Malboro cigarette butts. Item #7. Pkg. #3731-4	LVMPD Crime Lab from 1998 Toyota Tacoma Pick up 720 JJM.	Yes	Collected by Reed. (11/19/98)	LVMPD
146		White nylon and hemp twine. Item #8. Pkg. #3731-5	LVMPD Crime Lab from 1998 Toyota Tacoma Pick up 720 JJM.	Yes	Collected by Reed. (11/19/98)	LVMPD
147		Long coil of hemp twine with apparent blood. Item #9. Pkg. #3731-5.	LVMPD Crime Lab from 1998 Toyota Tacoma Pick up 720 JJM.	Yes	Collected by Reed. (11/19/98)	LVMPD
148		White nylon twine. Item #10. Pkg. #3731-5	LVMPD Crime Lab from 1998 Toyota Tacoma	Yes	Collected by Reed. (11/19/98)	LVMPD

149		Hemp twine. Item #11. Pkg. #3731-5	Pick up 720 JJM.	Yes	Collected by Reed. (11/19/98)	LVMPD
150		Eight white paper rolls of rolled tire impressions. Item #12. Pkg. #3731-6	LVMPD Crime Lab from 1998 Toyota Tacoma Pick up 720 JJM.	Yes	Collected by Reed. (11/19/98) Admitted into evidence in court as Exhibit 23. (Verified 12/5/2014)	Clark County Court Evidence Vault
151	Eric Hamilton	One Marlboro brand cigarette butt. Item #1. Pkg. #5714-1	Desert area 2.1 miles south of State Route 146 on Las Vegas BLVD. South	Yes	Collected by Roberts (11/16/98). Detective Thowsen requested testing (11/23/98). David P. Welch #1418 received evidence in sealed envelope, tested, and returned it to the evidence vault. (12/21/98)  Requested: Is DNA from victim or suspect?	LVMPD
152	Eric Hamilton	One Marlboro brand cigarette butt. Item #2. Pkg. #5714-1	Desert area 2.1 miles south of State Route 146 on Las Vegas BLVD. South	Yes	Collected by Roberts (11/16/98). Detective Thowsen requested testing (11/23/98). David P. Welch #1418 received evidence in sealed envelope, tested, and returned it to the evidence vault. (12/21/98)  Requested: Is DNA from victim or suspect?	LVMPD
153	Eric Hamilton	One Skoal brand long cut spearmint chewing tobacco container with small amount of tobacco. Item #3. Pkg. #5714-2	Desert area 2.1 miles south of State Route 146 on Las Vegas BLVD. South	Yes	Requested: Is DNA from victim or suspect? Collected by Roberts (11/16/98). Sent to latent prints for latent processing. Det. Thowsen requested examination forensic lab (11/23/98). McPhail booked.  Requested: Is DNA from victim or suspect?	LVMPD
154	Eric Hamilton	One empty beer bottle Beck's brand label. Item #4. Pkg. #5714-3	Desert area 2.1 miles south of State Route 146 on Las Vegas BLVD. South	Yes	Collected by Roberts (11/16/98). Sent to latent prints for latent processing. Det. Thowsen requested examination forensic lab (11/17/98). Finger prints admitted into evidence in court as Exhibit 83. (Verified 12/5/2014)	LVMPD
155	Eric Hamilton	One empty beer bottle Beck's brand label. Item #5. Pkg. #5714-3	Desert area 2.1 miles south of State Route 146	Yes	Collected by Roberts (11/16/98). Sent to latent prints for latent processing. Det. Thowsen requested examination forensic lab (11/17/98). Finger prints	LVMPD

				on Las Vegas BLVD. South		admitted into evidence in court as Exhibit 83. (Verified 12/5/2014)	
156	Eric Hamilton	One cast of apparent tire impression. Item #6. Pkg. #5714-4		Desert area 2.1 miles south of State Route 146 on Las Vegas BLVD. South	Yes	Collected by Roberts (11/16/98)	LVMPD
157	Eric Hamilton	Vegetation sample. Item #7. Pkg. #5714-5		Desert area 2.1 miles south of State Route 146 on Las Vegas BLVD. South	Yes	Collected by Roberts (11/16/98)	LVMPD
158	Eric Hamilton	Vegetation sample. Item #8. Pkg. #5714-5		Desert area 2.1 miles south of State Route 146 on Las Vegas BLVD. South	Yes	Collected by Roberts (11/16/98)	LVMPD
159	Eric Hamilton	Vegetation sample. Item #9. Pkg. #5714-5		Desert area 2.1 miles south of State Route 146 on Las Vegas BLVD. South	Yes	Collected by Roberts (11/16/98)	LVMPD
160	Eric Hamilton	Soil Sample. Item #10. Pkg. #5714-5		Desert area 2.1 miles south of State Route 146 on Las Vegas BLVD. South	Yes	Collected by Roberts (11/16/98)	LVMPD
161	Eric Hamilton	One sku/upc tag with label "Plum Creek" Item #12. Pkg. #5714-7		Desert area 2.1 miles south of State Route 146 on Las Vegas BLVD. South	Yes	Collected by Roberts (11/16/98) Admitted into evidence in court as Exhibit 72. (Verified 12/5/2014)	Clark County Court Evidence Vault
162		Check list/To Do List made by Jack Seka		Mailed by Takeo Kato	No	Admitted into evidence in court as Exhibit 20. (Verified 12/5/2014)	Clark County Court Evidence Vault

# EXHIBIT 2

# EXHIBIT 2

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JOHN JOSEPH SEKA

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

CASE NO. C159915  
DEPT. 14

**DECLARATION OF MARGARET ANN MCCONNELL**

STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF CLARK     )

1. I met Thomas Creamer at a car lot where Tom was working in the 1990's. We quickly became friends, and then started a relationship.

2. I met John "Jack" Joseph Seka in the 1990's through Tom.

3. Tom and Jack originally met at drug rehabilitation center, Self Help Motivated, in Philadelphia.

4. When we first met, Tom had completed the Self Help Motivated Rehabilitation Program. He continued to live there at the rehabilitation center, and didn't appear to be struggling with any drug addiction.

5. Sometime after leaving Self Help, Tom suffered from back pain. In order to alleviate the pain he used pain medication that he received from my mother.

6. However, Tom's condition quickly deteriorated as he succumbed to his addiction.

7. Tom began taking any prescription medication he could, including: Paxil, Xanax, muscle relaxers, and any other prescription drug he could obtain.

8. Tom would see multiple doctors to obtain these prescription medications.
9. Tom's addiction progressed to the point that he would frequently lose consciousness, have frequent violent mood swings, and would often have gaps in his memory.
10. Unfortunately, Tom would also become extremely aggressive and violent. He would physically abuse me, and threatened to kill me on several occasions. I was often concerned that he was going to hurt himself, his grandmother, myself, and others around him.
11. Due to Jack's friendship with Tom, I would call Jack for help in calming Tom.
12. In December 1998 and January 1999, Tom's behavior seemed to increase in intensity.
13. During this time, I was living with Tom's grandmother in a small house located at 39 Springfield Ave, Flourtown, PA 19031.
14. Tom became increasingly paranoid. He believed that I was attempting to steal his grandmother's house, and that Jack was attempting to take me away from Tom.
15. During a particularly violent episode with Tom, I called Jack for help.
16. Jack came to the home in order to help calm Tom.
17. Jack took Tom's keys to prevent Tom from driving. Jack was worried that Tom would hurt himself or others if he was able to drive.
18. Tom was infuriated that Jack would take his keys.
19. At this time all three of us were in the upstairs portion of the home, which is where Tom had his bedroom in the small house.
20. I went downstairs while Jack attempted to calm Tom.
21. While downstairs, I could hear the entire conversation and interaction between Jack and Tom.
22. At no point during this interaction did Jack ever admit to, or reference killing Peter Limanni or Eric Hamilton or having any involvement in the crime that occurred in Las Vegas.
23. Jack left the house and was attempting to get into the car to leave because of how angry Tom had become.

24. Abruptly, Tom calmed as if nothing occurred. He told me that he wanted to walk the dog.

25. I stood in the doorway and attempted to close the door to prevent Tom from going outside. I was worried that if Tom saw Jack he would become infuriated again.

26. Despite my best efforts, Tom saw Jack outside. Tom's mood changed instantly and he became extremely angry and emotional again.

27. Tom started attacking me. I tried to stay in the doorway as long as I could.

28. Tom forced me to the floor and started hitting me on the head.

29. As soon as the doorway was open, Tom left the house and chased after Jack.

30. Once Tom left the house, I turned and locked the door. I then called my sister, Stacie Daly, and told her to call 911.

31. I wouldn't open the door until the authorities arrived.

32. When the authorities arrived, they made Tom sit in a chair and blocked him while I grabbed some things. His grandmother and I left and stayed in a hotel.

33. At some point during this incident, Jack contacted a local mental institution to have Tom "302'd" (involuntarily committed to a mental institution under Pennsylvania law).

34. During this incident, Jack went back and pretended to sleep on the sofa. Tom thought nothing of it, and eventually passed out. Jack let the mental institution workers into the house while Tom was sleeping.

35. The mental institution sent several people to the house to seize Tom. They arrived at the house around the same time that the police arrived.

36. Tom was institutionalized for several weeks due to the threat he posed to himself and others.

37. As a result of Tom's treatment towards myself and others, I immediately filed for a restraining order.

38. I have not communicated with Tom since his initial involuntary institutionalization.

39. Tom was angry at Jack because Tom believed that Jack was attempting to take me away from Tom, and because Jack involuntarily committed Tom to a mental institution.



40. Jack did not admit to having any involvement in the crimes for which Jack was convicted while at 39 Springfield Ave, Flourtown, PA 19031.

I, Margaret Ann McConnell, declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed this 15<sup>th</sup> day of April 2017 at 2100 Andover Rd,  
Cinnaminson, NJ 08077.

Margaret Ann McConnell  
Margaret Ann McConnell



1 **RSPN**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 STEVEN S. OWENS  
6 Chief Deputy District Attorney  
7 Nevada Bar #004352  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

11 -vs-

12 JOHN JOSEPH SEKA,  
13 #1525324

14 Defendant.

CASE NO: 99C159915

DEPT NO: XXV

15 **STATE'S RESPONSE TO DEFENDANT'S PETITION**  
16 **REQUESTING GENETIC MARKER ANALYSIS**

17 DATE OF HEARING: September 6, 2017  
18 TIME OF HEARING: 9:00 A.M.

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
19 District Attorney, through STEVEN S. OWENS, Chief Deputy District Attorney, and hereby  
20 submits the attached Points and Authorities in Response to Defendant's Petition Requesting  
21 Genetic Marker Analysis.

22 This response is made and based upon all the papers and pleadings on file herein, the  
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
24 deemed necessary by this Honorable Court.

25 ///

26 ///

27 ///

28 ///

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 Following the discovery of the bullet riddled bodies of Eric Hamilton and Peter Limanni  
4 in two separate desert locations and his flight out of the jurisdiction, John Seka, hereinafter  
5 Defendant, was charged on June 30, 1999, by way of Information with: Counts I and II –  
6 Murder with use of a Deadly Weapon (Open Murder) (Felony - NRS 200.010, 200.030,  
7 193.165); and Counts III and IV – Robbery with use of a Deadly Weapon (Felony - NRS  
8 200.380, 193.165).

9 Following a trial by a jury of his peers, on March 1, 2001, Defendant was found guilty  
10 of: Count I – First Degree Murder with use of a Deadly Weapon; Count II – Second Degree  
11 Murder with use of a Deadly Weapon; Count III – Robbery; and Count IV – Robbery.  
12 Defendant was sentenced to serve: life without the possibility of parole in the Nevada  
13 Department of Corrections (NDC) as to Count I, with an equal and consecutive life without  
14 the possibility of parole in NDC for the weapon enhancement; life with the possibility of parole  
15 in NDC as to Count II, with an equal and consecutive life with the possibility of parole in NDC  
16 for the weapon enhancement, to be served consecutively to the sentence imposed in Count I;  
17 35 to 156 months in NDC as to Count III, to be served consecutively to the sentence imposed  
18 in Count II; and 35 to 156 months in NDC as to Count IV, to be served consecutively to the  
19 sentence imposed in Count III. According to the Judgment of Conviction, Defendant was also  
20 ordered to pay a \$25.00 Administrative Assessment Fee, a \$250.00 DNA Analysis Fee,  
21 \$2,825.00 in restitution as to Count I, and \$2,500.00 in restitution as to Count II. The Judgment  
22 of Conviction was filed on May 9, 2001.

23 Defendant filed a Petition for Writ of Habeas Corpus (Post-Conviction) on April 24,  
24 2001 – this was denied. The Supreme Court filed the Order Dismissing Appeal from the  
25 district court's interlocutory decision to dismiss Defendant's Petition for Writ of Habeas  
26 Corpus on November 20, 2001. The Order also reinstated the briefing schedule on Defendant's  
27 direct appeal from his conviction. Remittitur issued on December 18, 2001.

28 ///

1 On April 8, 2003, the Supreme Court filed its Order of Affirmance of Defendant's  
2 conviction. Remittitur issued on May 6, 2003.

3 Defendant filed a pro per Petition for Writ of Habeas Corpus (Post-Conviction) on  
4 February 24, 2004. The Court filed its Findings of Fact, Conclusions of Law, and Order  
5 denying the Petition for Writ of Habeas Corpus on January 31, 2005.

6 On June 19, 2017, Defendant filed the instant Petition for Genetic Marker Testing  
7 ("Petition"). The State responds herein.

### 8 **STATEMENT OF FACTS**

#### 9 **The crime scenes**

10 This case involves two murders committed on two separate dates between November  
11 4, 1998 (when the first victim, Peter Limanni, was last seen), and November 16, 1998 (when  
12 the body of the second victim, Eric Hamilton, was found). There are two crime scenes,  
13 neighboring businesses at 1929 Western Ave. and 1933 Western Ave.<sup>1</sup> 1929 Western was an  
14 empty business; 1933 Western was occupied by Defendant and his friend Peter Limanni, and  
15 was the site of Limanni's heating, ventilation, and air condition (HVAC) business "Sinergi,"  
16 where Defendant also worked. Transcript of Jury Trial ("JT") 2-13-01 Vol. 2 at 37-38, 39; JT  
17 2-14-01 Vol. 1 at 52, 55. The HVAC store occupied the front of 1933; Defendant and Limanni  
18 lived in the back of the store. JT 2-14-01 Vol. 1 at 52.

19 Although forensic evidence, as outlined below, indicated that the murders were  
20 committed at 1929 and 1933 Western, the bodies of Mr. Hamilton and Limanni were found at  
21 different sites: Limanni was found in the desert near the California border, and Hamilton was  
22 found in a shallow grave off a highway between Las Vegas and Sloan, covered only by a few  
23 pieces of lumber.

#### 24 **Peter Limanni disappears**

25 Sinergi moved into 1933 Western in May of 1998. 2-13-01 Vol. 2 at 38. Throughout  
26 1998, Sinergi struggled to make ends meet; Limanni fell behind on rent and property of the

27  
28 <sup>1</sup> Although Defendant refers in his Petition to 1929 Western Ave. at "the scene of the crime," the evidence indicates that, while Hamilton was killed at 1929 Western, Limanni was shot at 1933 Western—a bullet matching those found in Limanni's body was found buried in the wall at 1933 Western Ave.

1 business had to be pawned to generate cash. JT 2-13-01 Vol. 2 at 38, 41. In late 1998,  
2 Defendant and Limanni devised a plan to convert Sinergi from an HVAC business to a cigar  
3 shop. JT 2-14-01 Vol. 1 at 89. They decided to handle some of the necessary reconstruction  
4 themselves. Id. Thus, there were pieces of lumber and construction tools around the property.  
5 JT 2-14-01 Vol. 2 at 21. However, as the HVAC business failed and their financial difficulties  
6 increased, the relationship between Defendant and Limanni deteriorated.

7 On November 5, 1998, Jennifer Harrison, Limanni's girlfriend, came to the residence  
8 at 1933 Western looking for Limanni. JT 2-14-01 Vol. 1 at 51, 64. Defendant told Jennifer that  
9 he did not know where Limanni was. She took a look around the place and saw all of Limanni's  
10 shoes, his dog, and a bullet cartridge on the floor, but could not find Limanni. Id. at 65-67.  
11 After she left Sinergi, Jennifer kept calling Limanni's phone and asking Defendant where he  
12 might be. Id. at 68-69. Defendant convinced Jennifer not to call police or file a missing person  
13 report. Id. at 69. He told her, "He's missing because he wants to be missing." Id. at 69.

14 On her visit to Sinergi to find Limanni, Jennifer noticed "a couple hundred bucks" out  
15 in the open on the desk. Id. at 68. Shortly before he disappeared, Limanni was seen with \$2,000  
16 to \$3,000 in cash that he planned to use in converting the HVAC business to a cigar shop. JT  
17 2-13-01 Vol. 2 at 41.

18 Limanni's sister, Diane, eventually filed a missing persons report on December 2, 1998.  
19 JT 2-22-01 Vol. 1 at 25-26.

20 **Eric Hamilton's body is found**

21 On November 16, 1998, a construction worker driving out to a dumping site in Sloan,  
22 Nevada noticed something off the side of St. Rose Parkway that looked like a body. JT 2-14-  
23 101 Vol. 2 at 13. When police came out to the site, they found a very shallow grave with some  
24 lumber placed in a latticework over it. Id. at 14, 15-16. The body was identified as Hamilton.  
25 Police found a slip of paper with Defendant's name and his cell number in the pocket of  
26 Hamilton's shirt. Id. at 17, 18. Police traced the phone number to 1933 Western Ave. Id. at 18.

27 The next day, on November 17, 1998, the owner of one of the other businesses in the  
28 shopping center where Sinergi was located noticed that the 1929 Western business, located

1 next to Sinergi, looked like it had been broken into. JT 2-14-01 Vol. 1 at 39. He called the  
2 police. Id.

3 When police officers arrived, they saw broken glass and what appeared to be blood. Id.;  
4 JT 2-20-01 Vol. 1 at 58. They looked around the back of the store where the dumpsters were  
5 located and saw that the dumpsters were empty. Id. at 83-84. They continued investigating. Id.  
6 at 84-85.

7 While the police officers who responded to the 911 call about the break-in were  
8 investigating, they saw Defendant pull up to 1933 Western and go inside. JT 2-14-01 Vol. 2  
9 at 40-41; JT 2-20-01 Vol. 1 at 60. They decided to talk to him. JT 2-20-01 Vol. 1 at 60-61.  
10 Inside, they noticed a small knife and bullet on the desk. JT 2-13-01 Vol. 2 at 47-48, 62; JT 2-  
11 20-01 Vol. 1 at 64-65. They handcuffed Defendant but released him once they determined  
12 there were not any weapons nearby. JT 2-20-01 Vol. 1 at 65, 67.

13 Defendant told police that he did not know anything about what had happened next  
14 door and that his business partner, Peter Limanni, also had not been around to see what  
15 happened. JT 2-20-01 Vol. 1 at 61-62. Defendant told police that Limanni had not been around  
16 since November 5, and that he thought Limanni might be up in Lake Tahoe, but did not really  
17 know where he was. Id. at 62, 63.

18 When the crime scene analyst arrived at 1929 Western, he found a bullet fragment  
19 outside. JT 2-14-01 Vol. 2 at 42. Inside, he saw blood and a jacket with three bullet holes in  
20 it. Id. at 42-43. He called homicide detectives. JT 2-14-01 Vol. 2 at 19. After homicide  
21 detectives arrived, they instructed officers to check the dumpsters again. The dumpsters—  
22 which had been empty before the officers who responded to the break-in call talked to  
23 Defendant—now contained papers and identification cards belonging to Limanni, as well as  
24 shirts with burn marks, including a blue shirt with “Limanni Mechanical Services” on it. JT 2-  
25 14-01 vol. 2 at 33; JT 2-21-01 Vol.1 at 35-36.

26 Police did not arrest Defendant, but read him his Miranda rights and interviewed him  
27 about Hamilton’s body. Because police had not yet processed any forensic evidence and had  
28 only the inconsistencies in Defendant’s statement, they did not arrest Defendant. JT 2-21-01

1 Vol. 2 at 42-43. Instead, they took him back to 1933 Western. Id. at 43. When they arrived at  
2 1933, police told Defendant that he could not take the brown Toyota pickup truck parked  
3 outside Sinergi to go to a dinner appointment. Police told him he could not because they had  
4 seen what might be blood in the bed of the pickup truck. Id. at 44-45. In addition to the pickup,  
5 there were two vans belonging to Sinergi outside the building, one a plain white van and one  
6 with Sinergi symbols and markings all over it. Id. at 46. Defendant next tried to take the van  
7 with the Sinergi markings. Id. at 45-46. Police thought it was odd that he would not take the  
8 plain van to meet his friend, so before he left, they asked if they could look inside the back of  
9 the marked van. There, they found blood stains that had been partially wiped off. Id. at 46.  
10 Defendant left for "dinner" in the unmarked white van. Id. at 47.

11 **The investigations merge**

12 Defendant never returned from his dinner. Id. at 47. Instead, he was arrested several  
13 months later in Pennsylvania based on a statement from Thomas Cramer, Defendant's  
14 longtime friend, that Defendant had confessed to shooting Limanni multiple times. JT 2-20-  
15 01 Vol. 1 at 5-6, 15, 18-19, 19, 23-24.

16 On December 23, 1998, police in San Bernardino, California, received a call from a  
17 driver who believed he had seen a body being tugged at by dogs in the desert. JT 2-14-01 Vol.  
18 2 at 4-5. The body was eventually identified as Peter Limanni. JT 2-16-01 Vol. 2 at 115, 117.  
19 As Cramer had told police in Pennsylvania, Limanni had been shot at least eight times; five  
20 bullets or bullet fragments were recovered in or around his head. JT 2-21-01 Vol. 1 at 34.

21 Later, police found that the blood in the rear of the marked Sinergi van, which  
22 Defendant had tried to take to "dinner" on November 17, belonged to Limanni. Limanni had  
23 been shot with a .32 caliber gun with a misaligned chamber. Inside Defendant's residence at  
24 1933 Western, a recovered bullet fragment matched the bullet recovered from Hamilton's  
25 body. Seka v. State, Docket No. 37907 (Order of Affirmance, Apr. 8, 2003), at 6; JT 2-14-01  
26 Vol. 2 at 22. At 1933 Western, police found ammunition for a .32 caliber gun and a .357 caliber  
27 gun, as well as a wallet with Limanni's driver's license, social security card, birth certificate,  
28 and credit cards. Id. at 22, 23.

1 Forensic evidence also confirmed Defendant's involvement in Hamilton's murder.  
2 Defendant's fingerprints were found on the lumber covering Hamilton's body. JT 2-21-01 Vol.  
3 1 at 75-76, 77. DNA testing confirmed that the blood that police had seen in the bed of Toyota  
4 pickup truck outside Sinergi was Mr. Hamilton's. Additionally, a tire tread found by  
5 Hamilton's body was the same as that left by the Toyota truck. JT 2-21-01 Vol. 1 at 88-91.  
6 During his interview with police, Defendant denied having seen Hamilton in the month prior  
7 to the interview on November 17; however, during their investigation on November 17, police  
8 found two beer bottles in the waste basket at Sinergi—one bottle had Defendant's fingerprints  
9 on it, and the other bottle had Mr. Hamilton's fingerprints on it. JT 2-21-01 Vol. 1 at 85.  
10 (Hamilton had a small amount of alcohol in his system when his body was autopsied. JT 2-14-  
11 01 Vol. 1 at 29.) Hamilton had been shot with a .357 caliber gun; .357 caliber ammunition was  
12 later found in Defendant's residence at 1933 Western and a bullet fragment from 1933 Western  
13 matched the bullet recovered from Hamilton's body. Seka v. State, Docket No. 37907 (Order  
14 of Affirmance, Apr. 8, 2003), at 6.

15 Once the forensic testing was completed, an arrest warrant issued for Defendant on  
16 February 26, 1999. JT 2-22-01 Vol. 1 at 19. Defendant was arrested one month later in  
17 Philadelphia, Pennsylvania.

### 18 ARGUMENT

19 Defendant requests that the Court grant his Petition for genetic marker testing of an  
20 extensive list of evidence related to the murder of Eric Hamilton. A petition requesting genetic  
21 marker analysis must include information "identifying specific evidence either known or  
22 believed to be in the possession or custody of the State *that can be subject to genetic marker*  
23 *analysis.*" NRS 176.0918(3)(a) (emphasis added). Additionally, a petitioner seeking genetic  
24 marker analysis of evidence which may contain genetic marker information relating to the  
25 prosecution that resulted in the judgment of conviction *must* provide the rationale for why a  
26 reasonable possibility exists that the petitioner would not have been prosecuted or convicted  
27 if exculpatory results had been obtained through a genetic marker analysis. NRS  
28 176.0918(3)(b).



1 Defendant asserts that “[i]f the type of genetic marker testing Mr. Seka is requesting  
2 had been available prior to Mr. Seka’s conviction, it could have excluded Mr. Seka as a suspect  
3 and the presence of that exculpatory evidence would have created a reasonable possibility that  
4 he would not have been prosecuted or convicted.” Petition at 8. In making this claim,  
5 Defendant commits the logical fallacy of assuming that someone else’s DNA at the crime  
6 scene, found on items that are common, or commonly handled by others, would be exculpatory  
7 evidence. This is incorrect. The utility of genetic marker testing is that if conditions are right  
8 (e.g., if the DNA is degraded, or if there is not enough DNA to be amplified, even genetic  
9 marker analysis may not produce a clear result), it allows identification or exclusion of those  
10 who might have been at the scene of a crime. However, when the crime scene is a public site  
11 or a site where there is a great deal of traffic, the evidence becomes less useful because people  
12 pass through the site and leave biological evidence behind who had nothing to do with the  
13 crime. Given the public nature of the dump sites of the bodies and the sites of the murders,  
14 DNA from other individuals found at the site would not be exculpatory, especially when  
15 weighed against the rest of the evidence. Rather, such evidence would indicate only that others  
16 had been at that site at some point and shed hair, or tossed cigarette butts, or in some other  
17 way left biological evidence behind.

18 The argument that it would be exculpatory to *not* find Defendant’s DNA on a surface  
19 or at a crime scene also fails. In cases where there is no DNA left behind on a particular surface,  
20 a failure to match DNA is not exculpatory because it does not exonerate a defendant of guilt.  
21 Here, even if Defendant’s DNA were not present on items collected from the sites the bodies  
22 were dumped, it would not be an indication that he was not present at the scene. Given the  
23 overwhelming weight of the evidence in the record, including bullets matching those used to  
24 kill the victims found in his home and blood from both victims found in cars that he drove,<sup>2</sup> a  
25 failure to find his DNA at sites where the bodies were found or the crime scenes would not be  
26 exculpatory. It would simply mean that he did not leave a detectable amount of DNA behind  
27 when he killed Limanni and Hamilton, and when he dumped the bodies.

28 <sup>2</sup> Defendant’s fingerprints were found on the driver’s side of the Toyota pickup, confirming that he drove it. JT  
2-21-01 at 83-84.

1 First, Defendant's claim that a third pair of fingerprints were found on the lumber  
2 covering Hamilton's body means that the lumber should be tested for DNA similarly fails.  
3 Petition at 7. DNA belonging to someone who was not Defendant or the victim would only be  
4 exculpatory if Defendant could establish that no one else had touched the lumber. Defendant's  
5 argument ignores that, in order for any fingerprints on the lumber to be exculpatory, Defendant  
6 would have to show that the murderer, and only the murderer, touched that wood at any point  
7 in history. This is an impossible task, not least because it would require that no one touched  
8 the wood as the tree it came from was cut down, transported to a lumber factory, became  
9 lumber, sold to a construction company, delivered, and used in construction. In short, there  
10 were countless opportunities during the life of that lumber for any number of people to touch  
11 it or shed DNA on it. That DNA from someone other than Defendant might be found on it is  
12 therefore meaningless, especially because Defendant's fingerprints *were* on the lumber,  
13 indicating, at the very least, that it was the lumber from 1933 Western, where he lived and  
14 resided. JT 2-21-01 Vol. 1 at 75-76. Regardless of whether or not someone else touched the  
15 lumber at some point, Defendant definitely touched the lumber as well. Thus, the evidence  
16 could not be exculpatory because it would not establish that Defendant did not kill Hamilton.

17 Genetic marker testing of the wood would not have changed the outcome of the  
18 proceedings. The jury heard evidence that there were another pair of fingerprints on the wood,  
19 suggesting that someone else had touched it. This evidence would not be enough to overcome  
20 the extensive forensic evidence—including blood of both victims in vehicles driven by  
21 Defendant, and bullet fragments matching those found in both bodies in Defendant's  
22 residence—because the third pair of fingerprints could have been left on the lumber at any  
23 time from the time that the lumber was manufactured to the time that it was placed over  
24 Hamilton's body. DNA left behind on the wood by a third party would present the same  
25 problem for Defendant, and would therefore not have changed the outcome of the proceedings.

26 Additionally, Defendant contends that the DNA testing lab could not determine whether  
27 a blood sample recovered from Hamilton's fingernail clippings belonged to a male or female,  
28 and claims that he is therefore entitled to new DNA testing of the sample. Petition at 9. Here,

1 Defendant confuses the testing methods about which Mr. Welch, the DNA expert, was  
2 testifying. Although the test to determine whether the blood found on Hamilton's fingernail  
3 clippings was male or female did not yield results, he was able to conduct other DNA testing.  
4 As Mr. Welch explained to the jury, the locus tested to determine whether the blood sample  
5 belongs to a man or woman is distinct from the DNA locus testing to generate exclusion results  
6 that was done on the blood sample. JT 2-16-01 Vol. 1 at 45-46. There are multiple tests that  
7 are done on a blood sample; that one test did not provide a usable result does not mean that  
8 the other test was invalid. In fact, although the gender-determination test failed, other DNA  
9 testing excluded Defendant as the source of the blood under Hamilton's fingernails, while  
10 Hamilton was included as the source of the blood under his fingernails. Exhibit 1; see JT 2-  
11 16-01 Vol. 2 at 23. Similarly, Defendant was excluded as the source of DNA for hairs with  
12 apparent blood, while Hamilton was included. Id. Given that Defendant was already excluded  
13 as the source of blood under Hamilton's fingernails but the jury nevertheless found him guilty,  
14 Defendant fails to explain how any further DNA testing to yet again exclude Defendant as the  
15 source of blood under the victim's fingernails and identify that blood as belonging to the victim  
16 would have changed the outcome of the trial.

17 Next, Defendant requests genetic marker testing on a variety of items found near  
18 Hamilton's body where it was dumped on the side of the road. These items include beer bottles,  
19 cigarette butts, and a chewing tobacco container. This evidence would not be exculpatory, nor  
20 would it have changed the outcome of the trial.

21 The cigarette butts found near Hamilton's body actually were tested for DNA but did  
22 not yield DNA typing results. Even assuming, *arguendo*, that newer testing methods could  
23 yield genetic marker results, however, Defendant does not provide a rationale for why DNA  
24 evidence obtained from these butts would overcome the other evidence introduced at trial,  
25 including the ballistics evidence indicating that bullets matching those used to kill Hamilton  
26 were found in Defendant's residence. In fact, at trial, Defendant made a compelling argument  
27 that the cigarette butts found near Hamilton's body were not his because he only ever smoked  
28 Marlboro Reds, which have brown filters, while the two Marlboro cigarette butts found near

1 the body had white filters. JT 2-22-01 Vol. 1 at 7-9; JT 2-21-01 Vol. 1 at 13-14; JT 2-21-01  
2 Vol. 2 at 27. Indeed, when police questioned Defendant on November 17, 1998, he had  
3 Marlboro Reds with him, but no cigarettes that had white filters. JT 2-21-01 Vol. 1 at 12-13;  
4 JT 2-22-01 Vol. 1 at 7-9. Given the persuasive evidence that the cigarette butts found near  
5 Hamilton's body were not Defendant's that was already presented at trial, Defendant does not  
6 show how even *more* evidence that the cigarette butts did not belong to him would have  
7 changed the outcome of the proceedings.

8 At best, if someone else's DNA were found on the cigarette butts, that would mean only  
9 that someone else smoked and then discarded cigarette butts at the side of the road at some  
10 point before police arrived. It would not counteract the victim's DNA found in vehicles used  
11 by Defendant. Given that Eric Hamilton's body was found in a shallow grave off St. Rose  
12 Parkway, a location on the side of the road that is not private, and that Marlboro is not an  
13 uncommon cigarette brand, Defendant would not be able to show that the cigarette butts were  
14 left behind when Hamilton's body was dumped. This is also true of the chewing tobacco  
15 container and the beer bottles found at the side of the road. It borders on absurd for Defendant  
16 to argue that cigarette butts, beer bottles, and a chewing tobacco container found by the side  
17 of a highway could be exculpatory when there is absolutely nothing to suggest that they were  
18 not discarded by motorists or people who stopped on the side of the road—especially where  
19 the jury heard testimony that people often pulled off nearby to stop. This evidence would not  
20 be exculpatory, nor would it have changed the outcome of the proceedings, since the cigarette  
21 butts, beer bottles, and chewing tobacco container could have been left at any time by any  
22 person. It also would not have explained how bullet fragments matching those used to shoot  
23 Hamilton were found in Defendant's residence or any of the other inculpatory evidence  
24 presented at trial.

25 Next, Defendant argues that he is entitled to additional DNA testing because "the vast  
26 majority of the DNA tested belonged to the victims."<sup>3</sup> Petition at 7. However, the vast majority

---

27  
28 <sup>3</sup> Defendant claims that his DNA, extracted from blood samples, that was found on the sink counter should be  
disregarded because he worked and lived at 1933 Western. Defendant had cuts on his hands when he was  
arrested on November 17, 1998, shortly after Hamilton was killed, his body left in a shallow grave, and covered

1 of DNA tested belonged to the victims because both victims' bodies were transported to dump  
2 sites in the desert, away from where they were killed (Hamilton was killed at 1929 Western  
3 and was found dumped in a shallow grave by the highway; Limanni was shot at 1933 Western  
4 and what remained of Limanni's body was found being eaten by animals over the border in  
5 California), and their DNA was therefore left behind in the vehicles used to transport them.  
6 Accordingly, it was significant that Limanni's blood was found in the back of the 1998 Dodge  
7 van driven by Defendant because it indicated that the body was transported in the van; it was  
8 similarly significant that Hamilton's blood was found in the bed of the pickup truck driven by  
9 Defendant. It was already known that Defendant drove these vehicles. Thus, testing them for  
10 his DNA would not have revealed any information of value, whereas identifying the DNA of  
11 the victims in the vehicles did have evidentiary value.<sup>4</sup>

12 Moreover, Defendant claims that "[n]o evidence linked Mr. Seka to any crime at 1929  
13 Western Ave." Petition at 7. This claim is belied by the record. By his hyperfocus on DNA  
14 evidence obtained from bloodstains, Defendant misrepresents the story told by the totality of  
15 the evidence. In fact, extensive evidence links Defendant to Hamilton's murder committed at  
16 1929 Western. The evidence that Hamilton was killed at 1929 Western included bullet  
17 fragments, Hamilton's bullet hole-riddled jacket, and his blood at the scene. On Hamilton's  
18 body, police found a piece of paper with Defendant's name and cell phone number. In  
19 Defendant's home, police found bullets of the same caliber as that used to kill Hamilton.  
20 Additionally, Defendant's fingerprints were found on the lumber covering Hamilton's dead  
21 body. Against the weight of all this evidence, Defendant claims that failure to find his DNA

22 with lumber. JT 2-21-01 at 25-26. However, even assuming, *arguendo*, that the Court accepts Defendant's  
23 assertion that the blood by the sink was from another incident and not Hamilton's murder and the dumping of  
24 his body in the desert, Defendant does not address why that assumption would be exculpatory or would have  
25 changed the outcome of the proceedings, given the evidence detailed above. That is, even if the blood by the  
26 sink was not the result of the crime, that would not in any way mitigate the ample forensic evidence or  
27 Defendant's attempt to destroy evidence after being questioned by police or Defendant's escape to  
28 Pennsylvania, returning only after his arrest by the FBI.

<sup>4</sup> As an example of a DNA testing result that would not have evidentiary value, Defendant also requests testing  
of hair and debris on Hamilton's jeans. Given that Hamilton was killed in an empty business, his body was  
transported in the back of a pickup truck, and he was left on the side of the road, his jeans could have picked  
up hair or "debris" at any point, even as he was lying at the side of the road.

1 on objects at the crime scene would be exculpatory, but does not provide a reasonable  
2 possibility for how.

3 Additionally, Defendant argues that, should the Court grant the Petition to test, among  
4 other things, the cigarette butts, lumber, and fingernail clippings, and should these tests not  
5 produce exculpatory results, he is entitled to unlimited DNA testing of any remaining evidence.  
6 However, this request is overbroad and fails to satisfy the requirements of NRS 176.09183.  
7 Defendant is not entitled to testing of any and all evidence collected by investigators in the  
8 hopes that some evidence might implicate someone else. Rather, Defendant must show a  
9 reasonable possibility that any DNA test result would be exculpatory and that it would have  
10 changed the outcome of the proceedings.

11 Defendant contends that the Court should grant the Petition because “[a]dditional  
12 testing *may* provide exculpatory evidence for Mr. Seka.” Petition at 7 (emphasis added).  
13 Defendant fails to explain how a failure to find his DNA on objects at 1929 Western or the  
14 sites where the bodies were dumped would be exculpatory given the extensive evidence in this  
15 case, much of which is independent of any DNA testing. This substantial evidence includes a  
16 .32 caliber bullet lodged into the wall of the residence he shared with Limanni; Limanni’s  
17 blood in the back of the van that Defendant drove; Defendant’s attempt to destroy evidence  
18 after police visited him on November 17, 1998, by throwing burned identification cards and  
19 papers belonging to Limanni into the dumpster behind 1933 Western; his conversation with  
20 Limanni’s girlfriend, in which he talked her out of filing a missing persons report; Hamilton’s  
21 blood in the back of the Toyota pickup that Defendant drove; Defendant’s fingerprints on the  
22 lumber that covered Eric Hamilton’s body; Hamilton’s fingerprints on beer bottles in  
23 Defendant’s trash despite Defendant’s claim that he had not seen Hamilton in one month  
24 (Hamilton had alcohol in his system when he died); the tire tread by Hamilton’s shallow grave  
25 that matched that of the Toyota pickup driven by Defendant; ammunition matching the calibers  
26 of the guns used to shoot Limanni and Hamilton hidden in Defendant’s ceiling of Defendant’s  
27 residence; and Defendant’s flight to Pennsylvania, where he confessed shooting Limanni to  
28 his friend, Thomas Cramer. DNA testing would not change or affect any of this evidence.

1 Defendant bears the burden of showing that, were the Petition granted, there exists a  
2 *reasonable* possibility that the DNA results would be exculpatory and that the result of the  
3 proceedings would have been different. NRS 176.0918(3)(b). He has not done so here.  
4 Therefore, this Petition should be denied.

5 **CONCLUSION**

6 For the foregoing reasons, the State respectfully requests that Defendant's Petition  
7 Requesting Genetic Marker Analysis be DENIED.

8 DATED this 15th day of August, 2017.

9 Respectfully submitted,

10 STEVEN B. WOLFSON  
11 Clark County District Attorney  
Nevada Bar #001565

12 BY /s/ Steven S. Owens  
13 STEVEN S. OWENS  
14 Chief Deputy District Attorney  
Nevada Bar #004352

15  
16  
17  
18  
19 **CERTIFICATE OF ELECTRONIC TRANSMISSION**

20 I hereby certify that service of the above and foregoing was made this 15th day of  
21 August, 2017, by electronic transmission to:

22 PAOLA ARMENI, ESQ.  
23 E-mail Address: parmeni@gcmaslaw.com

24 JENNIFER SPRINGER, ESQ.  
E-mail Address: jspringer@rminnocence.org

25  
26 BY: /s/ J. Georges  
27 Secretary for the District Attorney's Office

28 SSO/NA/jg/MVU

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
FORENSIC LABORATORY REPORT OF EXAMINATION

NAME: SEKA, John J. (suspect)  
HAMILTON, Eric (victim)

CASE: 98 1116-0443  
AGENCY: LVMPD  
DATE: December 18, 1998

INCIDENT: Homicide

BOOKED BY: Ruffino/McPhail  
REQUESTED BY: Homicide/Thowsen

I, DAVID P. WELCH, do hereby declare:

DEC 28 1998

That I am a Criminalist employed by the Las Vegas Metropolitan Police Department;

That on November 23, 1977, I first qualified in the Eighth Judicial District Court of Clark County, Nevada, as an expert witness;

That I received evidence in the above case and completed an examination on the following items:

DW 1 - One sealed envelope booked by Ruffino (1502/4) containing:  
Item 9 - Two (2) glass fragments with apparent blood.

DW 2 - One sealed envelope booked by McPhail (3326/3) containing:  
Item 14 - Three (3) "Cinergi" magnetic business cards with apparent blood.

DW 3 - One sealed envelope booked by McPhail (3326/5) containing:  
Item 6 - Hairs with apparent blood.  
Item 7 - Fingernail clippings from left hand.

DW 4 - One sealed bag booked by McPhail (3326/14) containing:  
Item 37 - Swab with apparent blood.

DW 5 - One sealed envelope booked by Reed (3731/1) containing: *REAR OF TOYOTA*  
Item 1 - Swab with apparent blood.  
Item 2 - Swab with apparent blood  
Item 3 - Swab with apparent blood.

DW 6 - One sealed envelope booked by Roberts (5714/1) containing:  
Item 1 - One Marlboro brand cigarette butt  
Item 2 - One Marlboro brand cigarette butt.

DW 7 - One sealed envelope booked by Thowsen (1467/1) containing:  
Item 1 - Buccal swabs from John J. Seka.

DW 8 - Bloodstain reference card of Eric Hamilton.

CONCLUSION:

Eric Hamilton cannot be excluded as a source of the human blood on the glass fragments (DW1), the hairs (DW 3), the fingernail clippings (DW 3), swab #2 (DW 5) or swab # 3(DW 5).  
John J. Seka is excluded as a source of the human blood. See DNA Summary Chart.

98 1116-0443  
Page 1 of 5 by: DW

**EXHIBIT "1"**

APP1641



John J. Saka cannot be excluded as a source of the human blood on swab #37 (DW 4). Eric Hamilton is excluded as a source of the human blood. See DNA Summary Chart

Both Eric Hamilton and John J. Saka are excluded as the source of the human blood on the magnetic cards (DW 2). See DNA Summary Chart.

Presumptive tests on swab #1 (DW 5) were positive for the presence of blood, however, no further results were obtained.

No DNA typing results were obtained on the two (2) Marlboro brand cigarette butts (DW 6).

I returned the evidence to the vault.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 12-21-98

David P. Welch, #1418  
DAVID P. WELCH, #1418  
Criminalist II

Bert Henry

Witness

98 1116-0443

Page 2 of 5 by: DW

APP1642



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*Attorneys for Petitioner John Joseph Seka  
In Conjunction with Rocky Mountain Innocence Center*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOHN JOSEPH SEKA,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

CASE NO. 99C159915  
DEPT. XXV

**DEFENDANT'S REPLY TO STATE'S OPPOSITION OF DEFENDANT'S PETITION  
FOR POST-CONVICTION GENETIC MARKER ANALYSIS TESTING – NRS 176.0918**

Petitioner, John Joseph Seka ("Mr. Seka"), by and through undersigned counsel, Paola M. Armeni of the law firm of Gentile Cristalli Miller Armeni Savarese and in cooperation with the Rocky Mountain Innocence Center, hereby submits the Defendant's Reply to State's Opposition of Defendant's Petition for Post-Conviction Genetic Marker Analysis Testing NRS 176.0918 ("Response"). Mr. Seka respectfully requests that the Court order DNA testing on the items outlined in the Petition pursuant to NRS 176.0918.

I.

SUMMARY

In late 1998, the bodies of two men, Eric Hamilton and Peter Limanni, were found in relatively remote areas of the Nevada and California deserts. Mr. Seka knew and worked with both victims, lived and had access to the building next door to where at least one of the victims was likely killed, and also had access to the vehicles that were purportedly used to transport the victims' bodies from the crime scene to the dumping sites. Mr. Seka fully cooperated with police during their investigation of the murders. However, because of Mr. Seka's relationship with the victims, the police focused their investigation on him, ignoring other equally plausible suspects. After receiving information from Mr. Seka's long-time friend, Thomas Creamer that Mr. Seka confessed to killing the two men<sup>1</sup> police arrested Mr. Seka for the murders. Although some DNA testing was conducted as part of the investigation of the murders, that testing was completed solely for the purpose of including Mr. Seka, not for the purpose of identifying the actual source of the DNA – more probative DNA testing was not available at that time. Although none of the testing inculpated Mr. Seka, the State was unable to determine who the DNA belonged to and instead went forward with its purely circumstantial case. In March of 2001, Mr. Seka was convicted.

Despite the State's contentions to the contrary, Mr. Seka's case presents exactly the type of case for post-conviction genetic marker testing that the N.R.S. 176.0918 was drafted to address. In 2001, when Mr. Seka was convicted, the jury was presented with a wholly circumstantial case. No relevant physical evidence placed Mr. Seka at the likely scene of the crime. No physical evidence connected Mr. Seka to the victims' deaths. No physical evidence put Mr. Seka at the sites where their bodies were dumped. Indeed, the physical evidence that was available and tested at the time was inconclusive, pointed to someone other than Mr. Seka as the

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<sup>1</sup> In 2017, Thomas Creamer's former partner, Margaret Ann McConnell, signed a declaration asserting that Mr. Seka never confessed to Mr. Creamer. Instead, Ms. McConnell suggests that Mr. Creamer fabricated the confession because he was angry with Mr. Seka for allegedly attempting to steal Ms. McConnell's affection and for committing Mr. Creamer to a mental institution. See Exhibit 2 to Mr. Seka's Post-Conviction Petition for Genetic Marker Analysis.

1 murderer, or was taken from Mr. Seka's residence. Now, with scientific advances over the last  
2 fifteen years, DNA testing can be used to definitively identify the perpetrator of these murders.  
3 At the very least, it is more than reasonably possible that the requested genetic marker testing  
4 will prove exculpatory to Mr. Seka and would have ultimately prevented his prosecution and/or  
5 conviction.

6 Strikingly absent from the State's Response is any explanation as to why testing the  
7 evidence at issue will harm the State in any way. The interests of justice are served by accuracy,  
8 not conviction. If the State believes that the test results do not warrant a new trial for Mr. Seka,  
9 the place to make that argument is when, and if, Mr. Seka files a Motion for a New Trial based  
10 upon the results of the genetic marker analysis. At this stage in the process, Mr. Seka is claiming  
11 that he is innocent and, as a result, is simply requesting that probative evidence be tested. Because  
12 there is the potential that Mr. Seka was wrongfully convicted and evidence that remains intact  
13 could shed light on that issue, the interests of justice weigh overwhelmingly in favor of  
14 gathering more information, not less. Indeed, this search for the truth benefits not only Mr. Seka,  
15 but also the State.

16 Thus, for the reasons outlined in his original Petition and in the reply below, Mr. Seka  
17 respectfully requests this Court to grant his Petition Requesting a Genetic Marker Analysis of  
18 Evidence with the Possession or Custody of the State of Nevada (N.R.S. 176.0918).

## 19 II.

### 20 STATEMENT OF FACTS

21 In its Response to Mr. Seka's Petition Requesting Genetic Marker Analysis, the State  
22 overstates the strength of evidence against Mr. Seka at trial. Simply put, Mr. Seka was convicted  
23 based wholly on circumstantial evidence. Although evidence presented at trial tied Mr. Seka to  
24 1933 Western Avenue and the vehicles parked there, evidence was also presented that  
25 established that Mr. Seka lived and worked at 1933 Western Avenue and others besides Mr. Seka  
26 had access to those vehicles. Importantly, the circumstantial evidence did not definitively  
27 connect Mr. Seka to the actual crimes, to the actual crime scene (1929 Western Avenue), to the  
28 victims' bodies, or to the sites where the actual perpetrator dumped the bodies. It is true, as the

1 State repeatedly asserts, that the circumstantial evidence led to Mr. Seka's conviction. What is  
2 also true, however, is that a careful examination of the facts make clear that DNA testing various  
3 pieces of evidence collected at the actual crime scene and the dump sites in order to establish the  
4 identity of the actual perpetrator creates a reasonable possibility that Mr. Seka would not have  
5 been prosecuted or convicted should the results of that testing show someone other than Mr.  
6 Seka.

### 7 **The Crime Scene**

8 The State suggests that two crime scenes exist. However, the forensic evidence suggests  
9 that Eric Hamilton ("Mr. Hamilton") was murdered in 1929 Western Avenue ("1929"), and the  
10 site of Peter Limanni's ("Mr. Limanni") murder is unknown.

11 First, all indications are that Mr. Hamilton was murdered in 1929. Trial Transcript,  
12 February 14, 2001, Vol II 19:12-24; 42:21-25; 46:9-14. The front glass in the entryway of 1929  
13 was shattered. *Id.* The police found copious amounts of blood on the entryway carpet and on the  
14 broken glass. *Id.* The police also discovered apparent drag marks in the blood on the floor of  
15 1929 and a bloody jacket with apparent bullet holes. *Id.* These holes were later compared to Mr.  
16 Hamilton's wounds, and were found to be similar to those in Mr. Hamilton's body.<sup>2</sup> The police  
17 also found three jacketed bullets and three bullet fragments next to the blood in 1929. In the  
18 parking lot immediately in front of 1929, the police found a piece of molding from the broken  
19 window with what appeared to be a bullet hole. Trial Transcript, February 14, 2001, Vol II  
20 42:14-20. Finally, a lead projectile (assumed to be from a bullet) was found on the sidewalk  
21 outside of 1929. *Id.*

22 In contrast, 1933 Western Avenue ("1933") showed no signs of a crime.<sup>3</sup> Trial  
23

24 <sup>2</sup> Although the State states in its Response that "[i]nside Defendant's residence at 1933 Western, a recovered bullet  
25 fragment matched the bullet recovered from Hamilton's body" the State's medical examiner testified that Mr.  
26 Hamilton was shot three times and each bullet had an exit wound so that no bullets or bullet fragments were found in  
27 Mr. Hamilton's body. Trial Transcript, February 14, 2001, Vol I 24-31. Furthermore, the State merely asserted at  
28 trial that the bullet fragments found in 1929 were "class consistent" not a "match." Trial Transcript, February 21,  
2001, Vol I 65:12-66:3.

<sup>3</sup> Mr. Limanni was shot twice through the chest and eight times in the head. Trial Transcript, February 16, 2001, Vol  
II 51:2-7; Trial Transcript, February 16, 2001, Vol II 51:2-25. Had he been killed at 1933, certainly some blood or  
other evidence of this brutal attack would have been discovered.

1 Transcript, February 21, 2001, Vol I 37:7-12. The police did not find any blood from the victims,  
2 any signs of a struggle or break-in, or any bullet riddled clothing. *Id.* Instead the police  
3 discovered a single bullet fragment buried in the wall of 1933. *Id.* The bullet fragment had no  
4 blood on it. *Id.* In its Response, the State asserts that this bullet matched those found in Mr.  
5 Limanni's body. State's Response to Defendant's Petition Requesting Genetic Marker Analysis  
6 3, 6, 7, 8 9, and 11. However, the State's own expert trial witness, Dr. Torrey Johnson,  
7 characterized the bullet as only "class consistent" to those found in Mr. Limanni's body. Trial  
8 Transcript, February 21, 2001, Vol I 65:12-66:3. In fact, Dr. Johnson testified that more than ten  
9 different types of ammunition and various types of firearms could have been associated with that  
10 bullet fragment. *Id.* While the State suggests that this bullet is proof that 1933 was the scene of  
11 Mr. Limanni's death, there is no indication how or when that bullet was shot into the wall. Trial  
12 Transcript, February 20, 2001, Vol II 40:15-17. Further, while there is undisputed evidence that  
13 Mr. Limanni was shot ten times (twice in the chest and eight times in the head), there is  
14 absolutely no blood or other evidence of such brutality in 1933. Trial Transcript, February 16,  
15 2001, Vol II 51:2-7; Trial Transcript, February 16, 2001, Vol II 51:2-25. Finally, the other  
16 complete bullet cartridges found in 1933 included calibers other than those used in the murders,  
17 and a witness testified that she saw at least one bullet in the business well before the murders  
18 occurred. Trial Transcript, February 20, 2001, Vol II 40:15-17; 12/7/1998 Police Interview of  
19 Jennifer Harrison pg, 17.

20 The police also found a beer bottle in 1933 with Mr. Hamilton's fingerprints. Trial  
21 Transcript, February 20, 2001, Vol II 65:5-9. However, numerous beer bottles were also found  
22 and collected from trash cans in several offices within 1933 and in the dumpster behind 1929 and  
23 1933. *Id.* It was impossible to determine when Mr. Hamilton left that beer bottle in 1933, but his  
24 presence at that location was no surprise. Mr. Hamilton worked for Mr. Limanni and Mr. Seka.  
25 Trial Transcript, February 16, 2001, Vol II 66:19-67:5. Mr. Hamilton's employment relationship  
26 with the business also explains why Mr. Seka's phone number was found on a note in Mr.  
27 Hamilton's pocket. *Id.*

28 Importantly, many individuals besides Mr. Limanni, Ms. Jennifer Harrison (Mr.

1 Limanni's girlfriend at the time), Mr. Hamilton and Mr. Seka had access to 1933. Trial  
2 Transcript, February 16, 2001, Vol II 88:21-23; 91:3-20; 96:22-24. Specifically, Tak Kato ("Mr.  
3 Kato") and Kaz Toe ("Mr. Toe") had access. *Id.* These Japanese investors financed Mr.  
4 Limanni's business and lost \$100,000 after Mr. Limanni stole their funds. *Id.* Not only were  
5 these individuals financing Mr. Limanni's business, they leased the business vehicles (four vans  
6 and a truck) for Mr. Limanni. *Id.* Indeed, Mr. Kato was also the guarantor on the note on the  
7 business. Trial Transcript, February 13, 2001, Vol I 52:20-22. Additionally, Amir Mohamed and  
8 his associates had access to 1933. Detective Thowsen's 12/10/1998 Officer's Report pg. 15-16.  
9 Amir and his associates invested with Mr. Limanni to change Mr. Limanni's business into a  
10 cigar shop. *Id.* Finally, numerous other people patronized the business as Mr. Limanni and Mr.  
11 Seka hosted frequent parties at that location. Trial Transcript, February 20, 2001, Vol II 16-17.

12       Anyone who had access to 1933 also had access to the five vehicles associated with the  
13 business. Trial Transcript, February 14, 2001 Vol I 89. While Mr. Limanni and Mr. Seka drove  
14 the work vehicles interchangeably, there was a period of time that Ms. Harrison drove the brown  
15 Toyota truck. *Id.* The keys for all five of the vehicles were located inside the business and were  
16 accessed from the business. Trial Transcript, February 21, 2001, Vol I 12:1-3. During the police  
17 investigation, the police were even able to retrieve the business keys from inside the business.  
18 Trial Transcript, February 21, 2001, Vol II 45. On October 26, 1998, before Mr. Limanni  
19 disappeared, Mr. Kato repossessed one of the vans that he provided for the business. Trial  
20 Transcript, February 13, 2001, Vol II 34:1-16; 92:20-25; *see* 2/26/1999 Declaration of  
21 Warrant/Summons Constitution, pg 11. He did not have his own set of keys; Mr. Kato simply  
22 obtained the keys from inside the business. *Id.*

23 **Peter Limanni Disappears**

24       As early as September 1998, Mr. Limanni began removing large sums of money from his  
25 bank accounts. Trial Transcript, February 21, 2001, Vol II 70:17-71:21. On September 22, 1998,  
26 Mr. Limanni signed a lease for an office space in Lake Tahoe. Trial Transcript, February 14,  
27 2001, Vol I 86-87; Detective Thowsen's 12/10/1998 Officer's Report pg. 19. Unfortunately, Mr.  
28 Limanni's check bounced and he returned to Lake Tahoe on October 5, 1998, with another

1 check. Detective Thowsen's 12/10/1998 Officer's Report pg. 19. Mr. Limanni paid for three  
2 months of the lease and he intended to move into the office spaces on October 15, 1998. *Id.*; *see*  
3 Defendant's Trial Exhibit CC – Shopping Center Lease. Mr. Limanni left one of Cinergi's work  
4 vans in Lake Tahoe for the future transition. Trial Transcript, February 14, 2001, Vol I 86-87

5 While originally paying rent for 1933 on time, in October 1998, Mr. Limanni started to  
6 pay rent late. Trial Transcript, February 13, 2001, Vol II 38:18-22. Around the same time in  
7 October, Mr. Kato told Limanni that he wanted his investment money returned. Trial Transcript,  
8 February 16, 2001, Vol II 91:3-20. Mr. Kato had a volatile relationship with Mr. Limanni,  
9 especially after Mr. Kato found out that Mr. Limanni was using the business funds for personal  
10 use. Trial Transcript, February 16, 2001, Vol II 90:1-6. Unable to receive a return on his large  
11 investment, Mr. Kato was forced to start bankruptcy proceedings that same month. Trial  
12 Transcript, February 16, 2001, Vol II 97:16-21. On November 2, 1998, Mr. Limanni closed his  
13 bank accounts. Trial Transcript, February 21, 2001, Vol II 70:17-71:21. Mr. Limanni was last  
14 seen between November 4 and 6. Trial Transcript, February 13, 2001, Vol II 40:1-11; February  
15 14, 2001, Vol I 51:6-18. With the business defunct, and Mr. Limanni missing, Mr. Seka pawned  
16 various items from the business in an attempt to keep the business afloat. Trial Transcript,  
17 February 23, 2001, Vol II 21:1-5.

18 Mr. Limanni's sister filed a missing persons report on December 2, 1998. Trial  
19 Transcript, February 13, 2001 Vol I 25:25-26:24. On December 23, Mr. Limanni's body was  
20 found off of a service road in the California desert near the Nevada border. Trial Transcript,  
21 February 14, 2001, Vol II 4-5.

#### 22 **Eric Hamilton's Body is Found**

23 On November 16, 1998, a construction worker found Mr. Hamilton's body on the side of  
24 the road under several pieces of lumber.<sup>4</sup> Trial Transcript, February 14, 2001, Vol II 13:13-14:9.  
25 The police found a note in Mr. Hamilton's pocket with Mr. Seka's name and phone number. The

26  
27 <sup>4</sup> From the pieces of lumber collected, three boards contained fingerprints from Mr. Seka and Mr. Limanni. Another  
28 two boards contained latent prints that did not match Mr. Seka or Mr. Limanni. These unidentified latent prints were  
never compared to the latent prints identified on the Beck beer bottle found near Mr. Hamilton's body. Trial  
Transcript, February 21, 2001, Vol II 17:2-17.



1 police traced the number to 1933. Trial Transcript, February 14, 2001, Vol II 17-18.

2 The day after Mr. Hamilton's body was found, November 17, 1998, a neighboring  
3 business owner called police about an alleged break-in at 1929. Trial Transcript, February 14,  
4 2001, Vol I 39-40. Upon arrival, the police noticed broken glass and apparent blood in 1929.  
5 Trial Transcript, February 20, 2001, Vol I 57:25-58:23. Several weeks later, Officer Nogues filed  
6 a report indicating that he searched the perimeter of the business and then the dumpster behind  
7 the business. Trial Transcript, February 20, 2001, Vol I 96:10-15; 83:5-8; 84:1-5. In that report,  
8 Officer Nogues recalled that the dumpster contained some miscellaneous papers. Trial  
9 Transcript, February 20, 2001, Vol I 84:2-5.<sup>5</sup> However, Richard Ferguson ("Mr. Ferguson"), the  
10 business owner who initially called the police about the disturbance at 1929, recalled that the  
11 dumpster contained more than just miscellaneous papers. Trial Transcript, February 14, 2001,  
12 Vol I 47:10-14; February 22, 2001, Vol II 53:4-15. Mr. Ferguson stated that before he called  
13 police the dumpster contained papers and burnt material consistent with the police photographs  
14 that were later taken. *Id.* Mr. Ferguson also stated that he witnessed another individual, not Mr.  
15 Seka, in the back of the businesses. *Id.* Once police arrived, Mr. Ferguson stated that a plain-  
16 clothed police officer stood watch over the dumpster. Trial Transcript, February 20, 2001, Vol I  
17 106-107. This belies the State's implication in its Response that Mr. Seka secretly disposed of  
18 important documents and evidence in the dumpster *after* police arrived.

19 While the police investigated 1929, Mr. Seka arrived in a Toyota pickup truck. Trial  
20 Transcript, February 20, 2001, Vol I 61:5-11. The police approached Mr. Seka and informed him  
21 of the disturbance in 1929. *Id.* The police asked Mr. Seka if they could search 1933 in case  
22 anyone inside needed medical attention.<sup>6</sup> Trial Transcript, February 20, 2001, Vol I 63:24-64:4.

23 <sup>5</sup> A crime scene analyst reported that the dumpster contained miscellaneous papers and forms of identification  
24 belonging to Mr. Limanni as well as several shirts with burn marks. Trial Transcript, February 14, 2001, Vol II 33;  
25 February 21, 2001, Vol I 35-36. However, police testified that there was no apparent smell of anything burning or  
26 smoke at the scene. Trial Transcript, February 20, 2001, Vol II 3:19-4:3.

27 <sup>6</sup> When approached by the police, Mr. Seka informed them that he believed that Mr. Limanni may have been in Lake  
28 Tahoe with Mr. Limanni's girlfriend. Officer Kroll's 12/10/1998 Officer's Report pg 2. Mr. Limanni recently signed  
a lease for a new office space in Lake Tahoe and had left one of Cinergi's vans at the location. Trial Transcript,  
February 14, 2001, Vol I 86-87, 99; *see* Defendant's Exhibit CC – Shopping Center Lease. Also, Mr. Limanni  
frequently left his dog, Jake, with Mr. Seka when he traveled to Lake Tahoe or went out with his girlfriend. Trial  
Transcript, February 14, 2001, Vol I 99.

1 Mr. Seka immediately consented and signed a consent to search card giving the police  
2 permission to "search for items directly or indirectly related to the investigation of MURDER  
3 W/DW." Trial Transcript, February 20, 2001, Vol I 64:5-7; 11/17/1998 Consent to Search Card.  
4 While searching 1933, the police saw a bullet and some knives. Trial Transcript, February 20,  
5 2001, Vol I 64:22-65:11. The police then searched Mr. Seka and handcuffed him as they  
6 continued to search 1933. Trial Transcript, February 20, 2001, Vol I 65:13-20. Michael Cerda,  
7 the property owner of 1933, stayed with Mr. Seka while the officers searched the business.  
8 11/7/1998 Police Interview of Michael Cerda pg, 10. Numerous officers, including Detectives  
9 Hufner and Buczek, responded to the scene to investigate 1929 and 1933. *See* Defendant's Trial  
10 Exhibit C – Officer Response Log. Detectives Hufner and Buczek were at the scene for 8-9  
11 hours and never left the scene during that time. Trial Transcript, February 21, 2001, Vol II 33:2-  
12 9. The police were at the scene "constantly, continually" throughout the day investigating. Trial  
13 Transcript, February 14, 2001, Vol II 35:7-8.

14 Mr. Seka was then taken to the Las Vegas Metro Police Department detective bureau.  
15 Trial Transcript, February 21, 2001, Vol II 36:11-15. Mr. Seka signed a rights of persons arrested  
16 card at 2:50 PM. 11/17/1998 Rights of Persons Arrested. Detective Thomas Thowsen  
17 interviewed Mr. Seka from 3:25-3:48 PM. 11/17/1998 Interview of John Joseph "Jack" Seka.  
18 The police then fingerprinted Mr. Seka and obtained a buccal swab after he signed a consent to  
19 search at 4:15 PM. 11/17/1998 Consent to Search. The police took Mr. Seka back to 1933 after  
20 informing him that he was not under arrest. Trial Transcript, February 21, 2001, Vol II 43. Upon  
21 arriving at 1933, the police informed Mr. Seka that he could not enter the business because it was  
22 being processed by a crime scene analyst. Trial Transcript, February 21, 2001, Vol II 44:14-17.

23 Mr. Seka told the police that he had a dinner appointment and he needed a vehicle. *Id.* at  
24 44:18-22. The police informed Mr. Seka that he could not take the Toyota truck because the  
25 police impounded it to process it as evidence. *Id.* at 44:18-22. Mr. Seka provided the police with  
26 the key to the Toyota and asked if he could retrieve the keys to one of two remaining business  
27  
28

1 vans.<sup>7</sup> *Id.* at 44:23-45:3. The police entered the business and retrieved the keys to the vans. *Id.* at  
2 45:16-19. The police gave Mr. Seka keys to the unmarked white business vehicle without license  
3 plates. *Id.* at 46:3-4; 68-69. The police then reconsidered and suggested that Mr. Seka drive the  
4 van with the large business decals. *Id.* at 46:7-12. Before giving him the keys, the police asked  
5 Mr. Seka if they could search the van with the large decals, to which Mr. Seka readily agreed. *Id.*  
6 After discovering what appeared to be blood, the police impounded the vehicle. *Id.* at 46:17-  
7 47:6. After the police searched the unmarked van and found no apparent "evidentiary connection  
8 to any of the cases," they again gave Mr. Seka the keys and told him he was free to leave. *Id.* at  
9 47:4-9.

#### 10 **The Investigation Merges**

11 The police did not indicate that Mr. Seka was expected to return after his dinner  
12 appointment so he returned to a friend's home where he had been staying after Mr. Limanni  
13 disappeared and the business was not operating. *Id.* at 47:21-23; Trial Transcript, February 22,  
14 2001, Vol I 15-17; *see* Officer's Report, Officer Kroll page 2 Dictation 120598/1120 Job#  
15 65221. Because he had no money and no employment after Mr. Limanni disappeared with all of  
16 the business assets, Mr. Seka chose to return to his home to the East Coast. Indeed, Mr. Seka  
17 moved to Nevada only after Mr. Limanni invited Mr. Seka to work for him in Las Vegas. Trial  
18 Transcript, February 22, 2001, Vol II 20-21; 32:1-7; 43:21-44:18; 12/7/1998 Police Interview of  
19 Jennifer Harrison, pg. 39. Before leaving Nevada, Mr. Seka informed the police that his daughter  
20 and parents lived on the East Coast. *Id.* In addition, Mr. Seka provided the police with several  
21 addresses and phone numbers where he could be reached. *Id.*; 11/17/1998 Police Interview of  
22 Jack Seka, pg. 4-5. The police never attempted to contact Mr. Seka. Trial Transcript, February  
23 22, 2001, Vol II 20-21; 32:1-7; 43:21-44:18.

24 Mr. Creamer initially learned of the homicide of Mr. Limanni and the ensuing police  
25 investigation from Lee Polsky, a mutual friend of Mr. Seka and Mr. Limanni, in December 1998.

26 <sup>7</sup> Out of the five vehicles Mr. Kato leased to Mr. Limanni only three remained at this time. To Mr. Kato's dismay,  
27 Mr. Limanni took one of these vans to Lake Tahoe where Mr. Limanni wanted to open a new business location.  
28 Trial Transcript, February 16, 2001, Vol II 102:19-24. Mr. Kato repossessed another van when he realized that Mr.  
Limanni swindled his funds. Trial Transcript, February 13, 2001, Vol II 34:1-16 92:20-25.

1 Trial Transcript, February 22, 2001, Vol II 48:17-50:12; Officer Dusak's 4/9/1999 Investigation  
2 Interview Record of Thomas Creamer pg 2. Mr. Creamer was involuntarily committed to a  
3 mental institution as a result of his erratic and violent behavior. *See* Petition Exhibit 2. Upon his  
4 release, Mr. Creamer contacted the State about Mr. Seka. Trial Transcript, February 20, 2001,  
5 Vol I 5-6, 15, 18-19, 23-24, *see* Petition's Exhibit 2. A state arrest warrant was issued by the  
6 State on February 26, 1999. Trial Transcript, February 22, 2001, Vol I 20. On March 15, 1999,  
7 the United States Marshals and other federal agencies were ordered by the District Court of  
8 Nevada to arrest Mr. Seka. 3/15/1999 District of Nevada Warrant for Arrest. Mr. Seka was  
9 arrested at his home in Pennsylvania based on the circumstantial evidence and Mr. Creamer's  
10 false statement. Trial Transcript, February 20, 2001, Vol I 5-6, 15, 18-19, 23-24, *see* Petition's  
11 Exhibit 2.

### 12 III.

#### 13 ARGUMENT

14 As specifically outlined below, Mr. Seka's Petition meets the requirements outlined in  
15 section 3(b) of N.R.S. 176.0918. That section requires the petitioner present "[t]he rationale for  
16 why a reasonable possibility exists that the petitioner would not have been prosecuted or  
17 convicted if exculpatory results had been obtained through a genetic marker analysis of the  
18 evidence" requested in the petition. Nev. Rev. Stat. Ann. § 176.0918 (3)(b).<sup>8</sup> If the type of  
19 genetic marker testing Mr. Seka is requesting had been available prior to Mr. Seka's conviction,  
20 it could have excluded Mr. Seka as a suspect and the presence of that exculpatory evidence  
21 would have created a reasonable possibility that he would not have been prosecuted or convicted.  
22 The State's contention that circumstantial evidence presented nearly twenty years ago trumps  
23 possibly definitive genetic marker testing is simply misplaced.<sup>9</sup>

24  
25 <sup>8</sup> Throughout its Response, the State suggests that this "reasonable possibility" standard is more onerous than  
26 provided in the Statute. Specifically, the State repeatedly suggests that in order to be granted DNA testing, Mr. Seka  
27 must show that "the result of the proceedings would have been different." Further, the State seems to indicate that  
28 Mr. Seka must show that the DNA evidence would conclusively establish his innocence. Neither of the State's  
assertions are correct. Mr. Seka need only show that there is a "reasonable possibility" that he would not have been  
prosecuted or convicted" had the DNA results been exculpatory.

<sup>9</sup> The State also seems to indicate that should the evidence be tested and definitively identify another possible

1 Specifically, as stated in the Petition, discussed above, and emphasized by the State in its  
2 Response, Mr. Seka was convicted based entirely on circumstantial evidence – most notably Mr.  
3 Seka’s alleged confession to Mr. Creamer; Mr. Seka’s relationship to the victims and access to  
4 1933; the victims’ blood found in two of the business vehicles; and Mr. Seka’s purported flight  
5 from the jurisdiction. However, this circumstantial evidence is not as strong as the State  
6 suggests. More importantly, the State fails to acknowledge the ample circumstantial evidence  
7 that pointed away from Mr. Seka as a potential suspect and that the requested DNA testing can  
8 lead to the identification of the actual perpetrator.

9 First, Mr. Creamer fabricated Mr. Seka’s alleged confession and as such, it is  
10 disingenuous of the State to rely on it as a basis for urging this Court to deny the requested DNA  
11 testing. *See* Petition Exhibit 2. Heavily drugged, violent, and unpredictable, Mr. Creamer was  
12 abusing his girlfriend, Margaret Ann McConnell (“Ms. McConnell”), when the “confession”  
13 allegedly occurred. *Id.* Ms. McConnell called Mr. Seka for assistance after a particularly violent  
14 episode, and the pair had Mr. Creamer involuntarily committed to a mental institution. *Id.*  
15 Knowing about Mr. Limanni’s homicide and the police investigation, upon his release Mr.  
16 Creamer told the police that Mr. Seka confessed to the murders. *Id.*; Trial Transcript, February  
17 22, 2001, Vol II 48:17-50:12; Officer Dusak’s 4/9/1999 Investigation Interview Record of  
18 Thomas Creamer pg. 2. However, the presence of Ms. McConnell and her sister, made such an  
19 interaction impossible without the other two also witnessing the confession. *Id.* Even assuming,  
20 *arguendo*, that the confession occurred, false confessions are involved in 1 out of 4 DNA  
21 exonerations. *See* <https://www.innocenceproject.org/causes/false-confessions-admissions/>,  
22 visited on August 30, 2017. A “confession” simply cannot form the basis for denying probative  
23 DNA testing.

24 Second, evidence collected at 1933—including the blood found in the business  
25 vehicles—does not connect Mr. Seka to the crimes. The State’s assertion to the contrary is not  
26 sufficient to deny DNA testing that could identify the actual perpetrator. As indicated in the  
27 \_\_\_\_\_ (continued)  
28 suspect that that result would not be sufficient to meet the statutory standard. This argument simply does not stand  
under a plain meaning interpretation of the statutory language.

1 record, Mr. Seka worked and lived in 1933. As such, his fingerprints and DNA are present on  
2 anything connected to the business i.e. the work vehicles, the lumber used to cover Mr.  
3 Hamilton, and inside the business. Any connection to this evidence simply indicates that Mr.  
4 Seka had interaction with that piece of evidence at some point, not necessarily in connection to  
5 the crimes. Furthermore, as discussed above, numerous individuals (including plausible  
6 alternative suspects) had access to 1933 and the business vehicles. The keys to the vehicles were  
7 located in the business, and any individual who had access to the business had access to the  
8 vehicles. Finally, there is absolutely no indication that a crime occurred at 1933. Mr. Hamilton  
9 was likely killed at 1929 and Mr. Limanni was killed at an unknown location. The only piece of  
10 evidence gathered at 1933 was a single bullet fragment. Mr. Limanni was shot ten times, twice in  
11 the chest and eight times in the head. At least two of those bullets passed through Mr. Limanni's  
12 body. In such a heinous and brutal murder, a single bullet fragment, particularly one without  
13 blood on it, simply cannot serve as grounds to designate a crime scene.

14 Third, the State's implication that Mr. Seka's decision to move back to Philadelphia after  
15 the murder investigations began is a red herring at best. It is undisputed that Mr. Seka no longer  
16 had a place to live, a source of income, or any other connections in Las Vegas. It is also  
17 undisputed that Mr. Seka cooperated with the police investigation and provided contact  
18 information in the event that police needed to speak with him. He allowed searches of both his  
19 home and business (1933). He consented to searches of the business vehicles. He consented to a  
20 search of his own persons. He gave consent for the police to take DNA samples from him. He  
21 also provided a voluntary police statement and submitted himself to police questioning. Mr. Seka  
22 did not obstruct the murder investigations or try to hide evidence. Perhaps Mr. Seka's  
23 cooperation should be viewed as circumstantial evidence in his favor rather than, as the State  
24 implies, evidence indicating his guilt. However, whichever way it is viewed, it is irrelevant to  
25 whether post-conviction DNA testing should be completed.

26 Fourth, although the State outlines the circumstantial evidence used to convict Mr. Seka,  
27 the State also fails to acknowledge the ample circumstantial evidence presented at trial indicating  
28 that Mr. Seka was not the perpetrator. *See* above and Petition pp.3-7. Nonetheless, the

1 circumstantial evidence both implicating and exculpating Mr. Seka can be definitively clarified  
2 with post-conviction genetic marker testing. Simply put, this testing can provide conclusive  
3 evidence of whether or not Mr. Seka was the perpetrator of these crimes.

4 Finally, genetic marker testing of the multiple jacketed bullets and a black baseball cap  
5 found on the floor of the reception room of the 1929 crime scene; several Marlboro brand  
6 cigarette butts, two empty "Beck's" brand beer bottles and one "Skool" brand cut spearmint  
7 chewing tobacco container found near Mr. Hamilton's body; seven pieces of lumber found on or  
8 near Mr. Hamilton's body (two of the seven pieces contained unidentified fingerprints), bloody  
9 hairs collected from under Mr. Hamilton's fingernails; Mr. Hamilton's fingernail clippings with  
10 possible touch DNA; hair and debris found on Mr. Hamilton's clothes; and a white cotton  
11 material found on Mr. Limanni's body; can identify the perpetrator of these violent acts. These  
12 pieces of physical evidence were so intimately connected to the commission of the crime, that  
13 the actual perpetrator likely left their DNA on them. As such, Mr. Seka's request for genetic  
14 maker testing of these items meets the statutory requirement that "a reasonable possibility exists  
15 that the petitioner would not have been prosecuted or convicted if exculpatory results had been  
16 obtained through a genetic marker analysis of the evidence" Nev. Rev. Stat. Ann. § 176.0918.

17 The multiple jacketed bullets<sup>10</sup> and the black baseball cap found in 1929 are closely related  
18 to the murder of Mr. Hamilton. These items were collected near Mr. Hamilton's blood in 1929.  
19 Mr. Hamilton was murdered in an empty business. Apparently devoid of any items, aside from  
20 those associated in the crime, these bullets would have been handled by the perpetrator of the  
21 crime. The hat may have been left by the perpetrator, removed from Mr. Hamilton by the  
22 perpetrator (as Mr. Hamilton's jacket was removed), or moved by the actual perpetrator.

23 The cigarette butts, two empty beer bottles, and chewing tobacco container were all  
24 collected in close proximity to Mr. Hamilton's body in a remote desert location. This was not a  
25 public thoroughfare as the State suggests. It was not near any businesses or homes. Although  
26 there was a freeway within sight of the place where Mr. Hamilton's body was discarded, the

27 <sup>10</sup> There appears to be some discrepancy in the record if the bullets collected were spent shell casings or complete  
28 jacketed bullets.

1 actual location of his body was on the side of a road that was not well-travelled. Importantly, the  
2 police deemed the items near Mr. Hamilton's body important enough to collect and, indeed,  
3 attempted to get physical evidence from both the cigarette butts and the beer bottles.  
4 Unfortunately, at the time, the DNA testing results of the cigarette butts were inconclusive. Trial  
5 Transcript, February 16, 2001, Vol I 57:20-58:7. A latent finger print was identified on one of  
6 the beer bottles, but was not matched to anyone and was not tested for DNA. Trial Transcript,  
7 February 21, 2001, Vol I 72:23-73:3. While the State asserts in its Response that "[a]t best, if  
8 someone else's DNA were found on the cigarette butts, that would mean only that someone else  
9 smoked and then discarded the butts at the side of the road," the likelihood that a person other  
10 than the perpetrator discarded identical cigarette butts in such close proximity to Mr. Hamilton's  
11 body is unlikely. Further, the State cannot claim that the test results of these items would be less  
12 probative now than they would have been at the time of trial. In short, the State's objections to  
13 testing now is belied by their attempts to test at the time of the crime.

14 Despite the State's elaborate explanation concerning the seven pieces of lumber used to  
15 cover Mr. Hamilton's body, it is not disputed that the perpetrator touched them. While three of  
16 the seven boards contained fingerprints from Mr. Seka and Mr. Limanni, two pieces contained  
17 unidentified latent finger prints. Trial Transcript, February 21, 2001, Vol II 17:2-17. These prints  
18 were never compared to the prints lifted from the beer bottles found near Mr. Hamilton's body  
19 nor were they tested for DNA. *Id.* If touch DNA is extracted from these unidentified fingerprints,  
20 taken in accumulation with the other evidence, it can implicate the actual perpetrator of the  
21 crime. This is also true for the bloody hair collected from under Mr. Hamilton's fingernails, Mr.  
22 Hamilton's fingernail clippings, hair and debris found on Mr. Hamilton's clothes, and a white  
23 cotton material found on Mr. Limanni's body. While the State did test the blood on the hair  
24 found under Mr. Hamilton's fingernails and the clippings themselves, they only tested those  
25 items for Mr. Seka's and Mr. Hamilton's DNA. They did not find Mr. Seka's DNA, and the  
26 blood on the hair and nails belonged to Mr. Hamilton. However, they did not test the hair itself  
27 or clippings for any other DNA – DNA belonging, for example, to one of the alternative  
28 suspects. Testing that material now to identify who Mr. Hamilton struggled with prior to his



1 death will unquestionably prove exculpatory to Mr. Seka. The white cotton material found on  
2 Mr. Limanni's body is equally probative, equally relevant and creates an equal possibility of  
3 exculpatory results for Mr. Seka.

4 New significant developments in DNA allows for more advanced testing which was not  
5 available in 1998. At the time of trial the forensic testing was limited to "old" PCR typing, which  
6 could only test to "eliminate, not a test of identification." Trial Transcript, February 16, 2001,  
7 Vol I 62:9-63:20; February 16, 2001, Vol II 17:16-19, 18:10-12. Now, DNA testing can be  
8 done on all of these pieces of evidence and can not only exclude Mr. Seka but can include one of  
9 the alternative perpetrators. In short, genetic marker testing of this evidence can identify the  
10 perpetrator of this violent act. Had this testing been available at the time of the police  
11 investigation or the trial, it is more than reasonably possible that Mr. Seka would not have been  
12 prosecuted. *See* N.R.S. 176.0918. Rather, police and prosecutors would have focused on the  
13 person who deposited the relevant DNA and left Mr. Seka, an innocent man, to go on with his  
14 life.

15 Similarly, if the jury was presented with DNA evidence showing that not only was Mr.  
16 Seka's DNA not present on the most probative physical evidence collected from the crime scene,  
17 but that someone else's DNA, someone who had ill feelings towards Mr. Limanni and/or Mr.  
18 Hamilton, there is more than a reasonable possibility the jury would not have convicted Mr.  
19 Seka. This is true even if the evidence collected, as the State asserts, was found in a public site to  
20 which others had access. This is especially true if the DNA profiles provided belong to Mr. Tak  
21 Kato, Mr. Toe, or Mr. Mohammed, or anyone else who Mr. Limanni swindled. These alternate  
22 suspects actually had the motive, means, and opportunity to commit the crime for which Mr.  
23 Seka was convicted. Further, the circumstantial evidence could easily implicate them,  
24 particularly if DNA ties them to the murders, the murder scene or the dumping sites. Thus, if  
25 modern DNA testing had been available at the time of Mr. Seka's trial and the results of that  
26 testing exculpated Mr. Seka and inculpated someone else, there is little doubt that a "reasonable  
27 possibility exists that [Mr. Seka] would not have been . . . convicted" of murder.

28 ...

1 IV.

2 CONCLUSION

3 Mr. Seka has met each of the statutory provisions established in N.R.S. 176.0918 and  
4 thus respectfully requests that this Court grant his Post-Conviction Petition for Genetic Marker  
5 Analysis. In its response to Mr. Seka's Petition, the State argues that Mr. Seka has only failed to  
6 meet one of the statutory requirements. Specifically, the State, by implication, does not contest  
7 that Mr. Seka has shown "[i]nformation identifying specific evidence either known or believed to  
8 be in the possession or custody of the State that can be subject to genetic marker analysis."  
9 N.R.S. 176.0918 (3)(a). Similarly, the State does contest that Mr. Seka has properly identified  
10 "the type of genetic marker analysis [he] is requesting" nor does the State argue that Mr. Seka  
11 has failed to outline the "results of all prior genetic marker analysis performed on evidence in the  
12 trial which resulted in the petitioner's conviction. *Id.* at (3)(c-d). Finally, and perhaps most  
13 importantly, the State does not dispute Mr. Seka's assertion that the "type of genetic marker  
14 analysis the petitioner is requesting was not available at the time of trial. . . ." *Id.* at (3)(e).  
15 Rather, the State claims that Mr. Seka has not shown that "why a reasonable possibility exists  
16 that [he] would not have been prosecuted or convicted if exculpatory results had been obtained  
17 through a genetic marker analysis of the evidence." In making this argument, the State  
18 exclusively relies on the circumstantial evidence that the jury heard at trial and used to convict  
19 Mr. Seka. The State does not acknowledge that evidence found at the crime scene, on the  
20 victims' bodies, and at the dump sites can be tested using procedures that were not available at  
21 trial, and thus could overcome the circumstantial evidence, identify the actual perpetrator and set

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 an innocent man free. As discussed above, the State's reliance on the circumstantial evidence and  
2 its narrow interpretation of the statute's purpose cannot form the basis for a denial of Mr. Seka's  
3 petition.

4 DATED this 5<sup>th</sup> day of September, 2017.

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20 **EIGHTH JUDICIAL DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 JOHN JOSEPH SEKA,  
23  
24 Petitioner,

CASE NO. 99C159915  
DEPT. XXV

25 vs.

26 STATE OF NEVADA,  
27  
28 Respondent,

**ORDER GRANTING PETITIONER JOHN JOSEPH SEKA'S POST-CONVICTION  
PETITION REQUESTING A GENETIC MARKER ANALYSIS OF EVIDENCE  
WITHIN POSSESSION OR CUSTODY OF THE STATE OF NEVADA (NRS 176.0918)**

23 Petitioner, John Joseph Seka's ("Mr. Seka"), Post- Conviction Petition Requesting A  
24 Genetic Marker Analysis of Evidence Within Possession or Custody of the State of Nevada  
25 (NRS 176.0918) having come on regularly for argument on the 13<sup>th</sup> day of September, 2017, in  
26 Department XXV, the Honorable Judge Kathleen Delaney presiding, Mr. Seka being represented  
27 by Paola M. Armeni, Esq. of the law firm of Gentile Cristalli Miller Armeni Savarese, the  
28

1 of 3

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SEP 14 2017

Respondent, State of Nevada being represented by J. Timothy Fattig, Chief Deputy District Attorney, of the Clark County District Attorney's Office and the issues being fully argued by counsel and the Court being fully advised in the premises and good cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDICATED AND DECREED** that Mr. Seka has met all the requirements outlined in NRS 176.0918(3) to file his Post-Conviction Petition Requesting a Genetic Marker Analysis of Evidence within the Possession or Custody of the State of Nevada (NRS 176.0918) and thus the Post-Conviction Petition is GRANTED pending a future hearing in this case.

**IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that pursuant to NRS 176.0918(4)(c)(1), that any agency and/or person in the State of Nevada who possesses or has custody of any evidence that may be subjected to genetic marker testing related to the above entitled matter including but not limited to the Clark County District Attorney's Office, Clark County Clerk's Office, Evidence Vault located at the Las Vegas Regional Justice Center and Las Vegas Metropolitan Police Department (LVMPD Event Number 981116-0443), shall preserve all evidence within the possession or custody of the person or agency that may be subjected to genetic marker analysis pursuant to NRS 176.0918.

**IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that pursuant to NRS 176.0918(4)(c)(2), any agency and/or person in the State of Nevada who possesses or has custody of any evidence that may be subjected to genetic marker testing related to the above entitled matter shall within ninety (90) days of this Order prepare an inventory of all evidence relevant to the claims in the petition within the possession or custody of the person or agency that may be subjected to genetic marker analysis pursuant to NRS 176.0918 as well as a statement on the inventory as to whether or not the evidence is currently in a sealed condition or not.

**IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that pursuant to NRS 176.0918(4)(c)(3), any agency and/or person in the State of Nevada who possesses or has custody of any evidence that may be subjected to genetic marker testing related to the above entitled matter shall within ninety (90) days of this Order submit a copy of the inventory to the

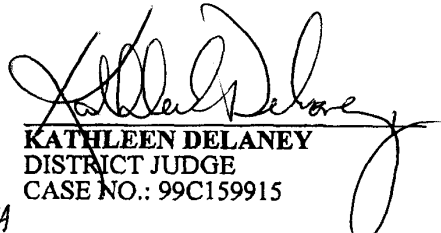
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APP1663


1 Petitioner John Seka by and through his counsel Paola M. Armeni, Esq. of the law firm of  
2 Gentile Cristalli Miller Armeni Savarese, J. Timothy Fattig, Chief Deputy District Attorney at  
3 the Clark County District Attorney's Office and the Honorable Kathleen Delaney, District Court  
4 Judge, Department 24 in the Eighth Judicial District Court.

5 DATED this 13<sup>th</sup> day of September, 2017.

  
KATHLEEN DELANEY  
DISTRICT JUDGE  
CASE NO.: 99C159915

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7  
8 Prepared and submitted by:

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19 *In Conjunction with Rocky Mountain Innocence Center*

20 Approved as to form and content:

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20 **EIGHTH JUDICIAL DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 JOHN JOSEPH SEKA,  
23  
24 Petitioner,

CASE NO. 99C159915  
DEPT. XXV

25 vs.

26 STATE OF NEVADA,  
27  
28 Respondent.

**ORDER**

29 Petitioner, John Joseph Seka's ("Mr. Seka"), Post- Conviction Petition Requesting A  
30 Genetic Marker Analysis of Evidence Within Possession or Custody of the State of Nevada  
31 (NRS 176.0918) having come for hearing on the 24<sup>th</sup> day of January, 2018, in Department XXV,  
32 the Honorable Judge Kathleen Delaney presiding, Mr. Seka being represented by Paola M.  
33 Armeni, Esq. of the law firm of Gentile Cristalli Miller Armeni Savarese, in conjunction with the  
34 Rocky Mountain Innocence Center and the Respondent, State of Nevada being represented by J.  
35 Timothy Fattig, Chief Deputy District Attorney, of the Clark County District Attorney's Office

FEB 13 2018



1 and the issues being fully argued by counsel and the Court being fully advised in the premises  
2 and good cause appearing therefor,

3 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED** that after considering  
4 the information contained in the Petition made pursuant to NRS 176.0918 that genetic marker  
5 analysis should occur.

6 **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that evidence to be  
7 analyzed exists; namely, the hair and nail samples of named victim Eric Hamilton, identified as  
8 Exhibit 36 on the Prosecution's Trial Exhibit List and the cigarette butts located near named  
9 victim Eric Hamilton's body, identified as Las Vegas Metropolitan Police Department  
10 ("LVMPD") Package 1, items 1 and 2.

11 **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that a reasonable  
12 possibility exists that the petitioner would not have been prosecuted or convicted if exculpatory  
13 results had been obtained through a genetic marker analysis of the evidence identified.

14 **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that after considering  
15 the evidence previously subject to a genetic marker analysis the court further finds that the  
16 evidence was not subjected to the type of analysis that is now requested.

17 **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that the Court has  
18 designated the LVMPD forensic laboratory and/or any laboratory contracted with LVMPD  
19 conduct and oversee the analysis.

20 **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that the following  
21 items shall be subject to Short Tandem Repeats ("STR") Testing using a twenty-one Combined  
22 DNA Index System ("CODIS") loci:

23 (1) Nail clippings obtained from named victim Eric Hamilton, identified as Exhibit 36 on the  
24 Prosecution's Trial Exhibit List;

25 (2) Cigarette butts located near named victim Eric Hamilton's body, identified as LVMPD  
26 Package 1, items 1 and 2.

27 (3) Any hair follicles identified on the hairs collected from victim Eric Hamilton's  
28 fingernails, identified as Exhibit 36 on the Prosecution's Trial Exhibit List.

1       **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that LVMPD is to  
2 examine the hairs identified in Exhibit 36 on the Prosecution's Trial Exhibit List and either  
3 determine a follicle exists and test it or if there is no follicle, examine package 36 to determine  
4 how many hairs are present in the envelope. If the STR DNA testing produces inconclusive  
5 results, the parties will discuss the subject to Mitochondrial DNA Testing including but not  
6 limited to costs, the bearer of those costs and the lab that would conduct such testing. This  
7 stipulation does not foreclose the parties from addressing this matter with the Court if necessary.

8       **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that the employees of  
9 LVMPD, LVMPD forensic laboratory, and Clark County Judicial Court are ordered to conduct  
10 all acts necessary to ensure the DNA Testing is completed as required by this Order. Within  
11 seven days, or as soon as practicable, after the entry of this Order, the evidence shall be  
12 transported to the LVMPD forensic laboratory or any laboratory contracted with LVMPD to be  
13 tested. The evidence custodian shall take all actions necessary to maintain the chain of custody of  
14 the evidence. Counsel for the State shall ensure that all of the appropriate agencies are made  
15 aware of this Order and their obligations hereunder.

16       **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that upon receipt of the  
17 evidence, LVMPD forensic laboratory or any laboratory contracted with LVMPD shall complete  
18 the DNA Testing within one hundred and twenty (120) days of the date of this Order.

19       **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that if more than half  
20 of any DNA extraction will be consumed by testing, the LVMPD forensic laboratory or any  
21 laboratory contracted with LVMPD will contact Mr. Seka's counsel and counsel for the State  
22 and will not conduct DNA testing of that piece of evidence until so authorized by counsel for  
23 both parties or by the Court. The laboratory will further maintain the remaining portion of each  
24 tested piece of evidence in such a condition that additional testing may be conducted, if  
25 necessary.

26       **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that LVMPD forensic  
27 laboratory or any laboratory contracted with LVMPD shall report the results of the DNA testing  
28 to Mr. Seka's counsel and counsel for the State within five (5) business days of obtaining or

1 receiving such results. Included with that report, the laboratory shall provide:

2 (1) the allele calls from the evidence and Mr. Seka's comparable DNA profiles, whether  
3 from the original case file, the Nevada DNA Database or the newly extracted buccal  
4 swabs; and

5 (2) true and correct digital copies of any and all electropherograms, ".fsa" files and other  
6 electronic raw data files from the above-described processes, together with all inspection,  
7 sampling, chain-of-custody, processing and testing protocols, records, lab notes, emails,  
8 communications and other documentation regarding the genetic material obtained from  
9 the evidence and Mr. Seka.

10 **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that in the event the  
11 DNA testing produces an unidentified DNA profile that qualifies for upload into the Nevada  
12 DNA Database and CODIS DNA Database, the parties reserve the right to argue whether the  
13 data should be entered into the Nevada DNA Database and CODIS DNA databases and whether  
14 All DNA matches identified as a result of the DNA database comparisons shall be provided to  
15 Mr. Seka's counsel and counsel for the State.

16 **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that the Petitioner shall  
17 submit a new DNA sample to the LVMPD forensic lab; however, said sample will not be  
18 retrieved until after the genetic testing is completed on the hair, nail samples and cigarette butts.

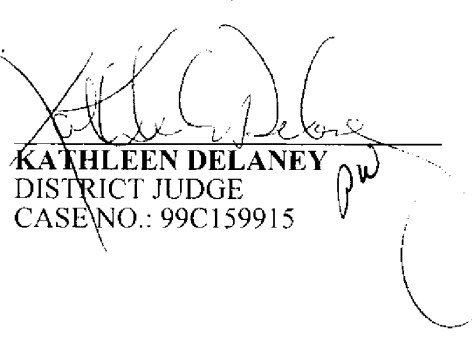
19 **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that once the testing of  
20 the evidence is complete, Mr. Seka may renew his request for DNA testing of the other evidence  
21 identified in his Post-Conviction Petition Requesting a Genetic Marker Analysis of Evidence  
22 within Possession or Custody of the State of Nevada (NRS 17630918), filed June 19, 2017.  
23 Should the State oppose this request, the Court will schedule a hearing to entertain oral  
24 arguments and/or additional briefing to determine whether such testing is appropriate.

25 **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that a status check  
26 pertaining to the progress on the genetic marker analysis is currently scheduled for April 2, 2018  
27 at 9:00 a.m.

28 ...


1       **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that this Order  
2 constitutes the final order of the Court, and no further order is necessary.

3       DATED this 15<sup>th</sup> day of February, 2018.

  
KATHLEEN DELANEY  
DISTRICT JUDGE  
CASE NO.: 99C159915

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21       Attorneys for Petitioner John Joseph Seka  
22       In Conjunction with Rocky Mountain Innocence Center

23       Approved as to form and content:

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