

**No. 86694**

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IN THE NEVADA SUPREME COURT

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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 9 of 15**

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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.

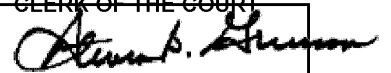
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John Joseph Seka, #69025 High Desert State Prison P.O. Box 650 Indian Springs, NV 89070	
--	--

/s/ Kaitlyn O'Hearn

An Employee of the Federal  
Public Defender, District of  
Nevada



TRAN  
CASE NO. 99C159915  
DEPT. NO. 25

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	
	)	REPORTER'S TRANSCRIPT
	)	OF
vs.	)	PETITION RE GENETIC MARKER
	)	ANALYSIS
	)	
JOHN JOSEPH SEKA,	)	
	)	
Defendant.	)	
_____	)	

BEFORE THE HONORABLE KATHLEEN DELANEY  
DISTRICT COURT JUDGE

DATED: FRIDAY, DECEMBER 14, 2018

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

1 APPEARANCES:

2 For the State: JOHN T. FATTIG, ESQ.

3

4

5 For the Defendant: PAOLA ARMENI, ESQ.

6 JENNIFER SPRINGER, ESQ.

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1 LAS VEGAS, NEVADA; FRIDAY, DECEMBER 14, 2018

2 P R O C E E D I N G S

3 \* \* \* \* \*

4  
5 THE COURT: Good morning.

6 This is the time that we set for the evidentiary  
7 hearing regarding genetic marker analysis in the John Seka  
8 matter. Thank you for your patience while we got started  
9 a little later today. I had a couple of things to take  
10 care of before.

11 We have had several check-ins. Got a lot of  
12 information already compiled. We left ourselves with this  
13 last aspect of the matter to determine on these, as I've  
14 indicated, right or wrong, these predominantly 3 remaining  
15 items in dispute. The black baseball hat, the bullet  
16 fragments, and the tobacco container with the beer  
17 bottles.

18 Let's get our appearances first, then we'll move  
19 forward.

20 MR. FATTIG: Tom Fattig for the State.

21 MS. ARMENI: Paola Armeni for John Seka.

22 MS. SPRINGER: Jennifer Springer for John  
23 Seka.

24 THE COURT: Good to see you all.

25 I really didn't have any pre-planned ideas for

1       today on how we'd go forward.  However you want to do it  
2       is fine.  We'll make sure we get it in the record.

3               MS. ARMENI:  So Mr. Fattig and I actually spoke  
4       about that because we recognize it is our burden, but we  
5       were trying to figure out what would make the most sense  
6       and easier for the court to comprehend or even for us to  
7       comprehend, quite frankly.  So we think the best route is  
8       to put Mr. King on first, who did the initial analysis or  
9       recent analysis, then we'd follow up.

10              THE COURT:  Kind of fill in the gaps.

11              MR. FATTIG:  I think that makes sense.

12              THE COURT:  Here's how I always look at it.

13       Haven knows I need all the help I can get.  I'm a very  
14       linear thinker, but sometimes what we need to have is just  
15       the written record, whatever that is.  Because heaven  
16       knows, and especially in these circumstances like this,  
17       the likelihood there's going to be a source of review, we  
18       want that to be comprehensible to whoever looks at it.  
19       When it's just a cold record, it could be very hard.

20              So this way I think it makes perfect sense because we  
21       start with what do we have now, what is this sort of  
22       situation we're looking at as we come in here today, then  
23       go ahead and what does it all mean tied together.

24              MR. FATTIG:  I believe I marked as State's 1,  
25       and 2, two reports that Mr. King authored, regarding what

1 testing he's done so far. I believe the defense is  
2 stipulating admission.

3 MS. ARMENI: That's correct, your Honor. We  
4 have no objection.

5 MR. FATTIG: Those will be helpful for the court  
6 in terms of following along with his testimony.

7 THE COURT: We'll go ahead and admit Plaintiff's  
8 Exhibits 1 and 2 for today's purposes. We have had some  
9 record made of what has already been tested in the  
10 circumstances, but anything we can -- I'm giving the  
11 blessing -- anything we -- I don't think there can be  
12 anything too redundant today, right. That makes this  
13 record even more complete. So however you want to cover  
14 it.

15 MR. FATTIG: Sure.

16 THE COURT: If you are comfortable sitting. You  
17 can stand if you want to.

18 MR. FATTIG: I would anticipate calling Craig  
19 King.

20 THE COURT: Mr. King, come up, please.

21 THE COURT: You do solemnly swear the testimony  
22 you are about to give in this action shall be the truth,  
23 the whole truth, and nothing but the truth so help you  
24 God.

25 THE WITNESS: I do.

1 THE COURT: State and spell your name for the  
2 record.

3 THE WITNESS: Craig, last name, King, K-i-n-g.

4 DIRECT EXAMINATION

5 BY MR. FATTIG:

6 Q. Sir, how are you employed?

7 A. I'm employed with Las Vegas Metropolitan  
8 Police Department in the forensic lab in the biology  
9 detail as a forensic scientist.

10 Q. How long have you had that position?

11 A. With Metro about 10 years now.

12 Q. Were you employed in a similar field before  
13 you were employed with Metro?

14 A. Yes, before and an interim in between.

15 Q. Can you briefly describe initially your  
16 training and education, how you became so employed in that  
17 field?

18 A. I have a bachelor of science degree in  
19 biology, which includes course work in genetics,  
20 biochemistry, microbiology. I also have training in  
21 genetic statistics.

22 So I started -- I started about 17 years ago with  
23 the armed forces' DNA identification laboratory. I worked  
24 for them for 6 year before coming out to Metro. Then I  
25 left Metro after 2 years. I took a position with the



1 Department of Defense as a contractor doing basically the  
2 same thing. I was doing forensics, but it was on the  
3 battle field in Iraq and Afghanistan. I worked for a  
4 company called BA Systems. I did that for about a  
5 year-and-a-half. Then I came back to Metro.

6 All these locations, we do go through a training  
7 period. We go through the different procedures that we  
8 use. We start out going through basic procedures. We get  
9 mock cases that simulate what we're going to be doing in  
10 real case work. I have written competency, lab  
11 competency. We go through an oral exam, a moot court, and  
12 all that. That training period can vary. It could be 6  
13 months, 18 months. It all depends on your experience and  
14 what you will be doing.

15 Q. Do you receive continuing education as well?

16 A. Yes. Every year we're required to receive 8  
17 hours of continuing education. We also try to do some  
18 literacy reviews throughout the year as well.

19 Q. Have you testified as an expert before in  
20 court regarding this field?

21 A. Yes, I have.

22 Q. Which courts?

23 A. I've done here in District Court in Nevada.  
24 I've done US court as well.

25 Q. Federal Court?

1           A.       Federal Court, yes.

2           Q.       Okay.

3                 Directing your attention to Metropolitan Event No.  
4       981116-0443. Were you asked to do some DNA examinations  
5       on various pieces of evidence under that particular event  
6       number?

7           A.       Yes, I was.

8           Q.       Is it fair to say that at this point you have  
9       been involved in drafting two different reports based upon  
10      the work you have done under that event number in this  
11      case?

12          A.       Yes.

13          Q.       One is dated April 17th of 2018, correct?

14          A.       Let me verify my reports.

15          Q.       Yes. If that will refresh your recollection.

16                 THE COURT: Thank you for doing that. It will  
17      help us out as we go forward if there's any time you have  
18      to testify from looking at something that -- you just,  
19      first of all, indicate it's something you don't recall,  
20      just like you just did. Then ask to have the opportunity  
21      to review it.

22                 We want to make sure the record always reflects  
23      whether you are testifying from your own recollection or  
24      looking at something.

25                 THE WITNESS: Yes, the date is April 17, 2018.

1 BY MR. FATTIG:

2 Q. The second report you authored is July 24th,  
3 2018?

4 A. That's correct as well.

5 Q. The first report, is it fair to say, it  
6 summarizes the work you did on particular items of  
7 evidence that this court ordered Metropolitan Police  
8 Department to either retest or test for DNA?

9 A. Yes. That's correct.

10 Q. The second report, does it reflect a  
11 comparison of a buccal swab obtained from Mr. Seka and  
12 compared to the items of evidence you already tested?

13 A. Yes, that's right.

14 Q. That's why we have two different tests?

15 A. Correct.

16 Q. So initially when you looked at the items of  
17 evidence, you did not have a reference sample of Mr. Seka  
18 to work from?

19 A. No, I did not have one.

20 Q. Getting into the items of evidence that you  
21 already tested that are detailed in those reports,  
22 initially you were asked to look at some cigarette butts,  
23 correct?

24 A. Yes. There were two cigarette butts.

25 Q. These cigarette butts turned out to be items

1       that weren't admitted into evidence at trial. Were you  
2       aware of that?

3           A.       I'm not real sure on that. No.

4           Q.       But when you examined the cigarette butts,  
5       they were in -- when you ordered them up, they came from  
6       the Metropolitan Police evidence vault?

7           A.       Yes, that's correct.

8           Q.       They were in a sealed evidence container?

9           A.       Yes, they were sealed.

10          Q.       Did the evidence indicate that the evidence  
11       had been tested by a DNA employee working for Metro on an  
12       earlier date in time?

13          A.       Yes, it did.

14          Q.       You could tell that by looking at the evidence  
15       envelop that the cigarette butts were in?

16          A.       There was a signature and information on it.

17          Q.       Did that turn out to be David Welsh who tested  
18       the cigarette butts back in 1999?

19          A.       Yes, that's correct.

20          Q.       Are you familiar with Mr. Welsh personally or  
21       do you know that he was formerly employed in your  
22       position?

23          A.       Not necessarily personally. He worked there  
24       when I first started for a short period of time and before  
25       he retired.

1           Q.       Is it fair to say you had access to  
2       Mr. Welsh's report and his notes and what he did in terms  
3       of -- with those items of evidence back in 1999?

4           A.       Yes, that's correct.

5           Q.       Is it fair to say that Mr. Welsh, when he did  
6       DNA testing in 1999, did not find any DNA material on  
7       either of those cigarette butts?

8           A.       No, he did not find anything on it  
9       originally.

10          Q.       When you pulled them up out of evidence, they  
11       were still in a sealed condition, correct?

12          A.       Correct.

13          Q.       This would have been in 2018, early part?

14          A.       Yes.

15          Q.       Item No. 1, which was the first cigarette  
16       butt, did you test that for DNA?

17          A.       Yes, I did.

18          Q.       Did you obtain any DNA profile or information  
19       coming from that cigarette butt?

20          A.       If I can refer to my report.

21          Q.       Would that refresh your recollection?

22          A.       Yes.

23                 For item 1, no DNA profile was obtained from that  
24       cigarette butt.

25          Q.       In layman's terms, what does that mean?

1           A.       There was nothing detected. There could have  
2       been DNA there, but there was nothing workable or usable  
3       in our current techniques, so nothing was obtained. They  
4       can do a profile looking for that information and nothing  
5       was there.

6           Q.       How about the second cigarette butt?

7           THE COURT: Before you move on, I don't want to  
8       to be obtuse about it, but which one was it or was there  
9       material not enough to create a profile or no material.

10          A.       I can't say. There's no way for us to tell.  
11       If you want to think of it as a glass, you take a glass.  
12       If it's all intact, I can use it to drink water from. I  
13       can't put that back together and drink from it. So the  
14       pieces could still be there, but I can't detect it. I  
15       can't detect it. I can't pick it up and use that  
16       information.

17          THE COURT: That tells me you can't use it as a  
18       glass when you can't make the profile, but can you see  
19       that the pieces are there.

20          THE WITNESS: We don't have a means of looking  
21       at that point, no.

22          THE COURT: Thank you.

23       BY MR. FATTIG:

24          Q.       You qualified that by saying under the current  
25       technology?

1 A. Yes.

2 Q. Things change over time?

3 A. Yes.

4 Q. Like they did since Mr. Welsh tested the  
5 evidence?

6 A. Correct.

7 Q. Going on to the second cigarette butt, did you  
8 test that for DNA?

9 A. Yes.

10 Q. What were your results?

11 A. It obtained a DNA profile from it from a  
12 male.

13 Q. Would you describe the profile you were able  
14 to obtain from that cigarette butt?

15 A. We call it a partial profile. I had almost a  
16 complete profile, but I couldn't get all of the  
17 information. So we're looking at, like, 21 locations. I  
18 couldn't get the complete information at all of those  
19 locations.

20 Q. Were you asked the subsequent date to compare  
21 that profile to the profiles of Eric Hamilton, the  
22 decedent, and the Defendant, John Seka?

23 A. I original had Eric Hamilton's blood card in  
24 our custody at the lab. So I used that during the initial  
25 testing to compare. Subsequently later when we got John

1       Seka's reference sample, I did the comparison at that time  
2       as well.

3           Q.       What were the results?

4           A.       Both were excluded as being that contributor  
5       as to being that male profile.

6           Q.       You know neither of them added DNA to that  
7       particular cigarette butt?

8           A.       Their DNA was not present on that, no.

9           Q.       Can you briefly describe the CODIS system?

10          A.       CODIS is a database. It's an investigative  
11       tool that we use. It's a way of putting in DNA profiles  
12       from forensic samples, unknown samples, to try to get  
13       information or investigative leads. So there's the  
14       forensic samples in there. There's samples from  
15       arrestees. There's convicted offenders. There's others  
16       in there as well.

17                Basically when we have an unknown profile we put  
18       that in and see if we have any kind of hits to it to give  
19       us a lead in a case as to who that DNA profile might have  
20       come from.

21          Q.       Did you put the results from that second  
22       cigarette butt into the CODIS system?

23          A.       Yes, we did.

24          Q.       Have you received any hits?

25          A.       No, not as of yet.



1           Q.     Moving on to the other items of evidence you  
2     tested in this case, let's talk about the fingernail  
3     clippings. These were fingernail clippings that were  
4     taken from the decedent, Mr. Hamilton, correct?

5           A.     Correct.

6           Q.     They would have been collected at the time of  
7     autopsy by the crime scene analyst back in 1998?

8           A.     Probably at autopsy.

9           Q.     When you ordered up these items of evidence,  
10    were you familiar that they were delivered from the court  
11    clerk, because they were admitted at trial?

12          A.     Yes. They were transferred from the court to  
13    our evidence vault.

14          Q.     This would have been Exhibit 36 in the trial.  
15    Do you remember seeing a sticker?

16          A.     If I can refer to my notes.

17          Q.     Sure. Absolutely.

18          A.     Yes, State's Exhibit 36.

19          Q.     Were they still in a sealed condition?

20          A.     Yes.

21          Q.     Regarding the fingernail clippings, were you  
22    able to look at the work that Mr. Welsh had done, if he  
23    had done any, regarding the fingernail clippings?

24          A.     Yes, I did.

25          Q.     Did he test any of the fingernail clippings to

1 your knowledge?

2 A. Yeah. I believe he tested the one hand of the  
3 two. There was two separate collected, a set for the  
4 right hand and a set for the left hand. He processed  
5 one.

6 Q. Did he reach any conclusions, to your  
7 knowledge, regarding the fingernail clippings?

8 A. Yes, he did.

9 Q. What was his conclusions?

10 A. If I can pull up his report and read what his  
11 conclusions were.

12 Q. Yes. If that would refresh you.

13 A. Yes.

14 THE COURT: Do we have that today.

15 MR. FATTIG: I --

16 THE COURT: I only have two reports.

17 MR. FATTIG: I was not planning on admitting it,  
18 but I can provide it to the court.

19 THE COURT: You're just using it to refresh his  
20 recollection for now. It's already -- we'll see if we  
21 need it.

22 THE WITNESS: He tested, appears to be, blood on  
23 fingernail clippings from Item 7. He included Eric  
24 Hamilton, and he excluded John Seka.

25 Q. Were you familiar that Mr. Welsh testified

1 during the trial and testified to all of these? He was  
2 cross-examined to all these findings?

3 A. Yes.

4 Q. What was the condition of the evidence bag  
5 that was marked Exhibit 36 when you received it in early  
6 2018?

7 A. It was in a sealed condition, like I would  
8 expect from any evidence collected from the scene.

9 Q. Again, there were markings on the envelop,  
10 fair to say, indicating -- or at least one of the  
11 envelops -- indicating Mr. Welsh had opened it at one  
12 point and done testing?

13 A. His signature was on there in the chain of  
14 custody. And his seal was on there as well.

15 Q. Let's go first of all and ask you about Item  
16 7, which was the right hand fingernail clippings of  
17 Mr. Hamilton, correct?

18 A. Yes.

19 Q. Did you test those fingernail clippings for  
20 DNA?

21 A. I did.

22 Q. What were your results regarding the right  
23 hand fingernail clippings?

24 A. He did get a mixture DNA profile, that I  
25 assumed was two people, with one male present. I ran it

1 through our software. STR mix is what it's called.

2 Q. Why did you do that?

3 A. Mixtures are our most complicated type of  
4 sample to do any kind of interpretations on. So what the  
5 system does, it's using what's called probabilistic  
6 genotyping. It's taking advantage of more information  
7 that we obtain from a DNA profile then we did  
8 originally.

9 Basically, if you think of this process as a  
10 statistical tool, it's like going on a beach with a metal  
11 detector. You're looking for a ring, or something like  
12 that. So you're going along and you're scanning the  
13 beach. And when you go and start getting beeps and you  
14 head toward those beeps, if you get no beeps, you're  
15 moving away from that.

16 So what it does is the way it's modeling is it's  
17 trying to coming up with the best fit for the data,  
18 proposing different possibilities to explain the data you  
19 have. So like on that beach, you're seeking out that  
20 beep. As you get closer, you hone in on that location,  
21 you dig to see what you have. This is what the software  
22 is doing. It's taking information and it's trying to  
23 break it down, tease it apart into the different  
24 contributors.

25 If I say it's two people, it's going to see how you

1 pull it apart and make two people to see if there's two  
2 people present with two profiles. It also allows us to do  
3 a statistical analysis. We can add a reference to it  
4 later and do a comparison and it gives us a static to  
5 that.

6 One of the good things about the software is in the  
7 past we were unable to use all of the information. One of  
8 the big hindrances we had was called drop out. So  
9 sometimes, whether we look in all of these different  
10 locations, there is information that might be missing from  
11 certain locations. We're losing it. We can see we're  
12 losing that information. So traditionally we have to  
13 ignore those locations, not use those in comparisons and  
14 things, or in our interpretation.

15 What the software does is it allows us to take that  
16 into account and use that information that there's that  
17 possibility a drop out exists. It gives us a lot more  
18 information to be able to breakdown that profile and make  
19 some conclusions on it.

20 Q. So what kind of conclusions were you able to  
21 draw from the mixture? You said you indicated there is  
22 two different sources of DNA?

23 A. I assumed there was two people, contributors  
24 to this DNA profile. When I ran the software, ran the  
25 sample through the software, I did make the assumption

1       that Mr. Hamilton was present. So I'm telling it that  
2       he's there, because these are his fingernail clippings.  
3       So I'm assuming that he's there.

4               What that does is it aids the software in making  
5       conclusions on who that other person would be. Without  
6       that information, it's got to come up with two different  
7       possibilities, and it can be a lot of different  
8       combinations. But doing this, it limits the combinations  
9       or possibilities for that other person.

10              If you think about of a puzzle, you have a thousand  
11       piece puzzle. You open it up. There is a lot of  
12       combinations to go together. So by assuming somebody,  
13       it's like we put the boarder together, the outside  
14       together. So that limits the possibility of what can go  
15       together in the middle of that puzzle. That aids us in  
16       determining who the other contributor could possibly be or  
17       what their possible profile is.

18              Q.       But you also had a reference sample of  
19       Mr. Hamilton, correct?

20              A.       I'm saying I used his information.

21              Q.       So it's consistent with the DNA you found in  
22       the fingernail clipping?

23              A.       I was saying he was present in that sample.

24              Q.       Then you did the calculations?

25              A.       Then did the calculations from there.

1 Q. Okay.

2 You said there's a mixture. Can you approximate  
3 the mixture proportions -- how much was Mr. Hamilton's,  
4 how much was the other one?

5 A. The software, what it does, is it will break  
6 it down into portions. Depending on what you are telling  
7 it, how many people are present, it will break it down  
8 into the relative amounts of DNA present in that sample  
9 you are entering.

10 Like in this case, it came up with a 99 to 1. The  
11 99 is Mr. Hamilton. Like, since I assumed he's there, he  
12 is the more prominent sample in there. So he's that 99  
13 portion, 99 percent. If you think of it like a pie, we're  
14 cutting that pie up into pieces. We're only going to cut  
15 this pie in two. Ninety-nine of it is going to be Mr.  
16 Hamilton and that 1 is someone unknown.

17 Q. Okay. So can you describe, the one, obviously  
18 it's a small amount of DNA?

19 A. It was a very, very limited, the amount of  
20 DNA. I had, in all the locations we're looking at, I had  
21 two locations where there could possibly be a second  
22 person.

23 Q. Can you hypothetically indicate when you have  
24 a situation where somebody is walking around, they have  
25 fingernails, is it possible to, if you shake your hand,

1       for instance, is my DNA possibly going to end up under  
2       your fingernails?

3           A.       That is a possibility, yes.

4           Q.       Is there other possibilities?

5           A.       Any kind of contact with somebody else may end  
6       up with your DNA underneath there. I would not be  
7       surprised to see it.

8           I have a 4-year-old daughter. I'm always holding  
9       her, changing her, things like that. I would not be  
10      surprised to find her DNA under my fingernails. So  
11      there's always a possibility that any contact you have  
12      with somebody else, if somebody is near you, if they  
13      sneeze on top of you, unfortunately, you may get that DNA  
14      transferred to your hands.

15          Q.       So you weren't surprised to see a second  
16      source there that was very small?

17          A.       No.

18          In this case, again, because it was so limited,  
19      like the possibility is that the extra information I have  
20      could be an artifact based on where the location was, the  
21      information that was there. But because I'm not surprised  
22      there could be the possibility of another person, I erred  
23      on the cautious side and took the information I had there  
24      was possibly another person.

25                THE COURT: What do you mean when you say



1 artifact. I think I know what you mean, but --

2 THE WITNESS: DNA, if we do a DNA profile, we're  
3 running our analysis. What we get is basically peaks on a  
4 chart. What we're doing is making copies. So we make  
5 that copy like a genetic photocopier. We're making  
6 millions and millions of copies to look at in all of these  
7 locations. But what happens sometimes is we get what's  
8 called a stutter. When we look at a location, when we're  
9 making that copy there is a mistake that happens. So it  
10 is that stutter that's part of that original peak, the  
11 peak we're looking at in the graph.

12 So what it is is we're doing short tandem repeats,  
13 STRs, sections of DNA that we repeat over, and over again.  
14 And so there is a number of them. We inherit them from  
15 our parents -- half from our mom -- half from our dad. I  
16 liken it to a train car. You've got so many cars on this  
17 train. There is another train there with so many cars in  
18 that. We're counting the cars.

19 So whenever we're making those copies, sometimes  
20 there's a miscount by one car. So it's always like a one  
21 repeat unit short. So how many repeats there are, one,  
22 it's called a stutter.

23 So in this case two of the locations were higher  
24 stutter from what we normally see on average stuff. Then  
25 another location could possibly be called pull up.

1           A pull up -- when we do this we're looking at 24  
2           different reactions in a single tube. We have to have a  
3           way to separate out that information after we're done to  
4           be able to visualize it. One of those is adding  
5           florescent tags. They're different colors. When you read  
6           it through on a scanner and it's going through our genetic  
7           analyzer, some of those colors are not distinct, separate  
8           bonds, they overlap. So our software for that piece of  
9           equipment helps separate that out. Sometimes there's a  
10          lead over or a little carry over from one color to the  
11          other, so we'll see what looks like a peek in one color  
12          channel, but it's actually originating from a different  
13          color channel.

14          So in this case, I had a peek like that that could be  
15          that pull up, but it was higher than I anticipated for a  
16          pull up. Same thing like the studder. It was higher than  
17          I anticipate. So it could potentially be true DNA. I  
18          erred on the cautious side and left it in and used it.

19                THE COURT: All that means that's possibly there  
20          wasn't additional DNA, but you can't rule it out so you  
21          leave it there.

22                THE WITNESS: Correct.

23          BY MR. FATTIG:

24                Q.          Based upon the studder and the pull up?

25                A.          Correct.

1 Q. It could have been a very, very small sample  
2 of DNA?

3 A. Yes. It could be there was only one person  
4 there and it's the artifact. It could be there's two  
5 people, with a very low second person. There is even a  
6 potential there may be a third person there. But, again,  
7 I'm not detecting it. I don't have enough information to  
8 distinguish that. But what I had, I'm looking at it as  
9 two people, the potential of two people.

10 Q. Potentially. Okay.

11 Were you able to compare any of the evidence you  
12 developed from the fingernail clippings -- Item 7 -- right  
13 hand clippings -- compared against Mr. Seka's known  
14 sample?

15 A. Yes, we did.

16 Q. What was that conclusion?

17 A. He was excluded as the contributor.

18 THE COURT: Can I clarify one thing. I don't  
19 want there to be confusion. These reports I have as Item  
20 4 and you said Item 7. I don't want there to be  
21 confusion. What item number are you utilizing.

22 MR. FATTIG: I'm using the impound item number,  
23 which is the item number the crime scene analyst would  
24 have used. I think the report at times mentions his lab  
25 item number.

1 THE COURT: That's what I wanted to clarify.

2 I see next to the name Eric Hamilton, under this lab  
3 item No. 4, fingernail clippings that's referenced in Item  
4 7, I wanted to be more clear about that.

5 MR. FATTIG: Absolutely. Thank you, your  
6 Honor.

7 BY MR. FATTIG:

8 Q. Is that fair to say, in terms of the  
9 differences, one number is the lab, being your set of  
10 numbers, and the other numbers, the number 7, for  
11 instance, would be from the crime scene analyst,  
12 originally?

13 A. Our lab numbers are an internal number we're  
14 using in the forensic lab. The impound numbers were what  
15 was collected at the time.

16 THE COURT: It was more for me to make sure the  
17 record is precise, which item we're talking about. Not  
18 that there was confusion about the distinction.

19 Go ahead.

20 MR. FATTIG: Sure.

21 BY MR. FATTIG:

22 Q. So you indicated you were able to exclude  
23 Mr. Seka from the right-hand fingernail clippings?

24 A. Yes.

25 Q. How were you able to do that?

1           A.       So, again, taking his profile and running it  
2       through that software program, he's excluded based on the  
3       combination it's coming up with. So what that software  
4       does, it's giving possibilities for each location with the  
5       information that it's looking at, the different  
6       possibilities to explain that profile. And so looking at  
7       his DNA profile compared to that, he doesn't match up to  
8       that. He doesn't fit any of the possibilities of that  
9       second contributor. He's excluded from it.

10          Q.       Which is why you're able to exclude him?

11          A.       Yes.

12          Q.       Regarding Item 8 from crime scene analyst, the  
13       left-hand clippings, did you test those for DNA?

14          A.       Yes, I did.

15          Q.       What were the results of that examination?

16          A.       Same as the mixture DNA profile, two people,  
17       with at least one male being present.

18          Q.       Was that the same portion, 99 to 1 -- 99 being  
19       Mr. Hamilton, one being the possibility of a second source  
20       DNA?

21          A.       Yes, that's right.

22          Q.       Is it the same -- do you have the same  
23       conclusions regarding the possibility because of the  
24       studder and the pull up that you talked about that there  
25       isn't even a second source on the left-hand fingernail

1 clippings?

2 A. Both profiles were consistent. They did the  
3 same three locations, the information I was getting, is  
4 the same for both. So that potential was the same, that  
5 it could potentially be artifact or two people.

6 Q. Did you also compare the left hand to  
7 Mr. Seka?

8 A. Yes, I did.

9 Q. Was that the same conclusion as the other  
10 hand?

11 A. Yes. He was excluded as well.

12 Q. Now, is it fair to say there was some hairs  
13 that were associated with the fingernail clippings?

14 A. Yes.

15 Q. Have you had a chance to exam those -- and  
16 those were in the same evidence envelope, State's 36?

17 A. Yes, they were.

18 Q. You had a chance to examine those hairs?

19 A. Yes.

20 Q. How many hairs are we talking about?

21 A. There were 7 fragments present.

22 Q. Were you aware of whether or not David Walsh  
23 had done any testing on the hairs back in 1999?

24 A. Yes, he did.

25 Q. What were his results from the hairs?

1           A.       Again, if I could refer to his report.

2           Q.       Yes, to refresh your --

3           A.       Yes.

4                    His report, he tested the hairs with apparent  
5 blood. He even tested the apparent blood, which was on  
6 the hairs. He was able to obtain a DNA profile. He  
7 included Eric Hamilton. He excluded John Seka from  
8 that.

9           Q.       So when you examined the hairs, did you notice  
10 any blood associated with the hairs?

11          A.       I didn't see any individually. I didn't  
12 notice any. I didn't test for blood. But nothing obvious  
13 or evidence on the hairs.

14          Q.       Is it possible whatever blood had been there  
15 had been used up by Mr. Welsh in his original testing?

16          A.       It could have been consumed by him. I'm not  
17 sure if he swabbed them or how he actually used that  
18 sample. He could have put the hairs in to get the blood  
19 off, if there was blood on it. I don't know for sure.

20          Q.       Is it fair to say that Mr. Welsh definitely  
21 didn't test the hairs themselves or the roots of the  
22 hairs?

23          A.       There was no notes of him testing the hair  
24 itself.

25          Q.       It was the blood associated with the hair?

1           A.       That's the apparent blood, yes.

2           Q.       Just to be clear. These were hairs that were  
3 found underneath the fingernail of Mr. Hamilton?

4           A.       Correct.

5           Q.       Did you do some testing on the hairs, since  
6 there wasn't blood to look at?

7           A.       I initially did, as I looked at the hairs to  
8 see if anything was suitable to take on for DNA testing.

9           Q.       What would be suitable for DNA testing?

10          A.       For our case we want to see a hair root that  
11 has some of that root material, or skin material, been  
12 pulled out.

13          Q.       When you looked at the 7 hair fragments, did  
14 you see any roots?

15          A.       On the hairs, 5 out of 7, did not. They were  
16 just hair shafts or fragments of hairs. Two I did see  
17 hair roots on them.

18          Q.       Did you do any -- you examined those roots?

19          A.       I took a look at them to see if they were  
20 suitable or not.

21          Q.       And were either of them suitable for  
22 testing?

23          A.       Yes. One I thought was suitable to take on  
24 for DNA testing.

25          Q.       Why was that one suitable?



1           A.       I'm not a hair examiner. We do have training  
2       in hair for DNA purposes.

3           What I'm looking for, like hair has 3 active  
4       growing stages -- anagen, catagen, telogen. So if you  
5       pull out a hair that's actually growing, you'll have like  
6       a skin tag at the root and all that.

7           When it starts to go into a resting state, it's  
8       called catagen. It's moving towards the resting period.

9           The final one it actually reaches a resting stage,  
10      it's called telogen. This is where the hair will  
11      eventually fall out. You might lose 100 hairs a day  
12      because they fall out.

13          So when you look at it under a microscope, I'm  
14      looking at the shape of that root. What does it look  
15      like, the different stages. So if I see what looks like a  
16      root portion left, and it's suitable, kind of looks like a  
17      ball. Think of it like a plant ball with a plant growing  
18      out of the top, looks like that, then it's not really  
19      suitable. There's not enough DNA, nuclear DNA present to  
20      do anything with.

21          Q.       Okay. So you mention one of them was in the  
22      anagen state, so that's the one you tested?

23          A.       The one I thought was between anagen and  
24      catagen, that is some material that looked like it's  
25      heading towards that resting state. But I felt there was

1 enough there to try to attempt it to get a DNA profile.

2 Q. What were the results of that?

3 A. If I could again refer to my notes.

4 Q. Yes.

5 A. So I did obtain a DNA profile. Eric Hamilton  
6 was included as being a possible contributor to that DNA  
7 profile.

8 Q. When -- was that the only contributor,  
9 Mr. Hamilton?

10 A. Yes.

11 Q. You didn't see a mixture?

12 A. No, no. Just one male present.

13 Q. What were -- did you come up with a  
14 probability that that was Eric Hamilton's DNA, as opposed  
15 to any other random person on earth?

16 A. Yes. We do a statistical calculation. We are  
17 using likelihood ratios. It's basically the probability  
18 of two competing proposals. What is the chance that this  
19 DNA profile originated from the person in question versus  
20 some random unknown person.

21 So the way we like to think of it as is a see-saw,  
22 or tetter todder. If it goes towards the proposal, this  
23 originated from the individual in question, it's going to  
24 start leaning. That number is going to start going up  
25 towards that individual. If it says it's more likely

1       toward the unknown individual, the random person, it will  
2       go the other way. The number will get smaller. If it's  
3       not at all that person, it's zero.

4               So in this case, the probability observing this DNA  
5       profile was, at least, 3.24 billion times more likely it's  
6       Eric Hamilton than it originated from a random, unknown  
7       individual.

8               Q.       When you looked at the 7 fragments, visually  
9       inspected them, did they all seem to be consistent with  
10      one another?

11              A.       As far as my training, yes. That's limited to  
12      suitable for DNA. I can't say for sure.

13              Q.       Just visually?

14              A.       Visually they were all black hair fragments.

15              Q.       Were they consistent at all with  
16      African-American hair?

17              A.       With my limited training, they did appear  
18      that, based on the way they looked with more follicle in  
19      the hair shaft, it was consistent with that. But I can't  
20      say conclusively.

21              Q.       Okay. Fair to say that we've talked about all  
22      the items of evidence you tested so far?

23              A.       Yes, that's correct.

24              Q.       We've also shared some communication, correct?  
25      We've spoken about some additional requests that attorneys

1       for Mr. Seka have, in terms of, items of evidence,  
2       correct?

3           A.       Yes.

4           Q.       We've spoken about a black baseball hat that  
5       was found at 1929 Western, correct?

6           A.       Yes.

7           Q.       Have you ever seen the hat?

8           A.       No, I have not.

9           MR. FATTIG: May I approach.

10          THE COURT: Yes.

11       BY MR. FATTIG:

12          Q.       Is it your understanding this hat was admitted  
13       at trial?

14          A.       Yes.

15          Q.       Counsel saw --

16          MR. FATTIG: They looked at this earlier. If  
17       you want to look again.

18          MS. ARMENI: No.

19          MR. FATTIG: Approach the witness, your Honor.

20          THE COURT: You may.

21          MR. FATTIG: Thank you.

22       BY MR. FATTIG:

23          Q.       Showing you what was admitted at trial as  
24       State's 22. You recognize generally what this is?

25          A.       Yes, an evidence package.

1 Q. From Metropolitan Police Department?

2 A. Yes.

3 Q. You haven't seen this before, correct?

4 A. No, I have not.

5 Q. There is the event number written on the  
6 outside indicating the same event number from this case,  
7 correct?

8 A. That's correct.

9 Q. Indicates it was located at 1929 Western.  
10 Indicates what's inside. Looks like a toothbrush as well  
11 as a JC Penney construction baseball type cap?

12 A. Correct.

13 Q. Does this appear to be in a sealed condition,  
14 State's 22?

15 A. If I can --

16 Q. Yes.

17 A. It's not in our evidence sealed condition.  
18 One side is opened here. It's stapled shut. But there is  
19 no evidence seal there to seal it up.

20 So for a proper seal, proper chain of custody, we  
21 would have some evidence tape to go along there. You  
22 would have a persons initials, P number, date when it was  
23 closed. So there is no way here to tell whether or not  
24 the evidence -- how many times it's been opened or closed,  
25 based off of that. It's still in an open condition.

1           Q.       So it looks like someone at some point has  
2       stapled a few times on one side, correct?

3           A.       Yes. That's correct.

4           Q.       And I'm going to have you open this up.

5           MS. ARMENI: I'd object to anybody touching  
6       it.

7           THE COURT: Let me see that. I can see the  
8       staples are holding it together. It was opened. It  
9       appears to be torn, not cut, from my observations. I'm  
10      not going into the bag, but it appears to be a torn bag,  
11      not that it was cut.

12          I don't know, based on what we're arguing about here  
13      today, that it would make any sense to open it up now and  
14      start actually contaminating it. If the argument is  
15      whether or not it's contaminated --

16          MR. FATTIG: I wanted to make sure the hat, as  
17      described, is in there. Right now we could see, but we  
18      can't totally see.

19          THE COURT: Do we have any reason to believe  
20      otherwise.

21          MR. FATTIG: I don't know.

22          THE COURT: I'm going to hold off on opening it  
23      at this time.

24          MR. FATTIG: Okay.

25          State's 19 -- thank you.

1 BY MR. FATTIG:

2 Q. You are also aware that defense is requesting  
3 some bullet fragments that were admitted at trial --  
4 State's 19?

5 A. Yes.

6 Q. Undergone some testing?

7 A. Okay.

8 MR. FATTIG: May I approach.

9 THE COURT: You may.

10 BY MR. FATTIG:

11 Q. So showing you State's 19. Do you recognize  
12 this generally as an evidence envelope?

13 A. Yes, I do.

14 Q. It indicates some various items of evidence,  
15 bullet fragments, copper jacketed bullets, et cetera, are  
16 located inside?

17 A. Correct.

18 Q. This is the same event number?

19 A. Yes.

20 Q. This indicates, down here, that some other  
21 person with Metropolitan lab had access to these items?

22 A. Looks like it was examined by someone from the  
23 forensic lab and sealed by them.

24 Q. Does this, State's 19, is that currently in a  
25 sealed condition or not?

1           A.       Again, no, it would not be considered sealed  
2       in our terms of chain of custody and evidence. The one  
3       side, again, is opened. It's stapled shut, but there's no  
4       tape seal there as well. It's not properly sealed for  
5       us.

6           Q.       These particular items of evidence, if we kind  
7       of peer in there, is it fair to say there appears to be  
8       some vials that would have -- is that kind of a typical  
9       way that firearm's evidence will be kept?

10          A.       They often do package them like that  
11       individually inside. Whether it's at the time of  
12       collection or after, during examination.

13          Q.       So the bullets aren't loose. They're put into  
14       vials -- individual vials or casings?

15          A.       Yes, to try to protect those. And to keep  
16       them identified as to which one is which from their  
17       examination.

18               THE COURT: Do we have knowledge of or  
19       information about if an item is opened for court and cut  
20       open in court whether it would be restapled later for  
21       purposes of holding it in the vault.

22               THE COURT: Yes.

23               MR. FATTIG: That's what I understand.

24               THE COURT: Just seems -- the thing that strikes  
25       me as odd, it seems this way, with this one as well, is



1       that my observations of opening evidence bags for court  
2       purposes has been somebody uses a scissor and cuts it.  
3       It's usually a very smooth cut. These items appear to be  
4       torn, not cut. I don't know if that means anything.

5               MR. FATTIG: There was a record made at the time  
6       of trial they were opening them during the trial. At some  
7       point afterwards, I believe an evidence custodian or  
8       someone stapled them in order to hold them all these  
9       years.

10              THE COURT: The way they were opened at trial,  
11       doesn't seem to match what's here.

12              MR. FATTIG: The record is clear.

13              THE COURT: I want to note this is almost opened  
14       here at the bottom end where the blue tape is. It maybe  
15       deteriorated or broken open over time. One of the vials  
16       are small enough they could come out of this hole.

17              I don't know if we want to do something. I'm going  
18       to place a clip on it now so we don't have something fall  
19       out of it.

20              MR. FATTIG: The envelop is not in the best  
21       condition.

22              THE COURT: There's two places -- you can see  
23       from what I'm holding up where the vial is about to come  
24       out of the gaping hole here. I don't want us to have  
25       anything fall out.

1 I also see a biohazard label on it. Are the things  
2 in vials because of fragments and where they came from --  
3 just keep it straight up and down.

4 BY MR. FATTIG:

5 Q. Would that be indicative of the possible  
6 biological material -- blood?

7 A. Yes. If there's any chance or risk of any  
8 biological fluids, when you open or handle it, that  
9 there's something there that could be infectious or  
10 such.

11 Q. Let's go back to the black hat.

12 Now that you had a chance to look at it, generally,  
13 in terms of the evidence envelop that it's in, would that  
14 be something that the Metropolitan Police Department  
15 forensic lab, DNA, would test, or do you have concerns  
16 about testing it?

17 A. We would refuse it. We would not test it if  
18 it wasn't in a sealed condition. There are concerns as to  
19 integrity of that evidence inside.

20 Q. Can you talk a little about that in terms of,  
21 hypothetically -- well, this is not hypothetically.

22 We know from the record that the evidence was  
23 opened in front of the jury. We know from our common  
24 sense that the evidence goes back to the jury room and is  
25 there with the jurors when they are deliberating the case.

1       They get to inspect whatever they want. It's all right  
2       there.

3               Do those kinds of details give you concern in terms  
4       of testing the hat?

5               A.       Yeah. There are several things to be  
6       concerned about. First is the integrity of that package,  
7       that evidence. You can't account for who has been in this  
8       packet. Who hasn't been in this package. How many times  
9       somebody could have been in it. That's what the seals are  
10      for.

11              When we open a package, we're going to seal it. We  
12      sign that evidence seal. We sign the chain of custody.  
13      In this case somebody could have been in and out of this  
14      package numerous times and we'll never know. The staple  
15      there holds it together, but you could open that up and  
16      restaple it and get into it. We wouldn't have any record  
17      of that.

18              So in that seal there, they call a 1, the original  
19      seal is at the top of the package. Whoever examines those  
20      fragments, bullet fragments, they opened up the bottom so  
21      they're not tampering with that original evidence seal  
22      that was there. So you can see where it's reopened and by  
23      whom. So that's one of the concerns.

24              THE COURT: Can I clarify one thing. I mean, I  
25      didn't, when I just did a brief examination of the two

1 bags, I didn't look for this, but we would be able to see  
2 if the staples were taken out to have it looked at again  
3 post-trial and then restapled, wouldn't we. Wouldn't we  
4 be able to see hole marks from other staples.

5 THE WITNESS: Possibly.

6 THE COURT: The odds of multiple staples being  
7 able to be restapled in the exact same spot are pretty  
8 slim. I know I'm asking you something that's not --

9 THE WITNESS: I can only answer hypothetically.  
10 There is always that possibility you'd be able to tell.  
11 Maybe you only take out one staple to get something out.  
12 It all depends on the size of the item.

13 THE COURT: I guess what I'm getting at is the  
14 concern about the contamination related to the jurors  
15 handling it, or are we honestly thinking there's some  
16 reason to be concerned about future mishandling.

17 MR. FATTIG: I guess we have no way to know who  
18 stapled it or when they stapled it. We know it was opened  
19 and subject to being touched by any number of people, any  
20 of the jurors, the court staff, the prosecutors, the  
21 defense, the judge. I mean, we don't know. On some  
22 point, some one stapled it closed, I'm assuming after  
23 deliberations and after the verdict. I don't know.

24 BY MR. FATTIG:

25 Q. Can I ask you about deliberations. Are you

1 familiar with the concept called talking over evidence?

2 A. Yes.

3 Q. What is that?

4 A. So our concern -- like in this case -- we are  
5 talking about the hat. It's opened in court and jurors  
6 might handle it. My first concern would be not only  
7 talking over it, but touching it as well. So if it's  
8 handled by someone else are they transferring DNA there.  
9 Are they contaminating that item. So that's one  
10 concern.

11 The bigger concern is that talking over. Because  
12 what's transferred when we touch, it could be very little.  
13 It could be a lot. It all depends. It varies from that  
14 source. Is it a source from the skin cells when the  
15 person is handling it. Did that person touch their face  
16 or cough in their hand and then touch an item transferring  
17 their DNA to it. It could be a lot.

18 Even more so is talking over a piece of evidence.  
19 I mean, that can add a lot more DNA. That's when I'm  
20 talking about coughing into your hand and then touching  
21 it, you're transferring a lot of DNA. Just talking over  
22 it it's been shown that you can transfer a lot of DNA.

23 To give you an example, I had a case where it was  
24 pipe bomb fragments. Very small fragments, I wasn't  
25 anticipating much results due to the size, the fact that

1 the item was exploded. The heat might have destroyed that  
2 DNA. I was actually able to get a pretty good profile  
3 from it.

4 I compared it to our elimination database. We have  
5 a staff elimination database. It happened to match the  
6 detective. I called him up and said, hey. You know, I  
7 did find a DNA profile. He was excited at first, until I  
8 told him it was a department employee. He was pretty  
9 upset. He's like, who. I was like, well, it was you.  
10 And he recalled that he had talked over that evidence as  
11 he was collecting it. I didn't detect anybody else. I  
12 only obtained a DNA profile from him.

13 So that's the concern for evidence like this. It's  
14 open to jurors and they're handling it. They're  
15 transferring DNA from touching it. Or they're talking on  
16 it. I have no way of knowing if that's happened. I don't  
17 have eliminations from those individuals. In this case I  
18 have elimination from the detective, so I was able to sort  
19 him out, but I don't know.

20 Contamination is an issue that adds complexity to  
21 it. I could mask the original information that's there,  
22 but I have no way of knowing that or sorting that out.

23 THE COURT: Is that the bigger concern,  
24 contamination could mask what was there rather than reveal  
25 who was there.

1 THE WITNESS: Right.

2 When you're collecting evidence today, you're  
3 trying to preserve for DNA like a snapshot of that time.  
4 There's always going to be concern of contamination.  
5 There's always concern there's no DNA present before, that  
6 it was added during a crime, added after the crime but  
7 before collection, during collection, during processing.  
8 But current techniques we try to mitigate that as much as  
9 possible to aid us in trying to detect if it is present.

10 We have elimination databases. We have  
11 controls. We have very specific procedures for collection  
12 of evidence, storing of evidence and such. So that helps  
13 mitigate those concerns.

14 But if there is contamination there now, how do I  
15 know that, how do I determine that from what the original  
16 sample would have been.

17 BY MR. FATTIG:

18 Q. If you were able to develop DNA from the black  
19 hat, would it be eligible to be up-loaded to the CODIS  
20 system?

21 A. No, likely not.

22 Q. Why not?

23 A. Again, because we can't rule out that source.  
24 Like CODIS will only allow us to enter in profiles that we  
25 believe to be attributed to a suspect from a forensic

1 unknown. In this case, if there is concern that there is  
2 contamination from -- like a juror, innocent individuals,  
3 how do I know what I'm putting in. So what eligibility is  
4 that. Who do I think it's from. So if I believe it's  
5 from an innocent individual, I'm not going to be able to  
6 enter that in.

7 Q. You have no reference samples, no buccal swabs  
8 collect from jurors, for instance?

9 A. I don't have any of that.

10 Q. Regarding State's 19 that we saw, the evidence  
11 envelope with bullet fragments, do you have concerns about  
12 testing those items for DNA?

13 A. Similarly. Again, if they didn't take it out  
14 in court that would eliminate that. I don't know if they  
15 did or not. So that question is was it handled or not,  
16 you know, remains like a question.

17 Q. Whether or not the cartridges were taken out  
18 of the vials, we don't know?

19 A. I don't know.

20 We know the package was opened, but I don't know if  
21 the individual pieces were taken out.

22 But less that and way more as far as processing,  
23 currently we have a routing system for evidence through  
24 our lab. So typically we'll look at trace evidence first,  
25 DNA second, latent prints third, firearms last. We never



1 go backwards.

2 Firearms is a handled piece of evidence. We don't  
3 go back to it because of the methods they're using.  
4 Sometimes they're not always wearing gloves. Safety  
5 reasons for handling an item, a gun, something like that.  
6 Or if it's a bullet or something like that, they might be  
7 cleaning it to do their examination under the microscopic.  
8 So I don't know what they've done there. As far as  
9 handling, they're not trying to preserve the DNA evidence  
10 They are looking for their evidence.

11 So once they've have handled something, we won't  
12 test anything that's previously tested by firearms.

13 Q. That's lab policy?

14 A. Yes.

15 Q. They may have cleaned off the bullet  
16 fragments. They may have not worn gloves when they  
17 examined it. There's any number of possibilities, in  
18 terms of contamination, during the firearm's  
19 examination?

20 A. Correct.

21 Q. Firearm's examiners would not be attempting to  
22 prevent contamination for DNA purposes?

23 A. Typically, no. They have very strict  
24 procedures, but at the time of this case back in the late  
25 90s, there's less of a procedure or whatnot for trying to

1       prevent DNA contamination for preserving DNA evidence. We  
2       have more now, things in place. At the time this original  
3       testing was done, even DNA was only looking at biological  
4       fluids that had a lot of DNA, blood, saliva, semen, things  
5       like that.

6               Touch was not a consideration. Cross-contamination  
7       may not have been the same for DNA. Now we have things in  
8       place within the lab to try to prevent the contamination,  
9       cross-contamination, whatever else that's a destruction of  
10      the DNA portion.

11             Q.       What about the firing of the bullet itself,  
12      the heat, the friction, processing the gun. Would that  
13      have a deleterious effect of possibility of DNA being on  
14      the items?

15             A.       Yes. Likely with a cartridge case with a  
16      bullet in the end, there's not much DNA possibly there.  
17      The likelihood is lower because of the small surface area.  
18      It all depends on the person handling it, what they're  
19      doing, touching their face, again. But one of the big  
20      things that can destroy DNA is heat. In that explosion  
21      that heat could destroy any potential DNA on there at the  
22      time it was fired. And then only the DNA you find would  
23      be after. So like if it's going through a person or  
24      entering a person's body, that is where you would expect  
25      to see it.

1           Q.       Moving on to the other items. We also spoke  
2       about a Skoal tobacco container, as well as two empty  
3       Beck's beer bottles, correct?

4           A.       Yes.

5           Q.       Is it your understanding those items were  
6       never admitted during the trial?

7           A.       I believe so.

8           Q.       Is it your understanding those are still in a  
9       sealed condition in the Metro police vault?

10          A.       Correct.

11          Q.       Do you have any concerns with testing those  
12       items for DNA?

13          A.       Again, I do. More by the lab process at the  
14       time. Latent prints -- currently, again, we're looking at  
15       evidence first, any shared evidence before latent prints.  
16       We might look at it together to view what to test, what  
17       not to test. So at the time I know Fred Boyd was the  
18       latent print examiner who examined it. When I started in  
19       2007 with Metro, 2008, we were noticing his DNA in some of  
20       our samples that he examined. At that time there was not  
21       that routing procedure.

22                 One of the things we did know at the time -- or  
23       found out at the time, there was an old latent technique  
24       of huffing on evidence, on certain surfaces.

25          Q.       What is huffing?

1           A.       It's like you're breathing on it and creating  
2       that condensation. Like you do on a window. You heat  
3       it -- like if you have kids -- you write on it. Same  
4       thing. When you huff on it, you might be able to  
5       visualize if there's any kind of latent print on an  
6       object. So we did know at the time we discovered he was  
7       doing that. So we had to stop that. At the time, it was  
8       around 2008 era, is when we're saying this the procedure  
9       and how we're changing them so this didn't occur.

10          Q.       In the 90s was touch DNA even a thing?

11          A.       Not at this time. Again, at least within the  
12       Metro lab they were only looking at high quality, high  
13       quantity samples -- blood, saliva, semen. Touch wasn't a  
14       factor at that time. That also plays into a lot of the  
15       procedures to prevent DNA contamination that weren't there  
16       at that time.

17          Q.       So were these items processed for  
18       fingerprints -- the tobacco container, the beer bottles?

19          A.       Yes, they were.

20          Q.       So what you're saying is during the processing  
21       of those items your concern was there was some possibility  
22       of the crime scene analyst or fingerprint examiner's DNA  
23       ending up on the items?

24          A.       More so like the latent present examiner.  
25       Another factor besides the huffing is we're not trying to

1 prevent DNA cross-contamination or anything like that at  
2 that time as we are today. So he may have worn gloves, if  
3 he wore them at all. He might have worn the same gloves  
4 and examined multiple pieces of evidence and potentially  
5 transferred DNA from one to the other. We don't know. I  
6 don't know the way it was done exactly. So there is  
7 always that potential cross-contamination with DNA from  
8 one thing to the other from one case to another.

9 Q. What about the processing of the items  
10 themselves, like the powder they used or the brush?

11 A. So there is a couple of issues. If they are  
12 using a fingerprint brush and powder, that often is not  
13 changed. Especially back then. Now we do it differently.  
14 But they might be using the same brush to dust multiple  
15 pieces of evidence. Again, like picking up DNA, or  
16 leaving DNA behind from one item to another. There's that  
17 potential there.

18 In the process, depending on the process, it could  
19 have more of a deleterious effect on the DNA. It could  
20 start breaking it down. Some powders there's some issues.  
21 Especially a lot of the enhancements they use, different  
22 dyes and stains to help enhance the latent print they  
23 develop. Those are potential things that could destroy  
24 the DNA that's present.

25 MR. FATTIG: I have no other questions.

1 THE COURT: All right.

2 Can we take 5 minutes to use the restroom and  
3 gather our thoughts. Then we'll proceed with the next  
4 line of questions.

5 (Brief recess taken.)

6 THE COURT: When you are ready.

7 CROSS-EXAMINATION

8 BY MS. ARMENI:

9 Q. Mr. King, you kept using the words, during  
10 your direct examination, you had concerns?

11 A. Yes.

12 Q. Would you agree that your concern is not a  
13 scientific measurable component rather a subjective one?

14 A. It is subjective. We have no way to tell for  
15 sure any of this happened, but the potential is there.

16 Q. Potential is there.

17 And have you ever tested an item that you had  
18 concerns about?

19 A. Sometimes. Usually in those cases we have  
20 things in place to mitigate some of those concerns. So if  
21 there is potential contamination, like if an officer  
22 handled a piece of evidence or it was collected, we would  
23 try the elimination sample from that individual so we can  
24 rule out that possibility that they did contaminate it.

25 Q. You would agree, Sir, that at a crime scene a

1 lot of times there are first responders that arrive,  
2 right?

3 A. Yes.

4 Q. And police officers that arrive at the  
5 scene?

6 A. Correct.

7 Q. That's usually before the evidence is  
8 collected by a CSI analyst?

9 A. Analyst or detective.

10 Q. When you're talking about this, I believe you  
11 called it this spoken over or talking over. You would  
12 agree that oftentimes evidence at a crime scene is  
13 probably talked over by the first responders or the  
14 detectives that arrive at the scene?

15 A. Potentially, yes.

16 Q. You would still test those items, right?

17 A. We would.

18 Q. How often do you encounter DNA mixtures on  
19 objects?

20 A. I don't have a percentage, but very often.  
21 It's probably one of our most common type of sample we  
22 get.

23 Q. If you develop a major profile from a DNA  
24 mixture, is that something you -- would you enter that  
25 major profile into your database?

1           A.       You're talking about the CODIS database?

2           Q.       Yes, sir.

3           A.       Currently we don't use the term major anymore.

4                 We're using the statistical software to develop  
5       different contributors, components. So if it generates  
6       enough information where there's confidence, like a  
7       hundred percent confidence at a location, or 99 percent,  
8       we'll take that information and enter it in. It's  
9       eligible to go into the database.

10          Q.       Are you -- I want to make sure I use the right  
11       terminology. You said you don't use major profile. You  
12       use the word component. Would I still be using major  
13       component?

14          A.       We say contributor now. Contributor one or  
15       contributor two. It depends on how many individuals we're  
16       talking about. A mixture of two, component one or  
17       contributor one or two.

18          Q.       If you had a contributor that had a lot of  
19       DNA, then you had another contributor that there was just  
20       a minor amount of DNA, would you still upload the major  
21       component to CODIS?

22          A.       It depends if it meets the eligibility  
23       requirements. Depending on how much we put in -- we'd  
24       have to do -- there's a match estimator to see what kind  
25       of hits we get beforehand. The amount of DNA you're



1 putting in, that profile information you're putting in,  
2 you don't want to hit too many people, too many  
3 possibilities. We want to see what level. There's  
4 different tiers. We have a local tier, state tier,  
5 national tier. Each one has different criteria. Each  
6 level, as you are going up the local level to the national  
7 level increases those criteria. So we want to see if we  
8 have enough information to get it into which level and how  
9 far up do you go.

10 The national, you're looking at millions of samples  
11 you're pairing to. The possibility if something has a  
12 poor quality to hit, there could be 10,000 different  
13 possibilities, so we won't put that in.

14 Q. But there has been a time -- I'm asking, there  
15 has been a time where you have a major component with a  
16 minor component you're not too sure about, that you have,  
17 in fact, uploaded into CODIS?

18 A. Yes. If that major component met all the  
19 requirements, yes.

20 Q. You are certainly not saying, as you testify  
21 here today, that you would not test an item if you were  
22 concerned about other DNA transfers on that item?

23 A. It depends on the item. Having those issues,  
24 if I can mitigate some of those concerns, then, you know,  
25 it would be more applicable to testing versus ones I can't

1 mitigate.

2 Q. Let me give you an example.

3 If you have a murder where a gun is used and you  
4 believe that gun -- where the suspect gave it to his  
5 mother, who then gave it to his father, who then gave it  
6 to his best friend, would you not test that firearm?

7 A. No, we would test it.

8 Q. You said that -- you were talking about  
9 Mr. Boyd. You had Mr. Boyd's DNA profile?

10 A. Yes, we do have his elimination sample on  
11 file.

12 Q. So by having that profile on file you were  
13 able to exclude him?

14 A. In cases that we worked, after him, yes.

15 Q. If you were to test the Skoal container or the  
16 two beer bottles, you could, if you're concerned about  
17 this huffing as you explained earlier, you could exclude  
18 Mr. Boyd from it?

19 A. I'd have to see if he's present or not.  
20 Yeah.

21 Q. You talked about the bullet fragments. Can  
22 you explain -- you said they're in vials. Do you just  
23 drop the bullet fragments in a vial or is there some other  
24 material that's within the vial?

25 A. That I can't say for certain. It all depends

1       on the individual. I've seen it in the past loose in a  
2       vial. Other times I have seen it with something in there  
3       to hold it in place, like cotton, or something like that.  
4       It varies.

5           Q.       You talked about how possibly he could destroy  
6       DNA on the bullet fragment, but in truth, until you were  
7       able to look at the bullet fragments you have no idea if  
8       there's DNA on there or not?

9           A.       No, I can't say.

10          Q.       Similarly, you weren't at the trial?

11          A.       No, I wasn't.

12          Q.       You weren't in the jury room?

13          A.       No.

14          Q.       You have no idea if the jurors opened the vial  
15       and took the bullet fragments out, right?

16          A.       No, I do not.

17          Q.       You talked about you couldn't -- you had  
18       concerns at times of uploading components to CODIS. In  
19       this situation you did have -- if -- strike that. I'll  
20       come back to that.

21                You talked about Metro's policy is not testing  
22       items if they weren't sealed?

23          A.       Yes.

24          Q.       Has there ever been -- is there any exceptions  
25       to that rule?

1           A.       Not that I'm aware of. There might be. I'm  
2 not sure.

3           Q.       As you sit here today you personally have  
4 never tested an item that wasn't sealed?

5           A.       No. Any time I got it I returned it. We  
6 declined any kind of processing on our end.

7           Q.       If you were going to test the hat, the  
8 baseball hat, how would you test it?

9           A.       It depends on what you're looking for. As to  
10 the wearer, I would do the inside brim of the hat where  
11 the front would be rubbing across the forehead, or  
12 something like that.

13          Q.       Why would you test there?

14          A.       This is the spot where it's most likely  
15 contacting the individual's skin. So where it's rubbing  
16 against and having the DNA come off from the skin cells,  
17 whatever. That's probably the highest concentration  
18 versus anywhere else on the hat.

19                There may be DNA in places from touching the bill,  
20 whatever, but this is one area where it's in constant  
21 contact with the skin where I have a better chance of  
22 obtaining DNA from it.

23          Q.       If somebody was to touch this brim you're  
24 talking about, would that remove the DNA profile of the  
25 person that would wear the hat?

1           A.       It's not that you're removing the DNA profile.  
2       It could be removing some of the DNA present, and it could  
3       be adding DNA to it.

4           Q.       I understand the adding. That's an additional  
5       transfer onto the hat. But the component, the majority of  
6       the component would be the person actually wearing the  
7       baseball hat?

8           A.       Possibly. It all depends on that contact and  
9       whatever else is going on with it.

10          Q.       You wouldn't know that until you actually  
11       tested it, fair?

12          A.       Yes.

13          Q.       You're not sure if the jury actually touched  
14       the hat, right?

15          A.       No. I don't know.

16          Q.       If a juror touched the bill of the hat, that  
17       wouldn't effect your testing inside the brim, right?

18          A.       Not directly, no.

19          Q.       Sir, would you agree -- I think you testified  
20       to this -- that DNA testing has evolved since Mr. Seka's  
21       trial?

22          A.       Yes. Very much so.

23          Q.       When the original DNA testing was done in this  
24       case, back in the late 90s, that DNA only focused on  
25       gathering DNA from semen, or blood, or those kinds of

1 things?

2 A. Yes.

3 Q. Would you agree back in the late 90s when the  
4 DNA was tested, it came back, it was only based on  
5 blood?

6 A. Yeah.

7 Q. That blood actually came back to the victim?

8 A. Yes.

9 Q. Now, with the new testing you currently did,  
10 Mr. -- when we say Mr. Seka is excluded, he is excluded in  
11 epithelial cells, sweat, and a larger range, right?

12 A. Any source of DNA present, from what I  
13 tested.

14 Q. You talked about your 4 year old in the  
15 context that it's fairly easy to get DNA under  
16 fingernails?

17 A. Yes.

18 Q. True?

19 A. I wouldn't say easy, but it's possible any  
20 contact you might be getting some DNA.

21 Q. In the fingernails here Mr. Seka was  
22 excluded?

23 A. Yes.

24 Q. You also talked about -- and I appreciate you  
25 weren't the one that did the original testing. One of the

1       fingernail clippings was tested. The other one wasn't.

2               As you sit here, do you know whether it was the  
3       right-hand fingernail clippings or the left-hand  
4       fingernail clippings that were tested in the late 90s?

5               A.       If I can look --

6               Q.       Would that refresh your recollection?

7               A.       Yes.

8               Q.       Sir, can you tell us what you're looking at to  
9       refresh your recollection.

10              A.       Dave Walsh's report. He has -- says, Dave  
11       Walsh, DW-3, it's Item 7, fingernail clippings from the  
12       left hand, is what he's saying. That's what he tested was  
13       the fingernail clipping, Item 7, with hair and blood.

14              Q.       Now, you -- in addition to the left -- you  
15       were asked questions if Mr. Seka was excluded back in the  
16       late 90s from the left -- from the fingernail clippings.  
17       You're clarifying now it's the left fingernail  
18       clippings?

19              A.       There is a discrepancy on the report so I  
20       don't know. Item 7, we have as right. Then on here he  
21       has it as left. So I don't know that, but with his item  
22       number 7, left hand, Mr. Seka was excluded from.

23              Q.       What is the date of that report, Sir?

24              A.       December 28, 1998.

25              Q.       I understand with the discrepancy, I think we

1       can all agree that one hand of fingernail clippings was  
2       tested back in the late 90s?

3           A.       Yes.

4           Q.       And exclude Mr. Seka?

5           A.       Yes.

6           Q.       But only excluded him -- excluded him based on  
7       the DNA testing that was available at that time?

8           A.       Right.

9           Q.       Which was a lot more limited to the DNA  
10       testing currently?

11          A.       Less sensitive.

12          Q.       Less sensitive.

13               Now, today we have both fingernail clippings from  
14       both hands that have been resubmitted for more advanced  
15       testing and Mr. Seka has been excluded?

16          A.       Yes.

17          Q.       You said the current Metro lab uses  
18       probabilistic genotyping?

19          A.       Yes.

20          Q.       What system -- do you have a system you  
21       specifically utilize?

22          A.       The STR mix is the software.

23          Q.       My understanding from probabilistic genotyping  
24       you don't have to retest the evidence, right?

25          A.       What do you mean?



1           Q.       Don't you use the data, instead of going to  
2       the actual piece of evidence now, to do the comparison?

3           A.       For the comparisons. Once we run it through  
4       we do a deconvolution at initial run. So that's trying to  
5       tease it apart, the different contributors. Once we have  
6       that data, we go back and do what's called -- like a  
7       return -- like a ratio to previous data. So we are going  
8       back to that original deconvolution and doing a comparison  
9       to whatever references we obtain. So it is the original  
10      run.

11          Q.       Did you do a comparison between the DNA  
12      profile that you got from the cigarette butt compared to  
13      the nail clippings?

14          A.       We did not. We don't typically do evidence to  
15      evidence. We typically only do a reference sample to  
16      evidence.

17          Q.       You said you typically don't. Can you do it  
18      though?

19          A.       It's possible. We have to create a file to do  
20      it. You call it an individual basically, a text file. We  
21      could do that. But like I said, our normal practice is we  
22      don't do evidence to evidence.

23                  THE COURT: Why not.

24                  THE WITNESS: Part of it is it depends on the  
25      quality of the sample.

1           With a reference we know whose DNA that is. We're  
2           confident in that answer. So if we have a full single  
3           source profile and an unknown, we could do it for that,  
4           because it's better quality. When you get into the  
5           mixtures, depending on how much is generated, how much  
6           competence in whoever the contributors are, we don't know.  
7           The reliability isn't there.

8           THE COURT: I didn't understand the answer.

9           The question was can you do it, evidence to evidence.  
10          You said we don't typically or we don't do it.

11          I guess what I'm trying to understand is why. Not  
12          necessarily why doing evidence to sample is better, but  
13          why would it not be a protocol to go evidence to  
14          evidence.

15          THE WITNESS: Again, it's -- like we'll do --  
16          right now if we have a full single source profile, I can  
17          say these two profiles are consistent with the same  
18          individual -- the unknown individual -- we'll do that.  
19          But when we are lacking information, we're concerned that  
20          if we try to do that to somebody else, could it  
21          adventitiously match even though they might not truly be  
22          from the same individual. It depends on how much  
23          information is there. Could they have enough in common  
24          that that person could be considered a possibility.

25          So with a reference we know we have all the

1 information and we're confident. The evidence, we don't  
2 know if I were to rerun that sample, reprocess it, that  
3 answer might change somewhat. We might lose information.  
4 We might gain information. So there is a reproducible  
5 concern when we try to do evidence to evidence.

6 BY MS. ARMENI:

7 Q. I can't recall if you testified or not, but  
8 the baseball hat that we're seeking testing on, that was  
9 actually found at the crime scene where Mr. Hamilton was  
10 murdered?

11 A. I believe so. I'm not sure.

12 Q. If you did test that and get a full profile,  
13 you would then be able to compare that profile component  
14 to the cigarette butt that was found at the dumping site  
15 of Mr. Hamilton?

16 A. Possibly, yes.

17 MS. ARMENI: Court's indulgence.

18 THE COURT: Yes.

19 MS. ARMENI: I'll pass the witness. Thank you,  
20 Mr. King.

21 THE COURT: Mr. Fattig.

22 REDIRECT EXAMINATION

23 BY MR. FATTIG:

24 Q. We already know it was found at the dumping  
25 area where the body was at. It did not have any DNA of

1 Mr. Hamilton, correct?

2 A. That's correct.

3 Q. Hypothetically, if someone has a 357 firearm  
4 and they fire it, at least 3 times through the back of  
5 someone as they're running away and the bullet's fragment  
6 ends up on the ground where the person gets hit and falls  
7 down and ends up dying and a crime scene analyst comes  
8 over and picks up those fragments. What is the likelihood  
9 of finding the killer's DNA on those bullet fragments?

10 A. Without testing, we can't say anything  
11 conclusion-wise. I think likely you'll detect the  
12 individual who the bullet passed through. But, again, I  
13 can't say for certain, unless we test it.

14 Q. But unlikely?

15 A. Unlikely. It goes back to any DNA that might  
16 have been there is probably limited. It might have been  
17 destroyed in the firing of it. It all depends. But  
18 likely not.

19 We typically don't do cartridge cases, bullets  
20 because of the limited amount and the fact DNA can be  
21 destroyed through the explosion, the heat.

22 Q. That's in a situation where the case could be  
23 fresh, as opposed to when it's over 20 years old?

24 A. Time is going to play a factor into that.  
25 Time will destroy DNA. It breaks down over time. There's

1 nothing we can do to stop that.

2 MR. FATTIG: No other questions.

3 RECROSS-EXAMINATION

4 BY MS. ARMENI:

5 Q. Mr. King, you don't know until you try to test  
6 it?

7 A. I don't know, no.

8 MS. ARMENI: Thank you.

9 THE COURT: All right. I think that completes  
10 Mr. King. Thank you for your time today. I appreciate  
11 you taking your belongings.

12 Ms. Armeni, how would you like to proceed next.

13 MS. ARMENI: Your Honor, we're going to call Dr.  
14 Greg Hampikian.

15 THE COURT: Okay.

16 THE COURT: You do solemnly swear the testimony  
17 you are about to give in this action shall be the truth,  
18 the whole truth, and nothing but the truth so help you  
19 God.

20 THE WITNESS: I do.

21 THE CLERK: Be seated. State and spell your  
22 name for the record.

23 THE WITNESS: Greg Hampikian, G-r-e-g --  
24 H-a-m-p-i-k-i-a-n.

25 DIRECT EXAMINATION

1 BY MS. ARMENI:

2 Q. Can you tell us what you do for a living?

3 A. I'm a professor at Boise State University. I  
4 have a DNA laboratory. I also have a courtesy appointment  
5 in criminal justice at the University. I am executive  
6 director of the Idaho Innocence Project, which is a  
7 service component of my assignment there. I also have a  
8 consulting firm that does DNA casework around the  
9 country.

10 Q. How long have you been a professor at Boise  
11 State?

12 A. Since 2004.

13 Q. You talked about -- tell us about your  
14 innocence project work?

15 A. In 1999 I got involved writing a book with a  
16 man who was exonerated. It was titled Exit to Freedom.  
17 That is how I became involved with the Innocence Project.  
18 At the same time I began working with people who were  
19 starting the Georgia Innocence Project. Since then I've  
20 worked with a lot of innocence groups, really, all over  
21 the world.

22 Q. Can you tell us briefly about your training  
23 and education?

24 A. I have a Ph.D in genetics from the University  
25 of Connecticut. Also a bachelor's and master's degree

1 from that institution. The bachelors is in what's called  
2 biological sciences. The masters is genetics. And  
3 post-doctoral training at -- through National Science  
4 Foundation. Fellowship from the United States and  
5 Australia, working on sex determination. Then  
6 post-doctoral training at Wooster Foundation. Then  
7 professional development after that, as recently as this  
8 year, through the International Symposium on human  
9 identification.

10 Q. Have you written articles?

11 A. Yes. It's expected as a professor. I write  
12 peer reviewed articles.

13 Q. Tell us the areas in which you are  
14 published?

15 A. I fortunately got to work in a lot of areas,  
16 so I got a little bit of work in cancer, but a lot of work  
17 in forensics, forensic technology development, forensic  
18 error, subjectivity and bias, DNA analysis, and  
19 development of technology for preventing contamination --  
20 forensic contamination, which also has a patent. A lot of  
21 other topics. I have a very active lab. They do a lot of  
22 interesting stuff.

23 Q. You're here today because there are several  
24 items that Mr. Seka is seeking to test?

25 A. Yes.

1 Q. I want to go through those with you.

2 The first one is the baseball hat. That was found  
3 at the scene where Mr. Hamilton was murdered.

4 If you were to test that hat, where would you test  
5 it?

6 A. I agree with the previous analyst. I think  
7 you look for stain basically. It's ring around the collar,  
8 but it's on a band. It's usually pronounced so you can  
9 see where that person -- because some people where their  
10 hats backwards, whatever. Wherever that person has the  
11 most ring around the head band. So similar to what the  
12 previous expert said.

13 Q. You have also heard, let's assume that the hat  
14 did go back to the jury room and multiple jurors touched  
15 the hat. Would that assumption -- would you expect to  
16 find jurors' DNA on the hat?

17 A. Under your hypothesis of multiple jurors, I  
18 would expect some DNA to also be transferred there. I  
19 would also -- my experience is even if people don't handle  
20 a hat after a crime, we often get mixtures on hats. So I  
21 think people swap hats -- the hat salesman, hat  
22 manufacturer, who knows. So it's not uncommon to have  
23 mixtures. Whether the minor components come after a  
24 criminal act or before a criminal act really doesn't  
25 matter to my work. It's just the amount of DNA from



1 various contributors.

2 Many times we can't explain who all the  
3 contributors are, but we're interested in either the  
4 predominant profile, the habitual wearer we assume, or the  
5 last wearer. Maybe if they had stolen the hat or borrowed  
6 it, et cetera. There is no way to tell who came before or  
7 after unless you have other evidence to indicate what the  
8 case may be.

9 Q. Would you assume the major contributor would  
10 likely be the person that was wearing the hat?

11 A. What we call the habitual wearer. So you just  
12 think about who stained up that hat with their forehead.

13 Q. In this situation, if you were the person,  
14 would you test the hat?

15 A. Absolutely.

16 Q. Tell us why you would test it?

17 A. For the obvious facts. It's found at the  
18 murder scene. It was collected by the experts on the  
19 ground, the detectives. I have to trust their training,  
20 because I don't do crime scene collection, generally. And  
21 it was seen as an important item for good reason. It's at  
22 a murder scene. People often leave clothing, gloves,  
23 hats, et cetera, cigarette butts as well. People leave  
24 things at crime scenes.

25 Q. I'm not going to ask you if you'd have a

1 concern testing it. I'm going to ask, based on your  
2 scientific background, if there's a reason scientifically  
3 that you wouldn't test that hat, based on the possibility  
4 there could be multiple transfers on the hat?

5 A. Scientifically there is no reason to say that  
6 what my personal concerns might be can determine the  
7 outcome of testing. I am often surprised by testing.  
8 That's why I test. I can't see DNA. I can't deconvolute  
9 mixtures by eye. Guess work, in my field, is frowned  
10 upon. You test.

11 Q. Going through with the bullet fragments as  
12 well that were also located where Mr. Hamilton was  
13 murdered. Assuming that multiple people had touched the  
14 bullet fragments, would this preclude you from testing  
15 that evidence?

16 A. No. Again, the story components are important  
17 afterward. The main thing is what does the present  
18 technology reveal, in terms of pieces of DNA. Then as the  
19 previous expert opined, the new statistical methods are  
20 shockingly good. Things that we were doing 5 years ago, I  
21 would stay away from now because they were manual  
22 interpretations that I've published on. Peer reviewed  
23 publications have shown that experts at the same crime lab  
24 come to different conclusions with the same DNA mixture.

25 These probabilistic software packages, Star Mix or

1 True Allele that we use are far better now. That doesn't  
2 mean there is not going to be some mistakes, but it's a  
3 lot better than me or the analyst that I trained looking  
4 at these complex mixtures.

5 So many items, mixtures, you couldn't find DNA at  
6 all, or we can only find what we used to call major  
7 components. We're discovering there is a lot of DNA where  
8 we thought there was none. So, I hope I answered -- I  
9 went too far.

10 Q. Have you ever personally tested bullet  
11 fragments?

12 A. Not bullet fragments. We have done shells.  
13 Not from crime scenes. This was to test that concept  
14 about 10 years ago when people first -- when I was first  
15 becoming aware that shells were being tested.

16 Q. Do you have any experience with hair  
17 comparison verse mitochondrial DNA testing?

18 A. I published a paper with several other authors  
19 in 2011 looking at the first 194 DNA exonerations by  
20 innocence network organizations of the innocence projects.  
21 We looked at all 194 cases and looked at what type of  
22 evidence it was in post-conviction, whether it was  
23 fingerprints, which were part of that I remember. I have  
24 the paper here, if I can review.

25 I'm sorry. Your question was about specifically.

1 Q. I was just asking if you had any experience --

2 A. Yeah. Hair analysis figured prominently in  
3 that because the FBI had to correct all of the training  
4 that it did with people about hair analysis. They used to  
5 say that there were unique features that identified  
6 somebody. Now they have completely backed off of that. I  
7 don't think they do visual hair comparisons. That's  
8 because trained experts, many years of experience in the  
9 field, were getting it wrong, once we used DNA to show  
10 that. So in that paper, I'm guessing it was about 5  
11 percent of the exonerations were bad hair analysis where a  
12 previous expert said the hairs match or hair is excluded,  
13 and it was reversed by DNA analysis.

14 That DNA analysis, when there is not a root, is  
15 called mitochondrial DNA. The crime lab does not do that.  
16 The FBI, my understanding, does that for free at the  
17 request of law enforcement agencies. So it's possible to  
18 even look at hairs without roots. The previous expert  
19 talked about hairs with roots. Those are great. But you  
20 can actually look at hairs without roots. That technology  
21 has been around for 20 years.

22 Q. One of other things we're seeking to be tested  
23 is the Skoal container and the beer bottles. Those were  
24 located -- for lack of a better word -- the dumping site  
25 of Mr. Hamilton.

1           You heard testimony about the huffing. Does the  
2 huffing cause you any scientific concern as far as testing  
3 these items?

4           A.       No. Again, I mean, our only concerns come out  
5 of the readouts from our machines. So my concern is when  
6 I get no DNA, or when I see an obvious contaminant coming  
7 in chemicals, or someone in my lab shows up in something  
8 that I'm testing. There really is no way to guess what  
9 DNA is on something. That's why we test it. No expert  
10 would testify that they could tell something about DNA  
11 before testing. DNA is all about testing.

12          Q.       You heard Mr. King testify it's common to have  
13 mixtures, DNA mixtures.

14          A.       Yes. More and more common, because our  
15 instruments are better to detect smaller and smaller  
16 amounts.

17          Q.       Is it fair to say the majority of evidence in  
18 a criminal case will likely have -- or more likely than  
19 not have multiple DNA mixtures?

20          A.       I remember, I think it was 2015, the Seattle,  
21 Washington State Police listed what fraction back then  
22 they saw in mixtures. I thought it was 20 to 30 percent.  
23 I think that's -- my own casework, it's at least 30  
24 percent of items have more than one detectable profile.

25          Q.       You mentioned Seattle police. Have you --

1       besides your work at Boise State as a professor and the  
2       Innocence Project, have you worked with -- have you had  
3       the opportunity to work with law enforcement?

4           A.       Yeah. Typically they'll come to me for things  
5       that their labs don't handle, so mitochondrial DNA. Now  
6       it's genealogy, which is exploding.

7           Q.       What is that?

8           A.       That's like the Golden State Killer where they  
9       try to get information from publicly available genealogy  
10      databases. That's become remarkably successful.

11                 So we pioneered some of that work through a  
12      different technic that was less successful, but right now  
13      there is a lot of success. I'm getting a lot of calls  
14      from law enforcement about using genealogy databases,  
15      which no crime lab will touch right now. It's a different  
16      type of testing. Instead of the 23 areas or so we look  
17      at, in forensic cases they look at 200,000 areas. Because  
18      of that confined relatives, as the press has been  
19      describing, of the people who donated profiles. So the  
20      relevance to this case is that I don't know if that has  
21      been proposed in this case, but it's certainly something  
22      that could be done. Even if there is no hit in the CODIS  
23      database, if there is evidence, that could be tested. A  
24      DNA test is not one done at a crime lab. That could  
25      become paired to a public genealogy databases now and

1       they've had quite a bit of success.

2           Q.       Are you familiar with the STR testing done by  
3       the Las Vegas Metropolitan Police Department?

4           A.       Yes. I've had private consulting cases where  
5       I've reviewed work. I'm not sure if I reviewed their STR  
6       mix or this new software. I don't remember if I had a  
7       case with that.

8           Q.       In preparing for today, did you have an  
9       opportunity to look at Mr. King's report?

10          A.       Yes, I did.

11          Q.       Are those reports relevant or helpful in  
12       determining whether you would retest certain items -- the  
13       items we're requesting?

14          A.       They're relevant.

15          Q.       Why so?

16          A.       Informational. Well, let's see. We have -- I  
17       have to review the last report to make sure.

18               THE COURT: Make sure you're letting us know  
19       which one it is.

20               THE WITNESS: This is the July 24th, 2018.

21               THE COURT: The admitted State's Exhibit 2.

22               THE WITNESS: So the fact that they got from  
23       this cigarette butt a profile, that while a partial, as  
24       the expert testified, as Mr. King testified, it was CODIS  
25       worthy. Which means it had enough information to be

1       statically acceptable to the national database. So I  
2       think that's important for several reasons.

3             One, the database may get a hit, which is important I  
4       think to law enforcement and to Mr. Seka. But also that  
5       profile can now be used to compare to other items. And as  
6       the previous expert talked about, mitigating concern of  
7       transfer versus contamination. It's important to have  
8       items that are isolated from any sort of transfer  
9       contamination that we can do paralyzed comparisons.

10       BY MS. ARMENI:

11             Q.       Let me ask you, Doctor. Last night we put  
12       together a chart for us to go through your testimony today  
13       and explain things as far as the separate components of  
14       contamination. Would it assist in your testimony to work  
15       with this chart and explain what you mean by these  
16       different groups?

17             A.       Yes.

18             MS. ARMENI: Is it possible for the Doctor to  
19       step down.

20             THE COURT: Sure. Has Mr. Fattig seen the  
21       demonstrative.

22             MR. FATTIG: No.

23             MS. ARMENI: It's not fancy.

24             THE COURT: It's old school. I love it.

25       BY MS. ARMENI:



1           Q.       Doctor, you were talking about different  
2 components in cross-contamination. We have what we'll say  
3 is demonstrative evidence No. 1, a chart. Let's talk  
4 about how we divided this.

5           You would agree we put them in 2 categories, right,  
6 the murder scene and the dump site where Mr. Hamilton's  
7 body was located?

8           A.       Correct.

9           Q.       What evidence was found at the murder scene?  
10 Let's start there.

11          A.       What has been referred to as bullet fragments  
12 and the hat.

13          Q.       And at the dump site, which evidence was  
14 located there?

15          A.       That would be from the body that was removed  
16 from that site, the nails -- right -- and nails -- left.  
17 Then from the scene itself, a cigarette butt that's  
18 referred to in that report I was just looking at.

19          Q.       How about the Skoal container and the two beer  
20 bottles. Where were they located?

21          A.       Also from the bump.

22          Q.       So starting with the evidence collected at the  
23 murder scene, the bullet fragments and the hat, you have  
24 the word jurors there. What does that mean?

25          A.       So there's been concern raised that jurors may

1       have touched these items or hats, some sort of contact or  
2       spoken over them or something.

3           Q.       Then moving over to the dump site of the chart  
4       you have nails right and left and you have the word cling.  
5       What are you referring to there?

6           A.       So, just, that's my vernacular for nobody  
7       objecting to this. These are -- everybody stipulated that  
8       that data is good.

9           Q.       How about the cigarette butt?

10          A.       Also my understanding is that the lab found it  
11       without concern so that they were able to upload it to  
12       CODIS.

13          Q.       Lastly you have CSI next to the Skoal  
14       container and the two beer bottles?

15          A.       Right. That just means these were collected.  
16       Those folks, as I understand it, the huff and puff could  
17       have affected these, but there is an exclusion sample from  
18       that person. But we put them in boxes because the CSI,  
19       huff and puff, was not used over here.

20          Q.       When you say over here, you're talking about  
21       the box under the murder scene that has the bullet  
22       fragments and the hat in it?

23          A.       Right.

24          Q.       Why does that matter?

25          A.       So when people raise concerns about transfer,

1       it's important to realize that transfer doesn't mean the  
2       DNA is everywhere. Its transfer is restricted to certain  
3       items within a place, context. So these items, the  
4       concern is that they may have been huffed and puffed, so  
5       we may get the analyst who did that, his profile on these  
6       items, but we wouldn't expect it in any of these other  
7       places. This is clean, so we're not worried about it  
8       being transferred, or any analyst, or any juror. The same  
9       here.

10               Over here we have the jurors, but the jurors didn't  
11       handle these items. So if we have the juror profile, they  
12       could be only on these. We would not expect to find  
13       jurors anywhere else. So this allows for a number of what  
14       we call paralyzed comparisons. You can compare any item  
15       from one of these boxes to an item in another box. If you  
16       have the same profile in any of those paralyzed  
17       comparisons -- there's 6 possible, at least 6 here, at  
18       least 6 here, at least 7 here, at least 5 here -- if you  
19       have a consistent profile in any of those paralyzed  
20       comparisons, it's not from any of the concerns about  
21       transfer that have been raised because the guy who could  
22       have transferred DNA here couldn't have done it in these  
23       other places.

24               Q.       So our record is clear. You are talking about  
25       if there is a transfer -- additional transfer on this

1       Skoal, we're not as concerned because it would be a  
2       different transfer that would have occurred with the hat.

3           A.       That's correct. We have isolated 4 separate  
4       categories of evidence and each of these 4 is sealed, in a  
5       sense, from transfer that could have occurred in any of  
6       the others.

7           If we have a profile that comes from one of these 4  
8       boxes that is from the scene or from the dumb, and from  
9       either CSI or not CSI, and for jury or not jury, any of  
10      the profiles are consistent in any of these paralyzed  
11      comparisons, it's not transfer. It can't be. The jurors  
12      could not have contaminated the beer bottles or the Skoal  
13      container. The jurors could not have contaminated the  
14      cigarette butt. The jurors could not have contaminated  
15      the nails.

16          The concern about the fingerprints, latent prints,  
17      that latent print examiner could not have contaminated the  
18      cigarette butt, the nails, the bullet fragments, or the  
19      hat. And so if there is a profile that we see on, say the  
20      bottle, one of the possible paralyzed comparisons, and  
21      that profile is also seen on the hat, or the bullet  
22      fragments, or the nails, or the cigarette butt, it's not  
23      there from transfer. It's there from something else. And  
24      obviously these are items collected by trained detectives  
25      for good reason, processed by crime labs, for good reason,

1       used as evidence.

2               If we have a consistent profile on more than one  
3       item, or we have a hit to a database from any of those, if  
4       they go up to the CODIS database then we know it's not  
5       transfer. And I think all of these arguments are  
6       completely mitigated about transfers.

7               Q.       Would there be a significance if the -- we  
8       know we have a DNA profile from the cigarette butt and  
9       let's say we received the same DNA profile on the hat.  
10      Would that be significant?

11              A.       It would be significant.

12              Q.       Why?

13              A.       Because none of the concerns that have been  
14      raised would be relevant.

15                      MS. ARMENI: Court's indulgence.

16                      THE COURT: Okay.

17      BY MS. ARMENI:

18              Q.       Doctor, if we had a DNA profile that came from  
19      the murder scene and then also the DNA profile matched one  
20      of the items that was located at the dump site, would that  
21      indicate that it was the same person at both the murder  
22      scene and the dump site?

23              A.       That's an inference that the triers of fact  
24      would determine. I think it would be very, very important  
25      for the jurors or judge because there is no concern raised

1       about transfer. If something they profiled is consistent  
2       from the murder scene to the dump, none of the concerns  
3       raised so far are relevant. It is relevant the profile be  
4       relevant to the crime, because it appears both at the  
5       murder scene and the dump. Very important piece of  
6       evidence.

7               MS. ARMENI: We'll pass the witness. Thank you,  
8       Doctor.

9               THE COURT: Thank you. You may have your  
10      seat.

11                               CROSS-EXAMINATION

12      BY MR. FATTIG:

13           Q.       Would it be significant to you if there was  
14      other pieces of evidence at the dump site that linked to  
15      someone?

16           A.       I'm sorry.

17           Q.       Let's talk about fingerprints for instance.  
18      Is that significant?

19           A.       Can you give me a specific hypothetical.

20           Q.       Fingerprints left at the dump site where the  
21      body is?

22           A.       Are they significant evidence?

23           Q.       Yes.

24           A.       I haven't examined any of those, but I imagine  
25      it's significant. If they are clear findings, I think

1       they're important.

2           Q.       If they were found on, let's say the lumber  
3       that was covering the body of Mr. Hamilton?

4           A.       Again, it's a hypothetical or --

5           Q.       Well, I'm asking you if you would think that  
6       that would be significant?

7           A.       Is this a hypothetical?

8           Q.       To the investigation.

9           A.       Is this a hypothetical or is this relevant to  
10       the case?

11          Q.       It's quite relevant.

12          A.       Is it -- may I ask if it's a hypothetical.

13               THE COURT: He answered. He can't ask questions  
14       that are based on not being relevant.

15               THE WITNESS: I'm not aware of a fingerprint on  
16       lumber covering the body.

17       BY MR. FATTIG:

18          Q.       You weren't told about that?

19          A.       Not that I recall, because it's not relevant  
20       to the DNA at this point. What I've been asked to look at  
21       in post-conviction.

22          Q.       You were only looking at the DNA contamination  
23       issues as to these issues?

24          A.       I'm looking at all of the DNA issues in terms  
25       of these items of evidence that I think are the basis of

1       this hearing.

2           Q.       Okay.

3               Were you provided any information about the hat and  
4       how it relates to the case?

5           A.       Where it was found. I can't remember other  
6       details. They were not important to my analysis of the  
7       DNA.

8           Q.       So you were never shared information the hat  
9       was the same type of hat that Mr. Hamilton was known to  
10      wear?

11          A.       I was not told that until you said it.

12          Q.       You weren't provided information the jacket  
13      was found near the hat, there was a jacket found near the  
14      hat?

15          A.       I don't --

16               MS. ARMENI: Objection. Outside the scope.

17               THE COURT: Hold on. Everybody was talking at  
18      once. I want to make sure, so ask the question again.  
19      I'm going to get the objection, and I'll rule on it before  
20      you respond.

21      BY MR. FATTIG:

22          Q.       Were you provided any information about a  
23      jacket that was found near the hat at the scene at 1929  
24      Western?

25               MS. ARMENI: Objection, outside the scope.



1 Relevance.

2 MR. FATTIG: Cross-examination.

3 THE COURT: The lumber and the fingerprints  
4 connects for me. The jacket doesn't connect for me. Help  
5 me understand the relevance here.

6 MR. FATTIG: Well, my follow up was it had 3  
7 bullet holes in it, plus finding the bullet holes in Mr.  
8 Hamilton's body.

9 THE COURT: I guess maybe -- and I don't want to  
10 presume I understand when Ms. Armeni makes the argument  
11 about relevance.

12 If we're really talking to this witness about the DNA  
13 and the -- either concerns about would it get a good  
14 sample because of touching or other things, or that there  
15 was potential transfer that can be a problem, which was  
16 just addressed by the witness, what are we talking about  
17 now when we're talking about the jacket.

18 MR. FATTIG: It goes to the issue of his  
19 conclusion that there could be significance regarding the  
20 hat -- DNA on the hat being similar if it was tested to  
21 evidence on the other items. Because the hat and the  
22 jacket were left next to each other, and there was  
23 evidence at trial they both belonged to Mr. Hamilton.

24 MS. ARMENI: Your Honor, we have the jacket. I  
25 think there was testimony the jacket belonged to Mr.

1 Hamilton. I'm not sure that that fact is as obvious with  
2 the hat, based on the trial testimony.

3 THE COURT: Maybe -- we've had some leeway here  
4 already with trying to just get to the heart of the  
5 matter. Rather than ask -- I'm not trying to tell you how  
6 to do your examination, Mr. Fattig. Maybe you can do a  
7 little set up for the question. I don't have a problem  
8 with you doing that. He's not aware of the jacket. I  
9 have no problem with you asking more details then is it  
10 relevant to this jacket. It's creating confusion.

11 So I'd prefer to avoid that and have you be more --  
12 maybe do a narrative to set up the question.

13 BY MR. FATTIG:

14 Q. Let me ask a different question.

15 Sir, it's fair to say you have a rather limited  
16 knowledge of the testimony at trial?

17 A. Correct.

18 Q. You don't know all the evidence in the case?

19 A. I do not.

20 Q. So you're not expounding, you're not giving an  
21 opinion that there is a reasonable possibility that the  
22 jury would have found Mr. Seka not guilty had Mr. Seka's  
23 DNA not been found on that hat?

24 MS. ARMENI: Objection. Your Honor, this is  
25 outside the scope of what I understood this hearing to be,

1       which is whether the testing should proceed forward on  
2       those 3 items based on whether there's contamination or  
3       not. Not really relevance or that these other factors,  
4       whether a jury could have found him guilty or not.

5               MR. FATTIG: That's the legal standard for the  
6       ordering of DNA evidence.

7               THE COURT: I was about to sustain from the way  
8       Ms. Armeni worded it. Since you're bringing in the issue  
9       with regard to the standard, you know, my impression of  
10      what we're doing here today was to make a determination on  
11      whether we should continue to test.

12              Yes, we have gone through and talked about under the  
13      statute and then circumstances what the standard should  
14      be, but it does seem like you're taking it to a step  
15      beyond the standard the court has to consider. Maybe we  
16      need to take a break and proffer why you believe the  
17      standard would require us to go to that length of  
18      questioning this witness.

19              MR. FATTIG: In terms of the reasonable  
20      possibility.

21              THE COURT: Go ahead and make a legal argument  
22      here before I say yea or nay.

23              MR. FATTIG: Court's indulgence.

24              THE COURT: I've got it in front of me.

25              MR. FATTIG: 176.

1           THE COURT: It's reasonable probability he would  
2 not have been prosecuted or convicted, you know -- go  
3 ahead. Just make your argument. We'll make a record or  
4 follow-up record.

5           MR. FATTIG: My argument is in terms of  
6 ultimately the court has to find that that is satisfied in  
7 order to order the testing on these additional items.

8           THE COURT: Isn't that the court's preview.  
9 Aren't I the one who's supposed to decide that, not this  
10 person's opinion on that. He's here to talk about DNA and  
11 how it all works.

12          MR. FATTIG: I was just clarifying that he was  
13 not rendering that opinion.

14          THE COURT: Okay. Let me see if Ms. Armeni has  
15 anything with that clarification.

16          Mr. Fattig was not trying to elicit the ultimate  
17 legal opinion the court has to determine, but whether he  
18 had -- was trying to give that opinion. Would you  
19 withdraw your objection or do you still object.

20          MS. ARMENI: I still object.

21          THE COURT: I'll overrule and let him answer.  
22 I'll give a little leeway here. With the clarification as  
23 the court perceived its duty to be the one to make that  
24 determination and isn't looking for that answer out of  
25 this witness, go ahead.

1 BY MR. FATTIG:

2 Q. Sir, you're not giving that opinion, correct?  
3 That the hat and Mr. Seka -- had the black hat been tested  
4 for DNA and Mr. Seka's DNA was found to not be on the hat,  
5 that that would create a reasonable possibility that the  
6 jury would have had a different verdict?

7 A. While I'm not a mind reader, I would say I did  
8 publish a paper of the first 194 exonerations, as I  
9 mentioned. It's peer reviewed. I have it on my screen to  
10 refresh me.

11 Clothing, there were 102 examples we found of  
12 exculpatory evidence used in post-conviction. We had  
13 successful exonerations where clothing -- such as a hat --  
14 and hat is a very common item -- was used from those 194  
15 cases with 102 pieces of evidence. Hair, there were 26  
16 examples that we were able to find from the 194 successful  
17 exonerations where judges, not me, determined that  
18 conviction should be overturned from that. And  
19 cigarettes, there were 5 cigarette butts out of the 194  
20 cases.

21 So I would say without being able to read any  
22 particular juror's mind, I'm not a lawyer, I'm not a  
23 judge, I don't know what the standard is, but I would say  
24 from my academic work, yes, these have overturned  
25 convictions and are significant items of evidence.

1       Whether this example would do anything, I don't think  
2       that's my job to decide. I would render opinions  
3       according to what I study and say, yes, these things have  
4       overturned convictions successfully.

5           Q.       In other cases under different factual  
6       scenarios?

7           A.       Yes.

8           Q.       Obviously your information in this case is  
9       limited in terms of dealing with these issues?

10          A.       Correct.

11          Q.       DNA on these items?

12          A.       I might have heard some other things in  
13       discussion, but I really don't need much except to look at  
14       the DNA. I think it's not my job as a pro bono consultant  
15       on this case to decide legal issues. I can only look at  
16       that the DNA and say, yes, that's testable, or this is not  
17       testable, in my opinion.

18          Q.       You don't know, for instance, if the same  
19       crime scene analyst worked both the dump site and murder  
20       scene as 1929 Western?

21          A.       To my knowledge that's not true, but I would  
22       be willing to hear what you know about such things. The  
23       facts supplied to me do not indicate that.

24          Q.       If that was true, that would create an issue  
25       to those two items?

1           A.       Yes. I think this chart could be updated.  
2       This is based on the information I have. If there's more  
3       information, I'd be happy to update the chart.

4           Q.       You indicated you are the executive director  
5       of the Idaho Innocence Project?

6           A.       Correct.

7           Q.       So you testify on behalf of criminal  
8       defendants, correct?

9           A.       I have also testified on behalf of the State.  
10       I consult with the State. I'd say most of my work is  
11       post-conviction for innocence organizations. Most of that  
12       is pro bono, or private consulting, which is generally  
13       defense cases. I have been hired and testified for  
14       prosecutors as well. I also work with police agencies.  
15       Internationally I've worked with Taiwan police lab and the  
16       French, both on actual criminal cases we worked on.

17               MR. FATTIG: Thank you. I have nothing  
18       further.

19               THE COURT: Ms. Armeni, anything further for  
20       this witness.

21               MS. ARMENI: No, your Honor.

22               THE COURT: I had one, but now it's escaping  
23       me.

24               Thank you, Mr. Hampikian. I appreciate your time.

25               THE WITNESS: Thank you.

1 THE COURT: Ms. Armeni, anybody further you wish  
2 to call.

3 MS. ARMENI: No, your Honor.

4 THE COURT: I didn't anticipate that. I'll  
5 check with Mr. Fattig.

6 MR. FATTIG: Court's indulgence.

7 THE COURT: Sure.

8 MR. FATTIG: If I can recall Mr. King,  
9 briefly.

10 THE COURT: That's fine.

11 MS. ARMENI: I'd ask if the need arises that  
12 we'd also be able to call Dr. Hampikian.

13 THE COURT: I'll give the same courtesy.

14 We don't need to reswear you. You understand you're  
15 still under oath.

16 THE WITNESS: Yes.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. FATTIG:

19 Q. Just a couple of questions for you, Mr. King.

20 Regarding the 99 to 1, regarding the fingernails of  
21 Mr. Hamilton. Are you able to -- you already testified  
22 that we don't even really know if that is another person,  
23 right. It could be just blips, as you said. I think the  
24 term is --

25 A. Artifact.



1 Q. Studders and pull-ups?

2 A. Yes, that's correct.

3 Q. Correct?

4 A. Correct.

5 Q. Are you able to compare whatever that was in  
6 one for the fingernail clippings to another piece of  
7 evidence?

8 A. No. The problem with that, I can't take that  
9 1 percent. Because what's being generated are  
10 possibilities of what that second contributor could be.  
11 It could again not be true DNA. It could be -- actually  
12 the possibilities could be more than one person there. So  
13 I can't take that and compare it to something else. If I  
14 had a good profile, yes, I could compare to that little  
15 bit. But what would be generated, how informative is that  
16 due to that limited amount. So that's the concern.  
17 Again, this is an individual coming up with possibilities  
18 of what could fit this data for that one percent.

19 Q. Regarding the word concern versus scientific  
20 conclusions, can you extrapolate on that?

21 MS. ARMENI: Objection. That goes outside the  
22 scope of the examination. I brought that up during  
23 cross-examination of Mr. King. That should have been on  
24 redirect.

25 THE COURT: I am wondering, Mr. Fattig, just to

1 be precise. I think Ms. Armeni is correct, that that  
2 wasn't any aspect of the conversation with Mr. Hampikian.  
3 If you're calling him to rebut that, that would make more  
4 sense. Is there some reason you need to reopen your  
5 direct of him.

6 MR. FATTIG: Him explaining that rebuts some  
7 points the defense expert testified to.

8 THE COURT: Maybe you can ask a more specific  
9 question about what it is you're trying to rebut to make  
10 sure I catch it.

11 BY MR. FATTIG:

12 Q. Mr. King, what aspect of the testimony that  
13 you listened to of the expert gave you some pause to want  
14 to explain the word concern versus scientific  
15 conclusions?

16 A. The difference for me is when you say concern  
17 verse scientific conclusion --

18 THE COURT: What aspect of his testimony.

19 MS. ARMENI: I'll object to a narrative.

20 THE COURT: Overruled, since I set it up that  
21 way. The question is can you tie it into what you're  
22 going to say first to what he said.

23 THE WITNESS: He said concerns are not  
24 scientific. I would disagree with that.

25 THE COURT: Okay.

1           THE WITNESS: My thing is for concerns, there is  
2 always concerns in science. So, for us, we have quality  
3 assurance guidelines. We have standard operating  
4 procedures. These things are put in place due to concerns  
5 about testing. It helps mitigate issues such as  
6 contamination. Whenever this comes up we have rules to  
7 follow, guidelines to follow that help address those  
8 concerns. It is like applying science, you know, what the  
9 outcome can be can effect our results in that scientific  
10 process.

11           THE COURT: Okay.

12           MR. FATTIG: Nothing further.

13           THE COURT: Ms. Armeni.

14           MS. ARMENI: Just a few.

15           THE COURT: Fine.

16           FURTHER CROSS-EXAMINATION

17 BY MS. ARMENI:

18           Q.       Mr. King, the 1 percent could, in fact, be  
19 another person, right?

20           A.       It's possible, yes.

21           Q.       You were asked about 1 percent and could not  
22 compare it. Two questions regarding that. One is the  
23 cigarette butt, you do have a full DNA profile?

24           A.       It's a partial, almost full.

25           Q.       Not that you could upload to CODIS?

1           A.       Correct.

2           Q.       So you could compare the profile you got from  
3 the cigarette butt to a profile you received from this  
4 Skoal container?

5           A.       Possibly, yes.

6           Q.       Are you familiar with True Allele?

7           A.       I'm aware of it.

8           Q.       Is that a type of probabilistic genotyping?

9           A.       Yes.

10          Q.       That's not something Metro uses, right?

11          A.       No. It's a different software.

12          Q.       Are you aware that that program could actually  
13 test that one percent to come up with a --

14               THE COURT: Can you spell that for us.

15               MS. ARMENI: Would the court allow the Doctor to  
16 spell it.

17               THE COURT: Yes.

18               THE WITNESS: The word True -- and  
19 A-l-l-e-l-e.

20               THE COURT: I recognized them separately not  
21 together.

22               THE WITNESS: I'm not as familiar with True  
23 Allele. We haven't tested it in our lab or anything. But  
24 I do know, given the information, it could come up with  
25 different results based on the algorithms and program

1       behind it and the information we're inputting into it.

2               MS. ARMENI: Thank you, sir. No further  
3       questions.

4               THE COURT: Mr. Fattig.

5               MR. FATTIG: No other questions.

6               THE COURT: Thank you, Mr. King. You may step  
7       back down.

8               Counsel want to make some closing remarks.

9               MR. FATTIG: Sure.

10              THE COURT: I'll throw this out for maybe  
11       something to start with because we just ended with it. Of  
12       course, whatever you want to pull together.

13              If Metro doesn't use True Allele, are we advocating  
14       here if the court were to grant the request to these items  
15       to use it.

16              MS. ARMENI: Your Honor, we could. I think at  
17       this point Metro's ability and their system and their  
18       ability to test is sufficient for the purposes of 3 items,  
19       4 categories of items that we're requesting be tested.  
20       True Allele is something that may come before the court at  
21       some point later, depending on what happens in this case.  
22       If we need to go back and look at the fingernail clippings  
23       with this 1 percent and try to match it further, I don't  
24       think we are there yet.

25              THE COURT: Any thought in terms of what the

1 testimony has been here today and how it lends itself to  
2 the determination on whether to allow testing on these  
3 remaining items.

4 MS. ARMENI: So I think a couple of things both  
5 sides can agree on. DNA testing has evolved over the last  
6 couple of years. What we got before the court today is  
7 there are several items that have now been tested with  
8 more expansive DNA that have, in fact, excluded Jack Seka.  
9 We're coming from a position where he has already been  
10 excluded by numerous items of evidence where his DNA was  
11 not found.

12 We can also agree that regardless, we keep hearing  
13 the contamination and transfer, but that realistically is  
14 not uncommon for pieces of evidence to have multiple  
15 transfers on them and that does not stop the testing of  
16 those items. If we're really -- what we're trying to do  
17 with the testing of these additional items is two things.

18 We're trying to continue to exclude Mr. Seka from  
19 relevant evidence that was collected. We are also trying  
20 to find some sort of consistency. Will something in these  
21 new evidence that we're asking to be tested, will there  
22 generate a new DNA profile that will match with the  
23 cigarette butt. Then we've got two situations where we  
24 have a cigarette butt that's found at the dumping site and  
25 a DNA profile that now matches something found at the

1 murder scene.

2 THE COURT: Again, I shouldn't say what's bad  
3 about it, but I don't want to sound obtuse.

4 If we ran the cigarette butts through CODIS and  
5 we came up with nothing, and we come up with something on  
6 the hat that perhaps matches and it can be explained away,  
7 as Mr. Hampikian talked about why there could or shouldn't  
8 be able to be transfer that could create that, but there's  
9 no match, there's nothing. Does that -- it's just because  
10 we found one at one place and one at the other that we  
11 have to assume this is --

12 MS. ARMENI: I don't think we can consider it  
13 assuming anything, but I think it definitely starts  
14 tipping the scales a bit and we start looking at, okay,  
15 now we've got a profile match -- or at least two profiles  
16 that are similar and they're in two different places.

17 I think we all agree that Mr. Hamilton was killed at  
18 the 1929 building and then was likely dragged into a  
19 vehicle and brought to this dumping site. I think it  
20 would be quite significant for this court to consider --  
21 and these are baby steps, right, your Honor. We're trying  
22 to do baby steps.

23 THE COURT: You answered the question.

24 My real question was even if we can't identify  
25 someone, you still believe this has a level of importance,

1 relevancy, however you want to call it, to mandate.

2 MS. ARMENI: Right.

3 If we get similar profiles on more than one  
4 piece of evidence, then we're looking at -- I think we  
5 have a reasonable -- and this is profiles that were not  
6 available at the time of trial because of the way DNA  
7 testing was -- how it was handled back then and now we  
8 have the new DNA testing. They weren't available at  
9 trial. Now we have these two new profiles, I think it's  
10 likely there is possibly another suspect which would make  
11 it less likely that Mr. Seka would have been charged, if  
12 there were these other profiles out there that DNA testing  
13 wasn't available during that time.

14 THE COURT: Is that all you had.

15 MS. ARMENI: Yes.

16 MR. FATTIG: Judge, I think the key word in her  
17 arguments, in my opinion, is the word relevant. She wants  
18 to test -- she wants to exclude Mr. Seka from relevant  
19 pieces of evidence.

20 Our position continues to be that even if we don't  
21 find Mr. Seka's DNA on that black hat, that wouldn't  
22 create a reasonable possibility that the jury would have  
23 acquitted him. There was never an allegation that it's  
24 the killer's hat. There was never an allegation that the  
25 real killer touched the hat, wore the hat, had any



1 association with the hat. In fact, the evidence at trial  
2 was that it was Mr. Hamilton's hat.

3 So if we test the DNA and we find Mr. Hamilton on the  
4 major profile, consistent with Mr. Hamilton, that has no  
5 relevance to whether or not Mr. Seka committed the murder.

6 You've got to go back to understand the relevance of  
7 the hat. You've really got to go back to whole state of  
8 all of the evidence. And the state of the evidence was  
9 that Mr. Hamilton's body was discovered on a dump site  
10 next to St. Rose Parkway on November 16, 1998. Covering  
11 the body were 7 pieces of lumber. Near the area --  
12 because this is like and pull off area -- near the area  
13 there is trash and different things, including beer  
14 bottles and cigarettes.

15 THE COURT: I heard it described as being a  
16 remote area and not well traveled in the briefings. I  
17 understand you are making a counter argument. One of the  
18 points made by Ms. Armeni is these were still collected.

19 MR. FATTIG: They were collected.

20 THE COURT: The folks who were investigating the  
21 crime scene felt it was important.

22 MR. FATTIG: Felt -- they're going to collect  
23 what's around a dead body I would submit. That's part of  
24 a homicide investigation. And they did.

25 The lumber was consistent with lumber that tied back

1 to 1933 Western Synergy, which is where the Defendant  
2 worked where he was maintaining his residence. The  
3 evidence was that Peter Lomani, who of course we haven't  
4 talked about at all, he's the other individual --

5 THE COURT: It's in the facts of the case.

6 MR. FATTIG: But not today.

7 But Peter Lomani was -- came up missing as of  
8 November 5th. That's according to what the Defendant even  
9 told the police.

10 So my point is the Defendant was in control of  
11 Synergy during this relevant time period when Mr. Hamilton  
12 was killed, when Mr. Hamilton's body was found the morning  
13 of November 16th. So it wasn't like an isolated area  
14 because the sun came up. The person that reported it was  
15 driving along St. Rose Parkway and after the sun came up  
16 they saw it and they called the police. The police came  
17 out there and found the body underneath the lumber.

18 The lumber was consistent with lumber that was  
19 found inside of Synergy that was being used to build a  
20 humidor. They were converting the business -- there was  
21 talk of converting the AC business to, perhaps, to a cigar  
22 shop because they were struggling.

23 On that lumber were fingerprints, including  
24 fingerprints of the Defendant, fingerprints of Peter  
25 Lomani, who is then deceased -- although the police didn't

1 know it -- and fingerprints of the Defendant.

2 Inside Mr. Hamilton's pant's pocket was a piece of  
3 paper. On it said, Jack, with a cell phone number.  
4 Turned out to be the Defendant's cell phone number. When  
5 the police find all of this on the 16th, they don't  
6 discover the relevance until the 17th.

7 On the 17th what happens is a neighbor to 1933  
8 Western, where Synergy was at, is walking by and sees at  
9 1929 -- the very next business over -- the front plate  
10 window -- it's an abandoned business -- the front plate  
11 window is broken in. There is a jacket and a hat and  
12 bullet fragments laying along with some blood in that  
13 abandoned business. The neighbor sees it and calls the  
14 police. They come out. And that's where everything gets  
15 put two and two together. They tie it to the day before  
16 finding Mr. Hamilton's body down in Henderson.

17 There are tire tracks that are by the scene where  
18 Mr. Hamilton is dumped that are consistent with the tire  
19 tracks of a 1998 brown Toyota pick-up truck that Mr. Seka  
20 is driving at 1933. He pulls up when the police are there  
21 at 1929, next door. He pulls up in this pick-up truck.

22 Subsequently -- and I would note the pick-up truck  
23 had recently been cleaned. The neighbor that called said  
24 normally that pick-up truck was dirty, but it had been  
25 recently cleaned.

1           In the bed of that pick-up truck, subsequently, Metro  
2       discovers blood. The blood comes back to Eric Hamilton.  
3       We believe Mr. Hamilton was killed likely right before  
4       November 16th that morning when his body was found,  
5       because otherwise it would have been discovered earlier.

6           There are 3 through-and-through gunshots to  
7       Mr. Hamilton to his back. Inside 1933 on November 17th  
8       the police find -- and these are 357 bullet fragments that  
9       are found at 1929 Western, that killed Mr. Hamilton.

10          Inside 1933, the business where the Defendant is in  
11       charge of, there are 4 different 357 cartridge casings  
12       that are found in different spots hidden in ceiling tiles  
13       and very suspicious spots. They are where the Defendant  
14       is in control of this business. Testimony at trial where  
15       these casings and the bullet fragments were consistent to  
16       having come from the same bullet.

17          The Defendant gave a statement to detectives and  
18       indicated that he called Mr. Hamilton, Semore. That's how  
19       he knew him. He described him. Said he was kind of a  
20       homeless guy. But Mr. Seka indicated that, yeah, he had  
21       my cell phone number, but I hadn't talked to him since  
22       October 24th, which was several weeks before.

23          He said it was 5 days before I went to New Jersey.  
24       We know he went to New Jersey on October 29th to visit  
25       some relatives. And Mr. Seka indicated to the detective

1       that Semore, who we know is Mr. Hamilton, hadn't been to  
2       Synergy for 2 weeks before that. So putting that back to  
3       October 10th.

4             The problem with all of that, of course, is multiple  
5       fold. One, the testimony at trial was that Mr. Hamilton  
6       didn't arrive into Las Vegas until either late October or  
7       early November. He was from California and a relative  
8       drove him to Las Vegas at the end of October or early  
9       November and dropped him off. So Mr. Seka, we know was  
10      lying about Mr. Hamilton when he had been at Synergy.

11            Also the evidence at Synergy, when they processed the  
12      scene, they found those four 357 casings, but they also  
13      found beer bottles in a trash can. The beer bottles --  
14      they're all Miller Light beer bottles -- are empty, and  
15      they had fingerprints of Mr. Hamilton and fingerprints of  
16      the Defendant amongst those beer bottles.

17            The Defendant is the one that had control over that  
18      property. And the Defendant is the one -- the testimony  
19      at trial was a witness named Jennifer Harrison. She was  
20      the girlfriend of Peter Lomani, and she would oftentimes  
21      come over and visit the business because her and Peter  
22      were close. The Defendant told Jennifer Harrison that he  
23      had to, quote, unquote, go underground. This is after  
24      November 17th. So police have contact with him on  
25      November 17th. He tells them the information about Semore

1       and some other things about Peter Lomani, then they don't  
2       have enough to arrest him at that point.

3           He tries to drive away in a white van, but when they  
4       look at the back of the white van they see blood in the  
5       back of the white van, so they say you can't take that  
6       van. They allow him to leave in a third vehicle. That  
7       blood turned out to be blood that belonged to Peter Lomani  
8       in the back of the white van.

9           He takes a third vehicle and leaves and then never  
10      comes back. They end up finding him in Pennsylvania  
11      weeks, and weeks later, after he fled. But during the  
12      time he was fleeing, he told Jennifer Harrison the police  
13      are looking for me. I have to go, quote, unquote,  
14      underground. They are looking into the killing of a black  
15      guy, referring to Eric Hamilton.

16          The wounds that were consistent with Mr. Hamilton, in  
17      the State's opinion -- this was proffered to the jury and  
18      I believe it's consistent with the state of the  
19      evidence -- shows that this wasn't like a hand-to-hand  
20      struggle. This was a situation where Mr. Hamilton was  
21      running near 1929, away from his assailant, and got shot  
22      in the back. Then fell through the window and ended up on  
23      the floor. Then gets dragged into the back of the pick-up  
24      truck and dumped down on St. Rose Parkway. That's the  
25      theory of the case from the State's perspective, and it's

1 consistent with the evidence, consistent with what the  
2 jury found.

3 So when you have a situation where Mr. Seka's DNA is  
4 not found on that black hat, it has no relevance to  
5 whether or not Mr. Seka is the murderer, in the State's  
6 opinion. Likewise, if Mr. Seka's DNA is not found on the  
7 Skoal container or the beer bottles, we're not -- I don't  
8 think anyone in their right mind would suggest that the  
9 person who killed Mr. Hamilton stuck around and was  
10 chewing tobacco and drinking beer. They tried to obscure  
11 the body with the lumber, and then they got the hell out  
12 of there.

13 We're not suggesting -- so the relevance that  
14 Mr. Seka's DNA is not on the beer bottles and not on the  
15 Skoal tobacco container, in the State's opinion, doesn't  
16 meet the reasonable possibility standard. There has to be  
17 a reasonable possibility under the law. What does that  
18 mean. Does that -- it's not in the law anywhere else.  
19 It's not probable cause. It's not preponderance. It's  
20 reasonable possibility. I don't know what that means,  
21 Judge, but that's what the legislature came up with.

22 In the State's opinion, relevance is the key. I'm  
23 not even getting into all of the contamination issues.  
24 That's the lab's issue. And obviously I think it's an  
25 issue, because otherwise I wouldn't have presented it.

1 But I'm talking about the actual state of the evidence.  
2 All the evidence that points to Mr. Seka the jury used.  
3 And it doesn't involve whether or not, well, why didn't  
4 you test the black hat. Is his DNA on the black hat. Is  
5 his DNA on those cigarettes. Is his DNA on the tobacco  
6 container or the beer bottles. Even conceding that it's  
7 not, that's not going to change the jury's verdict. These  
8 are expensive decisions. This takes time and money to do  
9 these testings. That's why I think the legislature set up  
10 these standards. In the State's opinion, this doesn't  
11 meet that standard.

12 THE COURT: Thank you.

13 Ms. Armeni, it's true in the State's response  
14 they had a two-fold argument. They had the argument that  
15 we primarily focused on here today, which is this is a  
16 public site, and/or these items, depending on which ones  
17 we're looking at and where they were gathered, there was  
18 no guarantee that we wouldn't have either lost DNA that  
19 might have been on it, or have other DNA on it that is of  
20 no value because of contamination, transfer, whatever you  
21 want to call it.

22 But there was also the argument that really there is  
23 such an overwhelming amount of evidence that it's not  
24 going to meet the reasonable possibility standard.

25 Did you want to speak to that.



1 MS. ARMENI: Your Honor, I feel like we're back  
2 months and months ago when we originally argued this  
3 petition because that's the same argument as the last  
4 time. I recognize you didn't waive that. That was his  
5 position at the time, and it's always been that  
6 position.

7 I don't know if I'm prepared to go through every  
8 piece of evidence, frankly, and give you a counter  
9 argument to everything.

10 THE COURT: That's not necessary.

11 MS. ARMENI: I will tell you that the lumber he  
12 described, there were actually 3 fingerprints on there.  
13 One fingerprint is to somebody we still don't know who it  
14 belongs to.

15 If the court remembers in our petition we believe  
16 there are alternative suspects that also had access. Can  
17 we deny that Mr. Seka's fingerprints would probably be on  
18 things, no. That doesn't make any sense. He's living  
19 there. He's working out of there. Of course his DNA, his  
20 fingerprints are going to be on things. That makes sense.  
21 So were these alternative suspects that we put forward in  
22 our petition that would also have access.

23 Mr. Seka didn't run away. He went to Philadelphia.  
24 He actually gave the police his information of where he  
25 was going to be. I submit if you're going to run away

1       you're certainly not going to provide the police with your  
2       contact information.

3               Mr. Seka is the one that consented to the van being  
4       looked through where the blood was pretty obvious.  
5       Whoever tried to clean it up didn't do a very good job.  
6       If Mr. Seka was responsible for cleaning up the van, he  
7       would have known he probably didn't do a good job and to  
8       therefore consent to allow them to look in the van and see  
9       the blood is questionable.

10              Again, our biggest issue here is that the DNA testing  
11       was not available at the time, and had it been available,  
12       and had there been that testing and they found profiles  
13       there is an alternative suspect here that they would have  
14       followed up on and Mr. Seka wouldn't have been a suspect  
15       in this case.

16              We keep hearing about, well, this probably won't show  
17       this. This probably won't show this. How do we know that  
18       until we test. Maybe Jack's DNA is not on the hat. We  
19       don't know. That's the problem. We don't know. We know  
20       these are all relevant pieces of evidence that Metro  
21       believed to be very relevant at the time this crime  
22       occurred. We know that they tried to test some of this,  
23       based on the testing available at the time, and did not  
24       get any results because of the state of the testing at  
25       that juncture. So we're dealing with a very different

1 dynamic now and what kind of testing is available. That's  
2 really where we are here.

3 If we test and there is no matching profiles, that's  
4 where Mr. Fattig -- a lot of Mr. Fattig's arguments come  
5 into play as to the relevance or not. We're not at that  
6 point yet. I think there's enough here and there's  
7 reasonable probability based on what we've put forward to  
8 the court already that with the new testing there is  
9 availability to term if there are additional profiles.

10 To Mr Fattig's point, it does cost a lot to do  
11 testing. It also costs a lot to keep a wrongfully  
12 convicted person in prison for longer then they need to be  
13 there, which is not one day longer.

14 We'll submit it on that.

15 THE COURT: Thank you.

16 I don't want to announce a decision here today,  
17 only because even though I went back over everything  
18 before today and always try to be prepared to announce a  
19 decision as we go through it as I hear testimony, I have  
20 some things I want to chew on a bit.

21 As you pointed out Mr. Fattig, I did not waive  
22 that argument whether or not this should be allowed. And  
23 ultimately I have to, at the end of the day, articulate my  
24 findings under the statute. And as pointed out, as  
25 nebulous as it gets, under the reasonable possibility

1 standard.

2 Things that are in my mind today, just so I give a  
3 little thought of that, and what I would like to do is  
4 figure out -- I don't want to take it under advisement and  
5 have it get lost. I'd rather have a return date so I can  
6 announce a decision.

7 It strikes me right now and that's one of the reasons  
8 I want to go back and look at this, if I'm misapprehending  
9 this right now, is that we have, you know, no evidence  
10 that would tie -- no DNA, blood, fingerprint evidence that  
11 would tie Mr. Seka to the murder scene in 1929. We have  
12 obviously in 1933. We do have evidence that has Mr.  
13 Seka's fingerprint at the dump site, where the body was  
14 located. We don't have, right now, any other then Mr.  
15 Hamilton's information something that shows something at  
16 both. It strikes me as what we're looking at here has the  
17 possibility of telling us if there's something consistent  
18 between the two sites, or eliminating the possibility  
19 there's anything consistent at the two sites. That leans  
20 me to go think about that we should consider this.

21 That said, one of the things I also did not read and  
22 visit for today's purposes that maybe I should have are  
23 the facts of the case in detail. There were facts of the  
24 case lined out in the petition, and then there was the  
25 going through the evidence in the opposition. But in

1 terms of my focus today, I was focused on what am I going  
2 to hear about the contamination, transfer and evidence and  
3 not thinking about that as much. I really have to pull  
4 these two things together then make my gut call.

5 I'm going do that. I appreciate we're coming up on  
6 holidays. I don't know what people's schedules are. I  
7 could have this decision next week. I could also have  
8 this decision in early January, if no one is offended by  
9 going out that far.

10 MR. FATTIG: I'll submit to the Court. I'm  
11 available next week. I'm available after the holidays.  
12 Either time.

13 MS. ARMENI: Same here, your Honor.

14 THE COURT: I'll do it when it's fresher. So  
15 looking at next week's calendars, both Monday and  
16 Wednesday are available. Is that okay with everybody.

17 MR. FATTIG: Yes.

18 MS. ARMENI: Can I just ask, your Honor. I  
19 appreciate you have a lot on, and I don't want to ask for  
20 any favors. I do have a mediation that starts at 10:00 on  
21 Wednesdays. Can I be out of here by 9:45.

22 THE COURT: You have been here enough to know  
23 that my court stating at 9:00 --

24 MS. ARMENI: Yes, your Honor.

25 THE COURT: -- is nonexistent anymore.

1 MR. FATTIG: Wednesdays are fine.

2 THE COURT: Let's plan on both getting here at  
3 9:30 and plan on calling it at 9:30, 9:45.

4 MR. FATTIG: Is the Court anticipating a written  
5 order at that point.

6 THE COURT: No.

7 MR. FATTIG: Just findings.

8 THE COURT: That is more ambition then I can  
9 say. I'll be articulating my outcome and directing the  
10 prevailing party to prepare the order.

11 MR. FATTIG: Perfect.

12 MS. ARMENI: Thank you.

13 MS. SPRINGER: Thank you.

14 THE CLERK: December 19th at 9:00.

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CERTIFICATE  
OF  
CERTIFIED COURT REPORTER

\* \* \* \* \*

I, the undersigned certified court reporter in and for the  
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the  
time and place therein set forth; that the testimony and  
all objections made at the time of the proceedings were  
recorded stenographically by me and were thereafter  
transcribed under my direction; that the foregoing is a  
true record of the testimony and of all objections made at  
the time of the proceedings.

A handwritten signature in cursive script, appearing to read "Sharon Howard", is written over a horizontal line. The signature is fluid and includes a large, circular flourish at the end.

Sharon Howard  
C.C.R. #745

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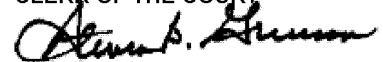
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18 *Attorneys for Petitioner John Joseph Seka*  
19 *In Conjunction with Rocky Mountain Innocence Center*

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, specifically the baseball hat and bullet/bullet fragments  
31 located at the scene of the murder of Eric Hamilton and the Skoal container and two beer bottles,  
32 located at the scene where Mr. Hamilton's body was discovered, all evidence Within Possession  
33 or Custody of the State of Nevada (NRS 176.0918) having come on for evidentiary hearing on  
34 the 14<sup>th</sup> day of December, 2018, in Department XXV, the Honorable Judge Kathleen Delaney  
35 presiding, Mr. Seka being represented by Paola M. Armeni, Esq. of the law firm of Gentile



1 Cristalli Miller Armeni Savarese, in conjunction with Jennifer Springer, Esq. of the Rocky  
2 Mountain Innocence Center and the Respondent, State of Nevada being represented by J.  
3 Timothy Fattig, Chief Deputy District Attorney, of the Clark County District Attorney's Office  
4 and the issues being fully argued by counsel, the testimony of two experts, Dr. Greg Hampikian,  
5 who testified on behalf of Mr. Seka and Mr. Craig King who testified on behalf of the State of  
6 Nevada being considered, the Court being fully advised in the premises and good cause  
7 appearing therefor,

8 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED** that Mr. Seka, Post-  
9 Conviction Petition Requesting A Genetic Marker Analysis of Evidence, specifically the baseball  
10 hat and bullet/bullet fragments located at the scene of the murder of Eric Hamilton and the Skoal  
11 container two beer bottles, located at the scene where Mr. Hamilton's body was discovered, be  
12 GRANTED in part and DENIED in part.

13 **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that the Court finds  
14 that after hearing the testimony of the two experts that testing of the bullets/bullet fragments,  
15 Exhibit 19 on the Prosecution's Trial Exhibit List, namely that heat destroys DNA, the Court  
16 finds that a reasonable possibility does not exist that the petitioner would not have been  
17 prosecuted or convicted through genetic marker analysis of the bullets/bullet fragments.  
18 Therefore, the Court finds that genetic marker analysis should not occur on the bullets/bullet  
19 fragments.

20 **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that the Court finds  
21 that after hearing the testimony presented at the evidentiary hearing there is a possibility of  
22 unknown DNA profiles based on previous forensic testing on Eric Hamilton's fingernail  
23 clippings as Exhibit 36 on the Prosecution's Trial Exhibit List and the cigarette butts located near  
24 named victim Eric Hamilton's body, identified as Las Vegas Metropolitan Police Department  
25 ("LVMPD") Package 1, items 1 and 2) that a profile other than Mr. Hamilton exists. The Court  
26 finds that there is a potential of DNA profile matches between the former evidence collected  
27 and/or the new evidence that will be tested that makes the contamination argument futile. As  
28 such, the Court finds that genetic marker analysis should occur as to the baseball hat, Exhibit 22

2 of 6

1 on the Prosecution's Trial Exhibit List, the Skoal container, LVMPD Package 2, Item 3 and two  
2 beer bottles, LVMPD Package 3, Items 4 and 5.

3 **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that a reasonable  
4 possibility exists that the petitioner would not have been prosecuted or convicted if exculpatory  
5 results had been obtained through a genetic marker analysis of the baseball hat, beer bottles and  
6 Skoal container.

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

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

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

- 16 (1) Baseball hat, identified as Exhibit 22 on the Prosecution's Trial Exhibit List;  
17 (2) Skoal Container; identified as LVMPD Package 2, Item 3,  
18 (3) Two beer bottles; identified as LVMPD Package 3, Items 4 and 5.

19 **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that the employees of  
20 LVMPD, LVMPD forensic laboratory, and Clark County Judicial Court are ordered to conduct  
21 all acts necessary to ensure the DNA Testing is completed as required by this Order. Within  
22 seven days, or as soon as practicable, after the entry of this Order, the evidence, Exhibit 22 on  
23 the Prosecution's Trial Exhibit List which is currently in the custody of the District Court Clerk's  
24 Evidence Vault, shall be transported to the LVMPD forensic laboratory or any laboratory  
25 contracted with LVMPD to be tested. The evidence custodian shall take all actions necessary to  
26 maintain the chain of custody of the evidence. Counsel for the State shall ensure that all of the  
27 appropriate agencies are made aware of this Order and their obligations hereunder.

28

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

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

11       **IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that LVMPD forensic  
12 laboratory or any laboratory contracted with LVMPD shall report the results of the DNA testing  
13 to Mr. Seka's counsel and counsel for the State within five (5) business days of obtaining or  
14 receiving such results. Included with that report, the laboratory shall provide:

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

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

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



1 Approved as to form and content:

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3

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7 *Attorneys for Plaintiff State of Nevada*

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99C159915

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**April 03, 2019**

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99C159915                      The State of Nevada vs John J Seka

---

April 03, 2019                      09:00 AM                      Status Check: Test Results

HEARD BY:                      Delaney, Kathleen E.                      COURTROOM: RJC Courtroom 15B

COURT CLERK: Boyle, Shelley

RECORDER:

REPORTER:                      Howard, Sharon

PARTIES PRESENT:

**John Seka**

**Petitioner**

**John T Fattig**

**Attorney for Plaintiff**

**Paola M. Armeni**

**Attorney for Defendant, Petitioner**

**State of Nevada**

**Plaintiff**

**JOURNAL ENTRIES**

Deft. not present, Nevada Department of Corrections (NDC).

Ms. Armeni stated the necessary report was received back from the last round of testing, Las Vegas Metropolitan Police Department provided the data for all underlying testing. Colloquy regarding scheduling. COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 05/15/19 9:00 A.M.

99C159915

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 24, 2019**

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99C159915                      The State of Nevada vs John J Seka

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July 24, 2019                      09:00 AM                      Status Check: Test Results

HEARD BY:                      Delaney, Kathleen E.                      COURTROOM: RJC Courtroom 15B

COURT CLERK: Castle, Alan

RECORDER:

REPORTER:                      Howard, Sharon

PARTIES PRESENT:

John T Fattig

**Attorney for Plaintiff**

Paola M. Armeni

**Attorney for Defendant, Petitioner**

State of Nevada

**Plaintiff**

**JOURNAL ENTRIES**

Defendant's presence waived for these proceedings. COURT ORDERED, briefing schedule set as follows: Defendant's Motion for New Trial DUE: 10/28/19; State's response DUE 1/06/20; Defendant's reply DUE: 2/03/20 and matter set for argument and decision.

NDC

2/10/20 9:00 a.m. Defendant's Motion for New Trial