

No. 86694

IN THE NEVADA SUPREME COURT

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Elizabeth A. Brown
Clerk of Supreme Court

John Seka,

Petitioner-Appellant,

v.

State of Nevada, et al.

Respondents-Appellees.

Petitioner-Appellant's Appendix
Volume 14 of 15

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District of Nevada
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Dated October 4, 2023.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Jonathan M. Kirshbaum

Jonathan M. Kirshbaum
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

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

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

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

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

/s/ Kaitlyn O'Hearn
An Employee of the Federal
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY

John Seka,

Petitioner,

v.

Calvin Johnson, Warden,

Respondents.

Case No. _____
(99C159915)

Dept. No. XXV

(Not a Death Penalty Case)

PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)

1. Name of institution and county in which you are presently imprisoned
or where and how you are presently restrained of your liberty: High Desert State
Prison

2. Name and location of court which entered the judgment of conviction

under attack: 8th Judicial District Court, Clark County

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

4. Case Number: 99C159915

5. (a) Length of Sentence: Life without parole with equal and consecutive life without parole, consecutive to 10 to life with equal and consecutive 10 to life, consecutive to a sentence of 35 to 156 months, consecutive to a sentence of 35 to 156 months.

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

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes [] No [X]

If "yes", list crime, case number and sentence being served at this time:

Nature of offense involved in conviction being challenged:

7. Nature of offense involved in conviction being challenged: First-degree murder, second-degree murder, and two counts of robbery

8. What was your plea?

(a) Not guilty X (c) Guilty but mentally ill _____

(b) Guilty _____ (d) Nolo contendere _____

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: N/A

10. If you were found guilty after a plea of not guilty, was the finding made by: (a) Jury X (b) Judge without a jury _____

11. Did you testify at the trial? Yes _____ No X

12. Did you appeal from the judgment of conviction? Yes X No _____

- 1 13. If you did appeal, answer the following:
- 2 (a) Name of Court: Nevada Supreme Court
- 3 (b) Case number or citation: 37907
- 4 (c) Result: Affirmed
- 5 14. If you did not appeal, explain briefly why you did not:
- 6 15. Other than a direct appeal from the judgment of conviction and
- 7 sentence, have you previously filed any petitions, applications or motions with respect
- 8 to this judgment in any court, state or federal? Yes X No _____
- 9 16. If your answer to No. 15 was “yes,” give the following information:
- 10 (a) (1) Name of Court: 8th Judicial District Court, Clark County
- 11 (2) Nature of proceeding: Postconviction Petition
- 12 (3) Ground raised:
- 13 1. Petitioner was denied his rights under the Sixth and Fourteenth
- 14 Amendments to the U.S. Constitution to effective assistance of
- 15 counsel, due process and a fair trial by his attorney’s failure to
- 16 investigate material witnesses and facts prior to trial and failure
- 17 to enlist experts for the defense prior to trial.
- 18 2. Petitioner was denied his rights under the Sixth and Fourteenth
- 19 Amendments to the U.S. Constitution to effective assistance of
- 20 counsel, due process and of fundamental fairness at trial by his
- 21 attorney’s failure to meaningfully challenge the state’s case with
- 22 expert testimony and adequate cross-examination and
- 23 impeachment of prosecution witnesses.
- 24 3. Petitioner was denied his rights under the Sixth and Fourteenth
- 25 Amendments to the U.S. Constitution to effective assistance of
- 26 counsel and due process on Direct Appeal by his direct appeal
- 27 attorney’s failure to identify and raise meritorious claims and
- issues within petitioners only direct appeal of constitutional right
- to a criminal defendant and while under a conflict of interest.
4. Petitioner’s convictions and sentence are invalid and
- unconstitutional in violation of the Fifth, Sixth and Fourteenth
- Amendments of the U.S. Constitution to due process, a fair trial
- and equal protection of the laws, due to the State’s failure to

disclose material exculpatory and impeachment evidence on Mr. Thomas Creamer.

5. Petitioner is in custody in violation of his rights to due process and a fair trial as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution due to the trial court's erroneous instructions on lesser included offences.
6. Petitioner was denied his rights under the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution, to due process, equal protection and a fair trial, by the improper jury instruction on reasonable doubt which illegally lowered the State's burden.
7. Petitioner is in custody in violation of his right to due process of law under the Fifth and Fourteenth Amendments to the U.S. Constitution by the trial court erroneously giving the jury instruction number fourteen (14) on a unanimous verdict.
8. Petitioner's convictions and sentences are invalid under the federal constitutional guarantees of the Fifth and Fourteenth Amendments of the U.S. Constitution to due process, equal protection, and trial before an impartial jury because the Malice Aforethought, Express Malice, Deliberation, and Premeditation jury instructions given at trial improperly lowered the State's burden of proof.
9. Petitioner's convictions and sentence are invalid under the federal constitutional guarantees of the Fifth and Fourteenth Amendments to the U.S. Constitution to due process because the Las Vegas Metropolitan Police Department failed to adequately investigate the murders of Peter Limanni and Eric Hamilton as well as the alleged robberies.
10. Petitioner's convictions and sentence are unconstitutional under the federal guarantees of the Fifth and Fourteenth Amendments of the U.S. Constitution to due process by prosecutorial misconduct before and during trial.
11. Petitioner's convictions and sentence are invalid under the federal constitutional guarantees of the Sixth and Fourteenth Amendments to the U.S. Constitution to effective assistance of counsel and due process by appellate counsel's failure to present issues on direct appeal as U.S. Constitution violations.

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

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

9 (5) Result: Denied

10 (6) Date of Result: 01/31/2005

11 (7) If known, citations of any written opinion or date of orders
12 entered pursuant to such result: 01/31/2015

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

15 (1) Name of court: United States District Court, District of
16 Nevada

17 (2) Nature of proceeding: 28 U.S.C. § 2254 Petition

18 (3) Grounds raised:

19 Ground 1: The trial court abused its discretion when it instructed the jury
20 that Seka's flight to Philadelphia could be considered in
21 deciding guilt or innocence when there was no evidence that he
22 intended to flee for the purpose of avoiding arrest. The trial
23 court's error violated Seka's Fifth, Sixth and Fourteenth
Amendment rights guaranteed by the United States
Constitution

24 Ground 2: Limanni's body was found in California and there was no
25 evidence that the crime of murder and robbery, or any part
26 thereof, was committed in Nevada. consequently, the trial court
lacked jurisdiction to try Seka for the murder and robbery of
Peter Limanni, thus Seka's constitutional due process rights

1 guaranteed by Fifth, Sixth and Fourteenth Amendments of the
2 United States Constitution were violated

3 Ground 3: Seka was denied the right to a fair trial guaranteed by the Fifth
4 and Fourteenth Amendments to the United States Constitution
5 by the district court's improper joinder of the two murder and
6 robbery counts

7 Ground 4: Seka is in custody in violation of his right to due process
8 pursuant to the Fifth and Fourteenth Amendments to the
9 United States Constitution because the evidence adduced at
10 trial was insufficient to prove murder in the first degree and
11 robbery beyond a reasonable doubt

12 Ground 5: The State's failure to preserve blood evidence for DNA testing
13 violated Seka's due process rights guaranteed by the Fifth and
14 Fourteenth Amendments to the United States Constitution

15 Ground 6: The district court's reasonable doubt instruction improperly
16 minimized the State's burden of proof thereby violating Seka's
17 due process rights guaranteed by the Fifth, Sixth and
18 Fourteenth Amendments to the United States Constitution

19 Ground 7: The trial court erred in instructing the jury that their verdict
20 need not be unanimous with respect to the theories of murder
21 so long as all believed that murder had been proven. This
22 instruction minimized the State's burden of proof in violation of
23 Seka's Fifth, Sixth and Fourteenth Amendment rights

24 Ground 8: The district court's jury instruction defining malice improperly
25 allowed the jury to presume malice without proof beyond a
26 reasonable doubt thereby violating Seka's due process rights
27 guaranteed by the Fifth, Sixth and Fourteenth Amendments to
the United States Constitution

Ground 9: The district court's jury instruction defining premeditation
improperly minimized the State's burden of proof thereby
violating Seka's due process rights guaranteed by the Fifth,
Sixth and Fourteenth Amendments to the United States
Constitution

Ground 10: The State committed prosecutorial misconduct during closing
argument when the prosecutor argued facts not in evidence and
vouched for its witness. The State's conduct violated Seka's

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right to due process and a fair trial guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution

Ground 11: Seka is in custody in violation of his right to effective assistance of trial counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution

A. Trial counsel was ineffective in failing to adequately investigate Cramer’s psychological and drug history

B. Trial counsel was ineffective in failing to retain a psychological expert to testify regarding the drugs Cramer was taking

C. Trial counsel was ineffective in failing to adequately investigate and interview witnesses

D. Trial counsel was ineffective in failing to retain a forensic pathologist to testify to the time of death

E. Trial counsel was ineffective in failing to obtain phone and bank records of Peter Limanni and the business

Ground 12: Seka is in custody in violation of his right to effective assistance of appellate counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution

A. Counsel’s failure to submit the direct appeal claims as constitutional violations

B. Counsel failed to raise the issue of the trial court’s erroneous jury instructions

- 1. Reasonable doubt instruction
- 2. Unanimous verdict instruction
- 3. Malice aforethought instruction
- 4. Premeditation instruction

C. Appellate counsel failed to raise the issue of the prosecution’s misconduct

Ground 13: Seka is entitled to relief because of the cumulative effect of the errors raised on direct appeal, in state habeas proceedings, and in this petition

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

(5) Result: Denied

(6) Date of result: 08/26/2008

(7) If known, citations of any written opinion or date of orders
entered pursuant to such result: 8/26/2008

(c) As to any third petition, application or motion, give the same
information:

(1) Name of court: 8th District Judicial Court, Clark County

(2) Nature of proceeding: Motion for a New Trial

(3) Grounds raised:

I. The results of the genetic marker analysis are newly
discovered evidence that require Mr. Seka be granted a
new trial

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

(5) Result: Granted, but reversed on appeal

(6) Date of result: 03/24/2020

(7) If known, citations of any written opinion or date of orders
entered pursuant to such result: State v. Seka, 137 Nev. Adv.
Op. 30, 490 P.3d 1272 (2021)

(d) As to any fourth petition, application or motion, give the same
information:

(1) Name of court: Ninth Circuit Court of Appeals

(2) Nature of proceeding: Application to File Second or Successive
§ 2254 Petition

(3) Grounds raised:

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- I. Seka’s right to due process under the Fifth and Fourteenth Amendments to the United States Constitution was violated when the State suppressed exonerating and material fingerprint evidence. U.S. Const. Amends. V and XIV.
- II. Seka’s conviction and sentence are invalid under the federal constitutional guarantees of due process, equal protection, and freedom from cruel and unusual punishment, because new evidence, including exonerating DNA evidence, establishes he is actually innocent of first-degree murder, second-degree murder and robbery. U.S. Const. Amends. V, VI, VIII and XIV.

- (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes __ No X
- (5) Result: Still pending at time of filing of this petition
- (6) Date of result: N/A
- (7) If known, citations of any written opinion or date of orders entered pursuant to such result: N/A

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other post-conviction proceeding? Yes If so, identify:

- a. Which of the grounds is the same: Grounds 1 and 2
- b. The proceedings in which these grounds were raised: Authorization application pending in the Ninth Circuit
- c. Briefly explain why you are again raising these grounds.

The two grounds in this petition have been presented to the Ninth Circuit for that court to determine whether it will authorize Seka to raise the grounds in a second or successive federal petition. See 28 U.S.C. 2244(b).

Seka can show good cause here for Ground One because it is a *Brady* claim. A petitioner can establish good cause and prejudice to overcome the Chapter 34

1 procedural bars if he can meet the elements of a *Brady* claim, namely that the
2 evidence was (1) suppressed, and it was (2) favorable and material. *See State v.*
3 *Huebler*, 128 Nev. 192, 197-98, 275 P.3d 91, 95-96 (2012) (finding that post-conviction
4 petitioner's establishment of suppression and materiality demonstrates good cause
5 and actual prejudice to excuse a procedural default). Seka can make both showings
6 here.

7 *The evidence was suppressed*

8 The *Brady* claim relies upon a latent fingerprint report in a stolen purse case
9 that was connected to the murders. The fingerprint report was not discovered until
10 November 2017. This fingerprint report was never turned over to the defense. The
11 defense was never put on notice that this fingerprint report existed or even that any
12 latent fingerprints from the purse existed.

13 Moreover, Seka did not have a duty to discover this report earlier because the
14 State affirmatively misled Seka into believing that the stolen purse was irrelevant to
15 his case. The prosecutor said at trial that the purse was "not important." The State
16 also *deleted* the purse from the list of evidence in the crime scene diagram shown to
17 the jury. Seka was allowed to rely upon the State's representations that the purse
18 was not relevant.

19 Seka otherwise took reasonable steps to obtain the report. After trial, Seka
20 sought all documents in the purse case, including the fingerprint report, using the
21 only means available to him at the time, a Nevada Public Records Act request.
22 Despite the request and persistent follow-up, the police would only turn over the
23 incident report associated with the stolen purse. It was not until the state district
24 court issued an order granting Seka's petition seeking DNA testing that the
25 fingerprint report was fortuitously turned over in November 2017.

26 *The evidence is favorable and material*

1 Seka can also establish that the report is favorable and material. The
2 previously undisclosed fingerprint report shows Seka is innocent of the murder of
3 Eric Hamilton. A purse was found in the ceiling at the business where Seka had been
4 working and living. The purse had been stolen from a car around the time of the
5 murder. The thief had shot out a window of the car and taken the purse. A bullet was
6 recovered from the car.

7 Latent fingerprints were recovered from the purse found in the ceiling. They
8 were compared against Seka's. The prints did not match Seka's prints. This report
9 was never disclosed to the defense.

10 A ballistics comparison was conducted between the bullet from the purse theft
11 and two bullets found in connection with the murder of Eric Hamilton. The markings
12 on these bullets were class consistent. The comparison established a likely connection
13 between the gun used in the theft and the one used in the murder. Indeed, it was a
14 stronger connection than the one the State advanced at trial to convict Seka, which
15 focused on the similarity between the caliber of bullets found at the murder location
16 and those found at the business location where Seka was staying.

17 The fingerprint exclusion shows that Seka did not commit the purse theft. And,
18 if Seka is innocent of the theft, the ballistics report provides a compelling reason to
19 believe he is innocent of the Hamilton murder, given that the ballistics evidence
20 points to the same person committing both crimes.

21 Further, the fingerprint exclusion significantly undermines the State's case in
22 other critical ways. First, the State's main theory was that Seka was the murderer
23 because Seka was the only one who had access to, and control over, the business
24 location at 1933 Western. However, the fact that someone else's prints were on the
25 purse in the ceiling confirms that someone else had access to the location.

1 Moreover, the State's case against Seka on the Hamilton murder was entirely
2 circumstantial. Indeed, the jury deliberated here for five days. The State took steps
3 to exclude the purse from the jury's consideration, knowing that the purse pointed
4 the finger away from Seka. By removing the purse from the jury's consideration, it
5 made the State's circumstantial case seem stronger. The exonerating *Brady* evidence
6 undermines the foundation of the State's circumstantial case.

7 For similar reasons, the purse is material as to the murder and robbery of Peter
8 Limanni. If Seka did not murder Hamilton, then he also did not murder Limanni.
9 The State argued that the person who committed one committed the other. Just as
10 with Hamilton, the State's case as to Limanni was a weak, circumstantial case. The
11 purse thief's access to the business location at 1933 Western also undermines the
12 State's case on the Limanni counts. Once a jury would see that Seka was innocent of
13 the Hamilton murder and robbery, any jury would harbor a reasonable doubt that
14 Seka was the one who killed Limanni.

15 *Miscarriage of justice gateway*

16 Seka can also overcome the procedural bars on Grounds One and Two because
17 he can establish the failure to consider the claims would result in a miscarriage of
18 justice. Seka can show that, looking at the evidence as a whole in light of new
19 evidence, it is more likely than not no reasonable juror would find him guilty beyond
20 a reasonable doubt. *See Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015).
21 In addition to the latent fingerprint report, this Court should consider new DNA
22 evidence, which establishes Seka's innocence. First, previously unavailable DNA
23 testing establishes that **there was a foreign DNA profile found on Hamilton's**
24 **fingerprints from his left and right hands**. Seka was fully excluded from this
25 foreign profile. This new foreign profile shows that someone else—clearly the
26 perpetrator—contributed the DNA found under Hamilton's fingerprints. Further,
27 Seka was excluded from the remaining relevant evidence collected at the site where

1 Hamilton's body was discovered. And Seka's fingerprints were excluded from those
2 found at 1929 Western, where Hamilton was murdered.

3 The DNA evidence and the *Brady* material discussed above each individually
4 establishes Seka's innocence of the Hamilton murder and robbery. Collectively, they
5 represent powerful evidence of innocence, particularly when the evidence against
6 Seka at trial was weak and entirely circumstantial.

7 Looking at the evidence as a whole, it is clear Seka did not murder and rob
8 Hamilton. And if Seka did not murder and rob Hamilton, then he also did not murder
9 and rob Limanni. The State argued that the person who committed one committed
10 the other. Just as with Hamilton, the State's case as to Limanni was a weak,
11 circumstantial case. Once a jury would see that Seka was innocent of the Hamilton
12 murder, any jury would harbor a reasonable doubt that Seka was the one who killed
13 and robbed Limanni.

14 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any
15 additional pages you have attached, were not previously presented in any other court,
16 state or federal, list briefly what grounds were not so presented, and give your reasons
17 for not presenting them. (You must relate specific facts in response to this question.
18 Your response may be included on paper which is 8 ½ by 11 inches attached to the
19 petition. Your response may not exceed five handwritten or typewritten pages in
20 length.).

21 19. Are you filing this petition more than 1 year following the filing of the
22 judgment of conviction or the filing of a decision on direct appeal? Yes__ If so, state
23 briefly the reasons for the delay. (You must relate specific facts in response to this
24 question. Your response may be included on paper which is 8 ½ by 11 inches attached
25 to the petition. Your response may not exceed five handwritten or typewritten pages
26 in length.)

1 Seka can show good cause to overcome the time bar for Ground One because it
2 is a *Brady* claim. A petitioner can establish good cause and prejudice to overcome the
3 Chapter 34 procedural bars if he can meet the elements of a *Brady* claim, namely that
4 the evidence was (1) suppressed, and (2) it was favorable and material. *See Huebler*,
5 128 Nev. at 197-98, 275 P.3d at 95-96 (finding that post-conviction petitioner's
6 establishment of suppression and materiality demonstrates good cause and actual
7 prejudice to excuse a procedural default). Seka can make both showings here.

8 *The evidence was suppressed*

9 The *Brady* claim relies upon a latent fingerprint report in a stolen purse case
10 that was connected to the murders. The fingerprint report was not discovered until
11 November 2017. This fingerprint report was never turned over to the defense. The
12 defense was never put on notice that this fingerprint report existed or even that any
13 latent fingerprints from the purse existed.

14 Moreover, Seka did not have a duty to discover this report earlier because the
15 State affirmatively misled Seka into believing that the stolen purse was irrelevant to
16 his case. The prosecutor said at trial that the purse was "not important." The State
17 also *deleted* the purse from the list of evidence in the crime scene diagram shown to
18 the jury. Seka was allowed to rely upon the State's representations that the purse
19 was not relevant.

20 Seka otherwise took reasonable steps to obtain the report. After trial, Seka
21 sought all documents in the purse case, including the fingerprint report, using the
22 only means available to him at the time, a Nevada Public Records Act request.
23 Despite the request and persistent follow-up, the police would only turn over the
24 incident report associated with the stolen purse. It was not until the state district
25 court issued an order granting Seka's petition seeking DNA testing that the
26 fingerprint report was fortuitously turned over in November 2017.

1 *Seka seeks relief within a reasonable time of discovering the evidence*

2 In addition, Seka is presenting this claim within a reasonable time after
3 discovering the report. Seka discovered the report while his 2017 DNA petition,
4 brought under the special procedure set forth in NRS 176.0918, was pending in this
5 Court. The petition was **granted**, as was his subsequent motion for a new trial. Seka
6 had no reason to raise this claim while those proceedings were pending. Those
7 proceedings ended on November 2, 2021, when the Nevada Supreme Court issued
8 remittitur in the appeal from the grant of the motion for a new trial. This petition is
9 being filed within one year of the remittitur.

10 *The evidence is favorable and material*

11 Seka can also establish that the report is material. The previously undisclosed
12 fingerprint report shows Seka is innocent of the murder of Eric Hamilton. A purse
13 was found in the ceiling at the business where Seka had been working and living. The
14 purse had been stolen from a car around the time of the murder. The thief had shot
15 out a window of the car and taken the purse. A bullet was recovered from the car.

16 Latent fingerprints were recovered from the purse found in the ceiling. They
17 were compared against Seka's. The prints did not match Seka's prints. This report
18 was never disclosed to the defense.

19 A ballistics comparison was conducted between the bullet from the purse theft
20 and two bullets found in connection with the murder of Eric Hamilton. The markings
21 on these bullets were class consistent. The comparison established a likely connection
22 between the gun used in the theft and the one used in the murder. Indeed, it was a
23 stronger connection than the one the State advanced at trial to convict Seka, which
24 focused on the similarity between the caliber of bullets found at the murder location
25 and those found at the business location where Seka was staying.

26 The fingerprint exclusion shows that Seka did not commit the purse theft. And,
27 if Seka is innocent of the theft, the ballistics report provides a compelling reason to

1 believe he is innocent of the Hamilton murder, given that the ballistics evidence
2 points to the same person committing both crimes.

3 Further, the fingerprint exclusion significantly undermines the State's case in
4 other critical ways. First, the State's main theory was that Seka was the murderer
5 because Seka was the only one who had access to, and control over, the business
6 location at 1933 Western. However, the fact that someone else's prints were on the
7 purse in the ceiling confirms that someone else had access to the location.

8 Moreover, the State's case against Seka on the Hamilton murder was entirely
9 circumstantial. Indeed, the jury deliberated here for five days. The State took steps
10 to exclude the purse from the jury's consideration, knowing that the purse pointed
11 the finger away from Seka. By removing the purse from the jury's consideration, it
12 made the State's circumstantial case seem stronger. The exonerating *Brady* evidence
13 undermines the foundation of the State's circumstantial case.

14 For similar reasons, the purse is material as to the murder and robbery of Peter
15 Limanni. If Seka did not murder Hamilton, then he also did not murder Limanni.
16 The State argued that the person who committed one committed the other. Just as
17 with Hamilton, the State's case as to Limanni was a weak, circumstantial case. The
18 purse thief's access to the business location also undermines the State's case on the
19 Limanni counts. Once a jury would see that Seka was innocent of the Hamilton
20 murder and robbery, any jury would harbor a reasonable doubt that Seka was the
21 one who killed Limanni.

22 *Miscarriage of justice gateway*

23 Seka can also overcome the procedural bars on Grounds One and Two because
24 he can establish the failure to consider the claims would result in a miscarriage of
25 justice. Seka can show that, looking at the evidence as a whole in light of new
26 evidence, it is more likely than not no reasonable juror would find him guilty beyond
27 a reasonable doubt. *See Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015).

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2 evidence, which establishes Seka's innocence. First, previously unavailable DNA
3 testing establishes that **there was a foreign DNA profile found on Hamilton's**
4 **fingernails from his left and right hands**. Seka was fully excluded from this
5 foreign profile. This new foreign profile shows that someone else—clearly the
6 perpetrator—contributed the DNA found under Hamilton's fingernails. Further,
7 Seka was excluded from the remaining relevant evidence collected at the site where
8 Hamilton's body was discovered. And Seka's fingerprints were excluded from those
9 found at 1929 Western, where Hamilton was murdered.

10 The DNA evidence and the *Brady* material discussed above each individually
11 establishes Seka's innocence of the Hamilton murder and robbery. Collectively, they
12 represent powerful evidence of innocence, particularly when the evidence against
13 Seka at trial was weak and entirely circumstantial.

14 Looking at the evidence as a whole, it is clear Seka did not murder and rob
15 Hamilton. And if Seka did not murder and rob Hamilton, then he also did not murder
16 and rob Limanni. The State argued that the person who committed one committed
17 the other. Just as with Hamilton, the State's case as to Limanni was a weak,
18 circumstantial case. Once a jury would see that Seka was innocent of the Hamilton
19 murder, any jury would harbor a reasonable doubt that Seka was the one who killed
20 and robbed Limanni.

21
22 20. Do you have any petition or appeal now pending in any court, either
23 state or federal, as to the judgment under attack? Yes X No _____

24 If yes, state what court and the case number: U.S. Court of Appeals for
25 the Ninth Circuit; Authorization Application (no docket number yet at
26 time of filing this state petition).

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Trial Attorneys: Peter Christiansen and Kirk Kennedy; Direct Appeal Attorney: Peter Christiansen

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack: Yes _____ No X

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

STATEMENT OF FACTS

This Statement of Facts is incorporated and adopted into both grounds for relief set forth in this petition.

A. John Seka begins working for Peter Limanni; Limanni develops financial issues with his investors

In 1998, John “Jack” Seka moved from Philadelphia to Las Vegas to work for his friend Peter Limanni. (2/22/2001 Trial Tr. vol. 2 at 31-32.) Limanni owned and operated a heating, ventilation, air conditioning and refrigeration business called Cinergi at 1933 Western Avenue (“1933 Western”). (02/13/2001 Trial Tr. vol. 2 at 37-38.) Limanni and Seka also lived in a back room at 1933 Western. (02/14/2001 Trial Tr. vol. 1 at 53-54.)

During Seka's employment, Limanni was transitioning Cinergi into a cigar shop. (02/16/2001 Trial Tr. vol. 2 at 93.) Limanni and Seka had purchased lumber to build a humidor. (11/19/2019 Motion for New Trial ("Motion"), Ex. 6 - 1933 Western Ave Crime Scene Photos; Motion Ex. 7 - 11/17/1998 Seka Voluntary Statement, p. 6.). The lumber was stacked inside and outside of 1933 Western. (*Id.*)

Takeo Kato and Kazutoshi Toe were two Japanese investors who financially backed Cinergi and lived at the business for a short time in the summer or fall 1998.

1 (02/16/2001 Trial Tr. vol. 2 at 81-82; 88-89; Motion, Ex. 9 - 03/07/2006 Toe interview;
2 Motion, Ex. 10 - 02/28/2006 Kato interview.) Kato and Toe not only provided Limanni
3 with a significant amount of money in capital, but also four white vans to help operate
4 the business.¹ (*Id.*) They also put the lease of 1933 Western in Kato's name. (*Id.*)
5 Limanni attempted to obtain more financial backing from Kato and Toe but was
6 unsuccessful. (02/16/2002 Trial Tr. vol. 2 at 93.) However, Limanni did receive capital
7 for the cigar shop from Amir Mohammed, a business investor who resided in Las
8 Vegas. (Motion, Ex. 11 - 12/10/1998 Detective Thowsen Report, p. 15-16; Motion, Ex.
9 12 - 05/16/2007 Decl. of Ed Heddy, p. 2-4.) A former business associate characterized
10 Mohammed as a dangerous person; the FBI was investigating Mohammed around
11 the time of the murders. (Motion, Ex. 19 - 03/13/2006 Thomas Investigation Mem., p.
12 2.).

13 All three of the investors—Kao, Toe, and Mohammed—had full access to 1933
14 Western and to the Cinergi vans and Toyota truck. (02/16/2001 Trial Tr. vol. 2 at 91-
15 92; Motion, Ex. 11 - 12/10/1998 Detective Thowsen Report, p. 15-16.) In addition,
16 Limanni's girlfriend, Jennifer Harrison, and numerous others who were invited to
17 the frequent parties Limanni hosted, had access to the business and the vehicles at
18 1933 Western. (02/16/2001 Trial Tr. vol. 2 at 91-92; Motion, Ex. 13 - 01/11/1999
19 Detective Thowsen Report; 02/20/2001 Trial Tr. vol. 2 at 16-17.) The keys for the
20 vehicles were located directly inside 1933 Western and were easily accessible.
21 (02/21/2001 Trial Tr. vol. 1 at 12; 02/21/2001 Trial Tr. vol. 2 at 45).

22 As early as September 1998, Limanni began removing large sums of money
23 from his bank accounts and was even overdrawn. (02/20/2001 Trial Tr. vol. 2 at 70-
24 71.) On September 22, 1998, Limanni signed a lease for an office space in Lake Tahoe
25

26
27 ¹ Toe said it was one million dollars while Kato said it was three hundred
thousand.

1 and eventually paid a deposit of three months of the lease. (02/14/2001 Trial Tr. vol.
2 1 at 86-87; Motion, Ex. 11 - 12/10/1998 Detective Thowsen Report, p. 19.) Limanni
3 left one of Cinergi's work vans in Lake Tahoe. (02/14/2001 Trial Tr. vol. 1 at 86-87.)

4 Kato and Toe visited Cinergi in late summer or fall 1998. (02/16/2001 Trial Tr.
5 vol. 2 at 91.) They believed that Limanni was diverting business funds for personal
6 use. (02/16/2001 Trial Tr. vol. 2 at 89-90.) As a result, Kato attempted to cancel the
7 lease on 1933 Western. (02/13/2001 Trial Tr. vol. 2 at 67.) In addition, Kato told
8 Limanni that he wanted his investment money returned. (02/16/2001 Trial Tr. vol. 2
9 at 90.) Kato and Toe confronted Limanni, seeking to recover the business vehicles
10 and to recoup some of their investment, but Limanni refused to give them the keys.
11 (Motion, Ex. 9 - 03/07/2006 Toe Interview, p. 12). On October 26, 1998, before Limanni
12 disappeared, Kato repossessed one of the vans that he provided for the business.
13 (02/13/2001 Trial Tr. vol. 2 at 34; Motion, Ex. 17 - 02/26/1999 Declaration of
14 Warrant/Summons, p. 11.) Kato was forced to start bankruptcy proceedings that
15 same month. (02/15/2001 Trial Tr. vol. 2 at 97.)

16 **B. Peter Limanni disappears**

17 On November 2, 1998, Limanni closed his bank accounts. (02/21/2001 Trial Tr.
18 vol. 2 at 70-71.)

19 The State presented inconsistent evidence about the exact date Limanni
20 disappeared. Harrison testified that Limanni disappeared on November 5, 1998.
21 (02/14/2001 Trial Tr. at 61-64.) However, the property manager for 1933 Western,
22 Michael Cerda, reported talking with Limanni around 10:30 a.m. outside 1933
23 Western on November 6, 1998. (02/13/2001 Trial Tr. vol. 2 at 39-40.) Limanni asked
24 Cerda if he could delay making the monthly lease payment because, although he had
25 between \$2,000 and \$3,000 in cash with him, he needed the money for a weekend
26 cigar show at Cashman Field. (02/13/2001 Trial Tr. vol. 2 at 41-42.) Cerda reminded
27 him that since it was after the fifth of the month he was already late on the payment,

1 so there would be a late fee assessed. (*Id.* at 41.) Limanni agreed and left; he was not
2 seen again. (02/22/2001 Trial Tr. vol. 1 at 25-27.)

3 Unsure of the whereabouts of his friend, Seka called several mutual friends on
4 the East Coast and informed them that he was worried because he could not find
5 Limanni. (02/22/2001 Trial Tr. vol. 2 at 46-47.) With the business closed, Limanni
6 missing, and expenses coming due, Seka pawned various items from the business to
7 raise money to keep it afloat but was unsuccessful. (02/23/2001 Trial Tr. vol. 2 at 21.)

8 **C. Eric Hamilton is found dead; he had previously worked**
9 **at 1933 Western**

10 Around 6 a.m. on November 16, 1998, a construction worker found Eric
11 Hamilton's body in a remote area with seven wood boards scattered on top of the
12 corpse. (02/14/2001 Trial Tr. vol. 2 at 13-14.) The police found a ring on his finger and
13 a note in his pants pocket with the name "Jack" and a telephone number connected
14 to 1933 Western. (*Id.* at 17-18.) Crime scene analysts also collected two empty Beck's
15 beer bottles, two cigarette butts, and a Skoal chewing tobacco container near the
16 body. (02/16/2001 Trial Tr. vol. 1 at 57; 02/20/2001 Trial Tr. vol. 1 at 54-55; 02/21/2001
17 Trial Tr. vol. 2 at 14-15.)

18 The State determined that Hamilton died from three gunshot wounds to his
19 leg, chest and abdomen. (02/14/2001 Trial Tr. vol. 1 at 24-25, 28.) The coroner also
20 noted a minor laceration just above the right wrist that he said was possibly
21 consistent with someone removing a bracelet. (*Id.* at 25.) The coroner estimated
22 Hamilton's time of death to be within twenty-four hours of when the body was found.
23 (02/14/2001 Trial Tr. vol. 1 at 30.)

24 Hamilton was a drifter. He had moved to Las Vegas from California shortly
25 before his death and had been working sporadically at Cinergi doing construction
26 projects. (02/16/2001 Trial Tr. vol. 2 at 57-58, 64, 66.) Seka later told officers he knew
27 Hamilton by the name "Seymour." (02/13/2001 Trial Tr. vol. 2 at 18-19, 32; Motion,

1 Ex. 11 - 12/10/98 Detective Thowsen Report, p. 9.) According to Seka, Hamilton would
2 come to Cinergi looking for work. (11/17/1998 Seka Voluntary Statement, p. 9-11.) He
3 last saw Hamilton about a month before his death, and at that time he told Hamilton
4 to call Cinergi in about a month to see if there was work available. (Motion, Ex. 17 -
5 02/26/1999 Declaration of Warrant/Summons, p. 5.)

6 Hamilton's sister, Michelle Hamilton, testified that Hamilton had
7 approximately \$3,000 dollars with him when he moved to Las Vegas. (02/16/2001
8 Trial Tr. vol. 2 at 62.) The State used this testimony to accuse Seka of murdering
9 Hamilton for money. However, Hamilton had been held in the county jail on a
10 trespassing charge from November 6, 1998 (the last day Limanni was seen alive),
11 until November 12, 1998; only three days later, Hamilton was likely killed, and a day
12 after that, his body was found. (02/21/2001 Trial Tr. vol. 2 at 53-56.) When booked
13 into jail, Hamilton had no money with him. (*Id.*)

14 **D. The police conclude Hamilton was murdered at a**
15 **business neighboring 1933 Western**

16 On November 17, 1998, the day after Hamilton's body was found, someone
17 called the police about an alleged break-in at an abandoned business at 1929 Western
18 Avenue ("1929 Western"), which is right next door to 1933 Western. (02/14/2001 Trial
19 Tr. vol. 1 at 38-39.) Upon arrival, the police noticed broken glass and apparent blood
20 in 1929 Western. (02/20/2001 Trial Tr. vol. 1 at 57-58.) Immediately in front of 1929
21 Western, the police found a piece of molding from the broken window with what
22 appeared to be a bullet hole. (02/14/2001 Trial Tr. vol. 2 at 42.) Finally, a lead
23 projectile (assumed to be from a bullet) was found on the sidewalk outside of 1929
24 Western next to droplets of blood. (*Id.*; 02/16/2001 Trial Tr. vol. 1 at 18.)

25 All indications were that Hamilton was murdered in 1929 Western.
26 (02/14/2001 Trial Tr. vol. 2 at 19, 42-43, 46.) In addition to the broken window, the
27 police found copious amounts of blood on the entryway carpet and on the broken glass;

1 the blood was later matched to Hamilton. (02/14/2001 Trial Tr. vol. 2, 42-43;
2 02/20/2001 Trial Tr. vol. 1 at 58.) There were two sets of bloody drag marks across
3 the carpet, one of which led to the broken window. (02/14/2001 Trial Tr. vol. 2 at 42-
4 43; *see also* Motion, Ex. 27 - 12/01/1998 Detective Buczek Report, p. 6.) Seka was
5 excluded from the blood found at 1929 Western. (02/16/2001 Trial Tr. vol. 1 at 46-58.)

6 A black baseball cap that Hamilton always wore, his gold bracelet and a rolled-
7 up jacket with blood and bullet holes were also found in 1929 Western. (*Id.*;
8 02/20/2001 Trial Tr. vol. 1 at 58; 02/13/2001 Trial Tr. vol. 2 at 17, 32; *see also* Motion,
9 Ex. 27 - 12/01/1998 Detective Buczek Report, p. 6.) The bullet holes in the jacket were
10 later found to be consistent with Hamilton's wounds. (02/14/2001 Trial Tr. vol. 2 at
11 19-20; Motion, Ex. 27 - 12/01/1998 Detective Buczek Report, p. 6.) The police also
12 found three bullets and three bullet fragments in 1929 Western. (02/14/2001 Trial Tr.
13 vol. 2 at 19.)

14 Latent fingerprints were lifted from the "exterior north vertical metal frame
15 edge" of the point-of-entry window, the glass pane on the interior of the front door,
16 and from a glass fragment inside the point-of-entry on the office floor. (Motion, Ex.
17 28 - 11/17/1998 Crime Scene Report of 1929 Western.) These prints were submitted
18 for comparison with Seka's, Limanni's, and Hamilton's prints. (Motion, Ex. 50 -
19 02/17/1999 Fingerprint Report at 2.) The result of the comparison for each of these
20 latent prints was "NI." (*Id.* at 3.) This stands for "Not Identified."² (*See, e.g., id.* at 4-
21 6.) These prints fell under the examiner's conclusion, "Latents remain unidentified."
22 (*Id.* at 2.)

23
24 ² *See* "Fingerprint Examination – Terminology, Definitions, and Acronyms,"
25 *Forensic Science Regulator*, at 37, available at [https://assets.publishing.
26 service.gov.uk/government/uploads/system/uploads/attachment_data/file/267523/Fi
ngerprintTerminology.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/267523/FingerprintTerminology.pdf) (last visited Oct. 24, 2022); "NI," *Abbreviations.com*
27 (2022), available at <https://www.abbreviations.com/term/266285> (last visited Oct. 24,
2022).

1 Overall, no evidence found in 1929 Western was directly connected to Seka.

2 While the police were investigating 1929 Western, Seka arrived in Cinergi's
3 Toyota pickup truck. (02/20/2001 Trial Tr. vol. 1 at 61.) The police approached Seka
4 and informed him of the disturbance in 1929 Western. (*Id.*) Seka consented to a
5 search of 1933 Western. (02/20/2001 Trial Tr. vol. 1 at 63-64; Motion, Ex. 30 -
6 11/17/1998 Consent to Search Card.) Seka and Cerda—the property manager, who
7 had been alerted to the disturbance—accompanied the police into 1933 Western.
8 (Motion, Ex. 31 - 11/17/1998 Cerda Voluntary Statement, p. 8-10.) After noticing a
9 bullet and some knives in 1933 Western, the police handcuffed Seka as they
10 continued to search 1933 Western. (02/20/2001 Trial Tr. vol. 1 at 64-65.) Cerda stayed
11 with Seka while the officers searched the business. (Motion, Ex. 31 - 11/17/199 Cerda
12 Voluntary Statement, p. 8-10.) Cerda informed officers that he was the only person
13 with a key to 1929 Western and that the business had been vacant for approximately
14 a month and a half. (*Id.*, p. 7.)

15 Seka was taken to the detective bureau and provided a voluntary taped
16 statement. (02/21/2001 Trial Tr. vol. 2 at 36.) During the interview, Seka denied
17 hurting Hamilton. (Motion, Ex. 7 - 11/17/1998 Seka Voluntary Statement, p. 21.)

18 The police took Seka back to 1933 Western after informing him that he was
19 not under arrest. (02/21/2001 Trial Tr. vol. 2 at 43.) Upon arriving at 1933 Western,
20 the police informed Seka that he could not enter 1933 Western because it was still
21 being processed. (02/21/2001 Trial Tr. vol. 2 at 44.) They also told him that they were
22 impounding the Toyota truck he arrived in. (02/21/2001 Trial Tr. vol. 2 at 44.) Seka
23 said he had a dinner appointment and needed a vehicle. (*Id.*) The police went into
24 1933 Western and grabbed the keys to the two remaining vans. (*Id.* at 45.) Before
25 Seka was allowed to leave, the police asked him if they could search the vans; Seka
26 agreed. (*Id.*) After discovering what appeared to be blood in one of the vans, the police
27 impounded the vehicle. (*Id.* at 46-47.) The police searched the other van and did not

1 find anything of apparent evidentiary value. They gave Seka the keys to that van and
2 told him he was free to leave. (*Id.* at 47.)

3 In addition to the blood found in the van, the police found drops of blood in the
4 bed of the Toyota pickup truck Seka had driven to 1933 Western. (*Id.* at 46-47;
5 02/14/2001 Trial Tr. vol. 1 at 5; 02/16/2001 Trial Tr. vol. 1 at 51; 02/16/2001 Trial Tr.
6 vol. 2 at 28-30.) The blood in the pickup truck bed matched Hamilton. (02/16/2001
7 Trial Tr. vol. 1 at 55.) The blood on the floor of the van and on some magnetic cards
8 found in the door of the van matched Limanni.³ (02/16/2001 Trial Tr. vol. 1 at 45, 48.)

9 **E. Seka leaves Las Vegas**

10 The police did not indicate to Seka that he was expected to return to 1933
11 Western after his dinner appointment on November 16, so he went to a friend's home
12 where he had been staying after Limanni disappeared and the business ceased to
13 operate. (02/21/2001 Trial Tr. vol. 2 at 47; 02/22/2001 Trial Tr. vol. 1 at 15-17; *see*
14 Motion, Ex. 29 - 12/10/1998 Officer Kroll Report, p. 2.) Seka had no money and no
15 employment after Limanni disappeared with the business assets, so he returned to
16 his home on the East Coast in December 1998. (02/22/2001 Trial Tr. vol. 2 at 37-38;
17 Motion, Ex. 39 - 12/07/1998 Harrison Voluntary Statement, p. 39-40; Motion, Ex. 7 -
18 11/17/1998 Seka Voluntary Statement, p. 5.) Seka provided the police with several
19 addresses and phone numbers where he could be reached on the East Coast. (Motion,
20 Ex. 7 - 11/17/1998 Seka Voluntary Statement, p. 4; 02/22/2001 Trial Tr., vol. 1, at 20;
21 02/22/2001 Trial Tr., vol. 2, at 21.) The police never attempted to contact Seka at any
22 of these numbers or addresses. (02/22/2001 Trial Tr., vol. 2, at 20.)

23
24
25
26 ³ Mohammed disappeared shortly after Hamilton's body was discovered and
27 the police began investigating the crime scene at 1929 Western Avenue. (Motion, Ex.
11 - 12/10/1998 Detective Thowsen Report, p. 3, 15-16.)

1 **F. Peter Limanni is found dead**

2 On December 23, 1998, Limanni's body was found off a service road in the
3 California desert near the Nevada border. (02/14/2001 Trial Tr. vol. 2 at 4-5.) He was
4 found near some tire tracks lying face down and buried from the legs down.
5 (02/16/2001 Trial Tr. vol. 2 at 108, 111.) The body was badly decomposed and
6 mummified consistent with a body that had been outdoors partially buried for several
7 weeks. (*Id.* at 111, 113-114.) The coroner found eight gunshot wounds in the head and
8 neck area, one on the top of the left shoulder, and one in the back, fatally injuring his
9 heart. (*Id.* at 51, 53.)

10 Limanni's girlfriend Harrison testified at trial that Limanni had been
11 mistreating Seka.⁴ (02/14/2001 Trial. Tr. Vol. I at 55-59.) The State argued that this
12 mistreatment provided Seka with a motive for Limanni's murder. However, evidence
13 discovered in the post-conviction investigation contradicted her testimony. Justin
14 Nguyen, who worked with Limanni and Seka at Cinergi for several months, stated
15 that Limanni treated Seka "like his own brother," they got along very well, and
16 Nguyen never observed Limanni call Seka names or mistreat him. (Motion, Ex. 8 -
17 07/29/2008 Decl. of Ed Heddy July 29, 2008, p. 1-2.) Kato and Toe also described Seka
18 and Limanni as "having a good friendship," "buddies" and like brothers. (02/16/2001
19 Trial Tr. vol. 2 at 81-82; 88-89; Motion, Ex. 9 - 03/07/2006 Toe Interview; Motion, Ex.
20 10 - 02/28/2006 Kato Interview.)

21
22
23
24 ⁴ Harrison also testified about a lengthy call she made to Seka on his cell phone
25 on the morning of November 5, 1998, in which he stated he was depressed.
26 (02/14/2001 Trial Tr. vol. 1 at 61-64.) The State used this evidence to establish Seka's
27 state of mind at that time. However, Seka's phone records show this call never
happened. (Ex. 4, Seka cell phone records.) Moreover, Cerda saw Limanni alive on
the morning of November 6, 1998, making his state of mind on November 5 mostly
irrelevant.

1 **G. The police search 1933 Western and find a stolen purse**
2 **in the ceiling**

3 Police thoroughly searched 1933 Western. (02/14/2001 Trial Tr. vol. 1 at 53-54;
4 Motion, Ex. 27 - 12/01/1998 Detective Buczek Report, p. 6-8.) They found Limanni's
5 wallet in the ceiling above his desk. (02/14/2001 Trial Tr. vol. 2 at 22-23.) The police
6 also found a purse in the ceiling in another room that was later identified as belonging
7 to Lydia Gorzoch, who, as discussed in more detail below, reported it missing on
8 November 6, 1998. (Motion, Ex. 11 - 12/10/1998 Detective Thowsen Report, p. 13.)

9 The police also found several beer bottles in the dumpster behind Cinergi and
10 two Miller beer bottles in a trash can in the business. (02/20/2001 Trial Tr. vol. 2 at
11 65.) Fingerprints identified on the beer bottles from the trash can matched Hamilton
12 and Seka. (*Id.*; 02/21/2001 Trial Tr. vol. 1 at 84-85.) The presence of both sets of
13 fingerprints was due to the fact that Hamilton helped on construction projects at 1933
14 Western three or four times. (Motion, Ex. 7 - 11/17/1999 Seka Voluntary Statement,
15 p. 9-11; 02/16/2001 Trial Tr. vol. 2 at 61, 64-65, 66-67.)

16 The police found several stains in the 1933 Western office and living space that
17 tested positive for presumptive blood. (Motion, Ex. 13 - 01/11/1999 Detective Thowsen
18 Report, p. 8; 02/16/2001 Trial Tr. vol. 2 at 6.) Seka's blood was identified on the front
19 right pocket area of a pair of his jeans, and a drop of his blood was identified on a wall
20 being remodeled and on the sink counter. (02/16/2001 Trial Tr. vol. 1 at 48, 49, 56,
21 57; Motion, Ex. 28 - 11/17/1998 Crime Scene Report of 1933 Western, p. 2.) Neither
22 Hamilton's nor Limanni's blood was found in 1933 Western. (02/16/2001 Trial Tr. vol.
23 1 at 46-58.)

24 The wood boards scattered on top of Hamilton's body seemed to have markings
25 similar to wood boards found at 1933 Western. (*See* 02/23/2001 Trial Tr. vol. 1 at 40.)

26 Ammunition cartridges and empty shell casings of different calibers, including
27 those consistent with the ones used in the murders, were found in 1933 Western.

1 (02/14/2001 Trial Tr. vol. 2 at 22; Motion, Ex. 28 - 11/17/1998 Crime Scene Report of
2 1933 Western, p. 3; 02/20/2001 Trial Tr. vol. 2 at 40; 02/21/2001 Trial Tr. vol. 1 at 55-
3 56.) A bullet fragment was found buried in the wall that had been shot through the
4 couch. There was no blood on this bullet fragment. (02/21/2001 Trial Tr. vol. 1 at 37.)

5 Finally, officers searched the dumpster behind 1933 Western; however, the
6 description of what was found varies depending on the report. (02/20/2001 Trial Tr.
7 vol. 2 at 40-41; *see also* Motion, Ex. 11 - 12/10/1998 Detective Thowsen Report, p. 8-
8 9; *see also* Motion, Ex. 40 - 12/05/1998 Officer Nogues Report, p. 2.) Detective Thowsen
9 reported that, when the officers looked in the dumpster at first, it was empty, but
10 when they searched later it contained several items of clothing and checks
11 purportedly belonging to Limanni. (02/20/2001 Trial Tr. vol. 1 at 84, 88; *see also*
12 Motion, Ex. 11 - 12/10/1998 Detective Thowsen Report, p. 8-9.) Officer Nogues
13 reported there were miscellaneous papers and trash at the bottom of the dumpster
14 when he arrived on the scene. (Motion, Ex. 40 - 12/05/1998 Officer Nogues Report, p.
15 2.) Later Officer Nogues noted several pieces of clothing, including a tennis shoe,
16 along with six inches of paper and other “debris” in the dumpster, none of which was
17 there before. (*Id.* at p. 3.)

18 The State suggested at trial that Seka must have disposed of evidence while
19 the police were searching 1929 Western and 1933 Western. However, Seka was either
20 with Cerda or at the police station during the searches. (Motion, Ex. 31 - 11/17/1998
21 Cerda Voluntary Statement, p. 10.) Furthermore, the police were at the scene
22 “constantly, continually” throughout the day investigating. (02/14/2001 Trial Tr. vol.
23 2 at 35; 02/21/2001 Trial Tr. vol. 2 at 33.) By the police officers’ own descriptions of
24 the scene, it would have been nearly impossible for anyone to have put evidence in
25 the dumpster undetected during the searches. The better explanation is that the
26 police did not conduct a thorough search of the dumpster when they first arrived.

1 **H. The police perform fingerprint and ballistics testing**
2 **before trial**

3 Fingerprint analysis was conducted on several items of evidence. (Motion, Ex.
4 50 - 02/17/1999 Fingerprint Report.) Latent fingerprints were identified on six of the
5 seven wood boards presumably used to cover Hamilton's body, and on the Beck's beer
6 bottle recovered from where Hamilton's body was found in the desert. (*Id.*)

7 Seka's fingerprints were identified on the Miller beer bottles collected from
8 inside 1933 Western and the dumpster just outside his home and business in 1933
9 Western. (*Id.*) Seka's palm print was on one board, his fingerprint was found on a
10 second board, and Limanni's fingerprints were identified on one board; however,
11 **additional unknown fingerprints, not belonging to Seka, Limanni, or**
12 **Hamilton, were also identified on three boards.** (*Id.*) The fingerprints on the
13 Beck's beer bottle did not belong to Seka, Limanni, or Hamilton. (*Id.*)

14 The police conducted ballistics analysis on the various types of ammunition
15 found in 1929 Western and 1933 Western.⁵ This analysis established that at least
16 three of the bullets found inside 1929 Western, the presumed location of Hamilton's
17 murder, were .357 caliber. (02/21/2001 Trial Tr. vol. 1 at 54; Motion, Ex. 37 -
18 12/17/1998 Ballistics Report.) The police found four spent .357 cartridge cases in 1933
19 Western. (02/20/2001 Trial Tr. vol. 2 at 9, 37, 39-40; 02/21/2001 Trial Tr. vol. 1 at 56-
20 57.) All the spent .357 cartridge cases in 1933 Western had the same characteristic
21 markings, suggesting they were shot from the same firearm. (02/21/2001 Trial Tr.
22 vol. 1 at 56-57.)

23 The bullets found in Limanni's body were all .32 caliber. (02/21/2001 Trial Tr.
24 vol. 1 at 63-64; Motion, Ex. 36 - 04/27/1999 Ballistics Report.) The police found two

26 ⁵ A cartridge is a full round of ammunition. Its main components (at least for
27 purposes of a ballistics examination) are a cartridge case and a bullet. Here,
 references to a "bullet" are to the projectile that was shot out of the firearm.

1 full .32 caliber cartridges in 1933 Western and a single .32 bullet fragment buried in
2 the wall of 1933 Western that had been shot through the couch. (02/21/2001 Trial Tr.
3 vol. 1 at 37; Motion, Ex. 37 - 12/17/98 Ballistics Report.) The bullet fragment had no
4 blood on it. (02/21/2001 Trial Tr. vol. 1 at 37.) The bullet fragment purportedly was
5 fired from a gun with a misaligned cylinder, similar to a bullet found in Limanni's
6 body. (02/21/2001 Trial Tr. vol. 1 at 63-65.)

7 The State argued at trial that the caliber of bullets and cartridge cases found
8 in 1933 Western connected Seka to the two murders. (02/23/2001 Trial Trans. vol. 1
9 at 55, 64; 02/23/2001 Trial Tr. vol. 2 at 61.) They argued, "Is it a coincidence that Pete
10 Limanni is killed with a .32, that Eric Hamilton is killed with a .357 and that both of
11 these kinds of ammunition, some of them with very peculiar markings [the .32 caliber
12 bullets], are found inside of 1933 Western?" (02/23/2001 vol. 2 at 61.) The State
13 continued to advance as evidence of guilt this bullet-caliber connection in the recent
14 appeal from the order granting Seka a new trial. (09/03/2020 OB at 24-25.)

15 The State also performed DNA analysis, which is discussed below.

16 **I. Thomas Cramer claims Seka made an incriminating**
17 **comment about Limanni**

18 When Seka returned to Philadelphia, he reconnected with his old friend
19 Thomas Cramer. Cramer initially learned of Limanni's murder in December 1998
20 from Lee Polsky, a mutual friend of Seka and Limanni. (02/22/2001 Trial Tr. vol. 2 at
21 48-50; Motion, Ex. 43 - 04/09/1999 Cramer Interview, p. 2.) Cramer was severely
22 addicted to drugs and frequently became physically and emotionally abusive.
23 (02/22/2001 Trial Tr. vol. 2 at 18.) During these abusive episodes, his girlfriend,
24 Margaret Daly, would contact Seka for assistance in calming Cramer. (02/22/2001
25 Trial Tr. vol. 2 at 19-20; 24.)

26 On January 23, 1999, Daly frantically contacted Seka from the residence she
27 shared with Cramer to request assistance controlling Cramer. (02/22/2001 Trial Tr.

1 vol. 2 at 19-20, 24.) Seka came over and Cramer became incensed. At one point, he
2 pushed Seka down the stairs. (02/22/2001 Trial Tr. vol. 2 at 24-25.) The police arrived
3 and involuntarily committed Cramer to a mental institution for ten days. (*See* Motion,
4 Ex. 44 - 04/15/2017 McConnell Declaration; Petition Exhibit 2; 02/22/2001 Trial Tr.
5 vol. 2 at 16-17, 24-26; 06/28/1999 Prelim. Hearing Tr. at 67.)

6 After being released from the mental institution, Cramer claimed that he
7 pushed Seka down the stairs because Seka said, "Do you want me to do to you what
8 I did to Pete Limanni?" (02/20/2001 Trial Tr. vol. 1 at 13-14.) However, in 2017, Daly
9 (who changed her last name to McConnell) signed a declaration stating that she was
10 present during the altercation and Seka never said that to Cramer. (Motion, Ex. 44 -
11 04/15/2017 McConnell Declaration, p. 4.) She believed that Cramer fabricated the
12 confession because he was angry with Seka for getting him committed and for
13 allegedly attempting to steal her affection. (*Id.* at 3.) Of note, when Cramer spoke to
14 the police about Seka's statement, he indicated that Seka told him he knew nothing
15 about the Hamilton murder. (Motion, Ex. 43 - 04/09/1999 Cramer Interview, p. 3.)

16 **J. The State prosecutes Seka for the Hamilton and**
17 **Limanni murders**

18 After law enforcement became aware of Cramer's statement, an arrest warrant
19 was issued for Seka for the Hamilton and Limanni murders on February 26, 1999.
20 (02/22/2001 Trial Tr. vol. 1 at 20.) In March 1999, Seka was arrested at his home in
21 Pennsylvania. The State filed an Intent to Seek Death on July 26, 1999. (07/29/1999
22 Notice.)

23 The jury trial occurred in February 2001. After extended deliberations lasting
24 nearly five full days, the jury convicted Seka of first-degree murder with a deadly
25 weapon with respect to Hamilton, second-degree murder with a deadly weapon with
26 respect to Limanni, and two counts of robbery. (03/01/2001 Verdict.) After the jury
27 deadlocked at the penalty phase hearing, Seka waived sentencing by a jury in favor

1 of being sentenced by a three-judge panel. On April 26, 2001, Seka was sentenced to
2 life without parole on the first-degree murder conviction, with an equal and
3 consecutive sentence of life without parole on the weapon enhancement; 10 years to
4 life on the second-degree murder conviction, with an equal and consecutive sentence
5 of 10 years to life on the weapon enhancement; and a sentence of 35 months to 156
6 months on each robbery count, all to be served consecutively. (05/09/2001 Judgment
7 of conviction.) The judgment of conviction was entered May 9, 2001. (*Id.*)

8 The Nevada Supreme Court affirmed the judgment of conviction on April 8,
9 2003. (04/08/2003 Order of Affirmance.) On February 13, 2004, Seka filed a state post-
10 conviction petition, which was denied on January 31, 2005. (01/31/2005 FOFCOL.)
11 The Nevada Supreme Court affirmed the denial of the petition on June 8, 2005.
12 On July 22, 2005, Seka filed a pro se federal habeas petition pursuant to 28 U.S.C. §
13 2254 in federal court. (07/22/2005 Petition.) The Federal Public Defender was
14 appointed to represent him. An amended petition was filed on May 18, 2007. On
15 August 26, 2008, the district court denied the petition and denied a certificate of
16 appealability. (8/26/08 Order.) The Ninth Circuit granted a certificate of appealability
17 but subsequently affirmed the denial of the petition. (*Seka v. McDaniel*, No. 08-17120,
18 Memorandum and Order, dated 03/14/2011.) The U.S. Supreme Court denied Seka's
19 petition for a writ of certiorari on March 5, 2012.

20 **K. In 2017, RMIC discovers a previously undisclosed**
21 **favorable fingerprint report for a stolen purse at 1933**
22 **Western**

23 After the initial post-conviction proceedings, new attorneys uncovered an
24 exculpatory, previously suppressed fingerprint report.

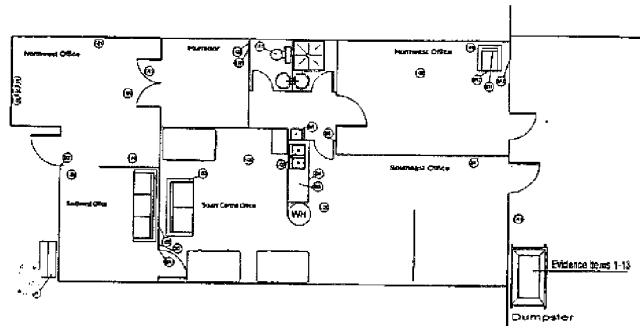
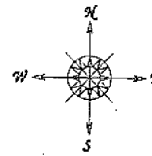
25 **1. At trial, the State tells the defense the stolen purse**
26 **is “not important”**

27 As noted above, the police found a purse hidden above the ceiling tiles inside
1933 Western. There was \$36.06 still inside the purse.

1 The declaration in support of Seka's arrest warrant mentioned the purse. It
2 stated, "a purse was discovered in the false ceiling having ID in the name Lydia
3 Gorz[o]ch. Investigation revealed that the purse had been taken out of her vehicle as
4 it was parked near the Crazy Horse II on Industrial after someone fired a bullet
5 through the window to gain entry on 11/6/98." (Motion, Ex. 17 - 02/26/1999
6 Declaration of Warrant/Summons at 8.) A damaged lead bullet was found in the car.
7 (Motion, Ex. 36 - 04/27/1999 Ballistics Report.) The declaration accused Seka of
8 committing a series of crimes "which included the theft of the purse." (*Id.* at 15.) Seka
9 was never charged with stealing the purse. The purse and the cash were returned to
10 Gorzoch on November 28, 1998. (Motion, Ex. 38 - 11/23/1998 Property Receipt Form.)

11 The crime scene report for 1933 Western, turned over during discovery,
12 included a diagram of what was found inside 1933 Western. (Motion, Ex. 32 -
13 11/17/1998 Crime Scene Report for 1933 Western.) As shown below, the purse was
14 listed as item 15 found at 1933 Western. (Ex. 3, 1933 Western Crime Scene Diagram.)
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Homicide Investigation
 Event: 991116-0443
 Date: 11-17-98
 Time: 1402
 Victim: John "Lumber" Doe
 Location: 1933 S. Western Avenue
 CSAs: A. Cabrales #2045
 D. Ruffino #1502
 R. McPhail #3326



Evidence Items

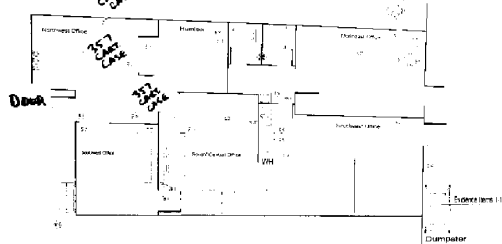
- | | |
|--|-----------------------------------|
| E/1 Photos and personal papers in the name of Peter Limanni | E/21 357 Magnum cartridge case |
| E/2 3 1/2 inch computer disk | E/22 Bullet |
| E/3 MCI phone card | E/23 Broken glass |
| E/4 New Jersey boat operators license | E/25 Wall calendar |
| E/5 Two canceled "Cinergi" checks | E/26 Multiple photos |
| E/6 Blue check book with "Limanni Mechanical Services" checks inside | E/27 Business card holder |
| E/7 Black appointment book | E/28 Left "K-Swiss" athletic shoe |
| E/8 Keys | E/29 Plastic cartridge holder |
| E/9 Metal container with seeds and green leafy flakes inside | E/30 Piece of press board |
| E/10 Right "K-Swiss" athletic shoe | E/31 Piece of cedar wood |
| E/11 Blue "Limanni Mechanical Services" shirt | E/32 Piece of pine wood (1X4X2) |
| E/12 Brass bolt buckle | E/33 Pair of "Levis" blue jeans |
| E/13 Green colored shirt | E/34 Piece of pine wood (3X1X8) |
| E/14 Ballys, Sands, and Palace Station slot cards | E/35 Piece of pine wood (1X6X8) |
| E/15 Brown Purse (with money inside E/16) | B/1 - B/10 Apparent blood |
| E/17 32 caliber cartridge | B/11 Reddish brown stain |
| E/18 32 caliber cartridge | B/12 Apparent blood |
| E/19 357 Magnum cartridge case | |
| E/20 357 Magnum cartridge case | |



There is no indication in the crime scene report or the latent fingerprint report related to the murder investigation that the purse had been fingerprinted or that any latent prints in the murder case were compared to any latent prints connected to the purse. (Motion, Ex. 32 - 11/17/1998 McPhail Crime Scene Report; Motion, Ex. 50 - 02/17/1999 Latent Fingerprint Report.)

At trial, the prosecution presented the same crime scene diagram to the jury. However, as shown below, the prosecution **crossed out the purse and the money**. (State's Trial Ex. 38, crime scene diagram.)

Homicide Investigation
Event: 881116-0443
Date: 11-17-98
Time: 1402
Victim: John "Lumber" Doe
Location: 1933 S. Western Avenue
CSAs: A. Calabrese #2045
D. Ruffino #1502
R. McPhail #3326



Evidence Items

E/1 Photos and personal papers in the name of Peter Limanni
E/2 3 1/2 inch computer disk
E/3 MCI phone card
E/4 New Jersey not operators license
E/5 Two canceled "Cinergi" checks
E/6 Blue check book with "Limanni Mechanical Services" checks inside
E/7 Black appointment book
E/8 Keys
E/10 Right "K-Swiss" athletic shoe
E/11 Blue "Limanni Mechanical Services" shirt
E/12 Brass belt buckle
E/13 Green colored shirt
E/14 Sallys, Sands, and Palace Station slot cards
E/17 32 caliber cartridge
E/18 32 caliber cartridge
E/19 357 Magnum cartridge case
E/20 357 Magnum cartridge case

E/21 357 Magnum cartridge case
E/22 Bullet
E/23 Broken glass
E/24 Vinyl calendar
E/25 Multiple photos
E/26 Business card holder
E/27 Plastic cartridge holder
E/28 Left "K-Swiss" athletic shoe
E/29 Piece of pine board
E/30 Piece of cedar wood
E/31 Piece of pine wood (14x20)
E/32 Pair of "Levi's" blue jeans
E/33 Piece of pine wood (14x20)
E/34 Piece of pine wood (14x20)
E/35 Piece of pine wood (14x20)
B/1 - B/10 Apparent items
B/11 Redacted items
B/12 Apparent items

In his trial testimony, Detective James Buczek discussed the items recovered at 1933 Western. After the detective mentioned that they had found Limanni's wallet in the ceiling, the prosecutor asked him, "And what else of significance did you observe in 1933 Western Avenue?" The detective answered, "There was also a purse, okay." The prosecutor responded, "**Not important.**" (02/04/2001 Trial Tr. vol. 2 at 23 (emphasis added).) The prosecutor then immediately moved on to other matters.

2. In November 2017, RMIC obtains a previously undisclosed fingerprint report

On January 3, 2010, while his first federal petition was pending in the Ninth Circuit, Seka sent a letter to the Rocky Mountain Innocence Center ("RMIC") asking if they would help him. (Ex. 15, Springer Dec., ¶ 3.) In September 2012, RMIC began investigating Seka's case. (Ex. 15, Springer Dec., ¶ 4.) RMIC is a small non-profit organization with limited staff and resources that relies upon a succession of law students to perform a great deal of the work on innocence cases. (Ex. 15, Springer

1 Dec., ¶¶ 2, 5.) For their work on Seka's case, RMIC compiled documents, conducted a
2 comprehensive investigation, and did work in the field, which included a trip to the
3 East Coast to interview witnesses. (Ex. 15, Springer Dec., ¶ 6, 7.) RMIC continuously
4 expended resources on the case from the moment it began its investigation until
5 RMIC's representation ended. (See Ex. 15 Springer Dec. ¶¶ 6-14; Ex. 12 London Dec.,
6 ¶ 1.)

7 Kurt London worked as a legal intern and then an attorney at RMIC from 2014
8 until 2018. (Ex. 12, London Dec., ¶ 1.) He worked on Seka's case the entire time he
9 was with RMIC. (*Id.*) Among other things, he participated in the investigation and
10 submitted public records requests. (Ex. 12, London Dec., ¶¶ 3-13.)

11 RMIC began its investigation pursuing non-DNA avenues. (Ex. 15, Springer
12 Dec., ¶ 7.) However, as advancements in "touch DNA" progressed, RMIC started to
13 consider post-conviction DNA testing of physical evidence left at the crime scenes.
14 (Ex. 15, Springer Dec., ¶ 8.) RMIC reviewed evidence at the courthouse in 2014 and
15 decided they needed further documents from Las Vegas Metropolitan Police
16 Department ("LVMPD") to determine whether to seek DNA testing. (*Id.*) However,
17 RMIC had a difficult time obtaining documents from LVMPD. RMIC's experience was
18 that LVMPD demanded a subpoena before turning over documents. (Ex. 15, Springer
19 Dec., ¶ 9.)

20 On February 17, 2016, RMIC sent a Nevada Public Records Act request to
21 LVMPD for all documents related to the homicide investigations under event number
22 98 1116-0043. (Ex. 12, London Dec., ¶ 2.) The purpose was to further research the
23 potential for exculpatory DNA testing.

24 On May 5, 2016, RMIC received some police reports related to the homicide
25 investigation. (Ex. 12, London Dec., ¶ 3.) However, they believed that many
26 documents related to the investigation had not been provided. RMIC submitted an
27

1 updated request listing numerous documents that they believed had not been turned
2 over. (*Id.*)

3 On June 6, 2016, London spoke to Gorzoch as part of RMIC's ongoing
4 investigation. (Ex. 12, London Dec. ¶ 4.) Gorzoch indicated that she was notified when
5 the purse was found at the scene of a murder. (*Id.*) The police returned the purse to
6 her with cash still inside of it. (*Id.*) She believed fingerprint testing had been done on
7 the purse. (*Id.*)

8 On June 19, 2017, RMIC filed a petition in the Eighth Judicial District Court
9 in Clark County seeking DNA testing of items in Seka's case. (06/19/2017 DNA
10 Petition.) This petition is discussed in more detail below.

11 At some point during his review of the documents related to the homicide
12 investigation, London noticed a different case number, 98 1106-0539, than the one
13 related to the homicides. (Ex. 12, London Dec., ¶ 6.) This case number was for the
14 stolen purse. (*Id.*)

15 On August 21, 2017, RMIC submitted a public records request to LVMPD for
16 all documents and photos related to the stolen purse case, 98 1106-0539. (Ex. 12,
17 London Dec., ¶ 7; Ex. 9, 08/21/2017 PRA request.) The request was broad and sought,
18 among other things, any fingerprint or lab reports. (*Id.*) On September 11 and 13,
19 2017, London made calls to LVMPD following up on the request. He was told LVMPD
20 would be responding soon. (Ex. 12, London Dec., ¶ 8.)

21 On September 15, 2017, LVMPD officially responded that they were only
22 authorized to provide the "Incident Report," which they later did provide. (Ex. 12,
23 London Dec., ¶ 9.) They indicated that they had requested detective approval to
24 release any laboratory reports. (*Id.*)

25 On September 19, 2017, the state district court granted the petition seeking
26 DNA testing and authorized the parties to conduct DNA testing. (09/19/2017 Order.)
27

1 The court's order required LVMPD to preserve and inventory any relevant evidence.
2 (*Id.* at 2.)

3 That same day, London received a call from Tasha in the LVMPD Photo Lab
4 about the public records request related to the purse case. (Ex. 12, London Dec., ¶
5 11.) She stated she needed a subpoena to look for the photos. (*Id.*)

6 On October 23, 2017, London followed up on the documents that required
7 detective approval. (Ex. 12, London Dec., ¶ 13.) He was told the request was on the
8 "subpoena desk" because LVMPD had received a subpoena from RMIC. (*Id.*) London
9 believes LVMPD misunderstood the order granting DNA testing and requiring
10 preservation of evidence; LMVPD may have believed the order was in fact a
11 subpoena. (*Id.*)

12 On November 7, 2017, RMIC received a latent fingerprint report related to the
13 purse case. (Ex. 12, London Dec., ¶ 15.) This report indicated that Seka's prints did
14 not match the latent prints found on the purse. (Motion, Ex. 35 - 03/09/1999
15 Fingerprint Report in 98 1106-0539.) The fingerprint examination had been ordered
16 by the same detective, Thowsen, who was investigating the murders. (*Compare id.*,
17 *with* Motion, Ex. 11 - 12/10/1998 Thowsen Report.)

18 This fingerprint report was never turned over to the defense. In his work on
19 the case, London had reviewed the files from Seka's prior attorneys. (Ex. 12, London
20 Dec., ¶ 15.) Those files included the discovery materials turned over by the State. (*Id.*)
21 This document was not in any of these files. (*Id.*) London had never seen this
22 document before. (*Id.*)

23 A ballistics report dated April 28, 1999, which listed the case numbers for both
24 the murders and the stolen purse, indicated that a criminalist had examined the
25 damaged lead bullet found in Gorzoch's car. He found that it was a "nominal 38/357
26 caliber bullet." Furthermore, the class characteristics "found on" this bullet were
27

1 consistent with the class characteristics “found on” two of the bullets found at 1929
2 Western. (Motion, Ex. 36 - 04/27/1999 Ballistics Report.)

3 **L. In the state court proceedings, the parties conduct new**
4 **DNA testing and receive exonerating results**

5 As mentioned above, on June 19, 2017, Seka, through RMIC, filed a petition in
6 state court seeking DNA testing of physical evidence found in Seka’s case. (06/19/2017
7 DNA Petition.) He argued the DNA testing done before trial was limited to old PCR
8 testing, so only a small fraction of the physical evidence was tested. (*Id.* at 8-9.) Due
9 to scientific advances since the time of trial, the physical evidence, which included
10 potential “touch DNA,” could undergo more advanced DNA testing, namely highly
11 sensitive STR testing. (09/05/2017 Reply at 2-3, 14.)

12 On September 19, 2017, the state court granted the petition. It authorized
13 DNA testing and ordered the State to inventory any possible items for testing.
14 (9/19/2019 Order.) In two later orders, the state court ordered DNA testing on several
15 items. (02/15/2018 Order; 01/24/2019 Order.)

16 While testing was ordered on evidence in both the Limanni and Hamilton
17 cases, the only viable results came from evidence in the Hamilton case. The most
18 consequential result came from the DNA testing of Hamilton’s fingernails. That
19 testing showed, for the first time, that foreign DNA was present and Seka was
20 excluded as the contributor.

21 **Hamilton’s fingernail clippings:** Fingernail clippings from Hamilton’s left
22 and right hands were collected at the autopsy. There was blood on the fingernails.
23 Before trial, PCR-RFLP testing was performed on only the left-hand clippings. Seka
24 was excluded as the contributor of the blood and Hamilton was included. (02/16/2001
25 Trial Tr. vol. 2, at 11-12.) However, any touch DNA on the fingernails was not tested.
26 (Motion, Ex. 48 - 12/18/1998 DNA Report.)
27

1 In 2018 STR DNA testing was done on the right- and left-hand fingernail
2 clippings. This testing was able to analyze epithelial cells, that is, skin cells.
3 (12/14/2018 Hearing Tr. at 61.) For the first time, the testing revealed a mix of two
4 DNA profiles. The examiner assumed Hamilton was one of the contributors, which
5 meant **a foreign DNA profile was found on Hamilton's fingernail clippings**
6 **on both his left and right hands.** (Motion, Ex. 49 - 07/24/2018 DNA Report.) The
7 foreign profile was the same for both hands. (12/14/2018 Hearing Tr. at 28-29.) **Seka**
8 **was fully excluded as contributor of this foreign profile.** (Motion, Ex. 49 -
9 07/24/2018 DNA Report.)

10 **Marlboro cigarette butt:** This item was collected next to Hamilton's body.
11 PCR-RFLP DNA testing was performed on it in 1998, but it was unsuccessful.
12 (Motion, Ex. 48 - 12/18/1998 DNA Results; 02/16/2001 Trial Tr. vol. 2 at 20.) The 2018
13 STR DNA testing produced a full DNA profile and excluded both Hamilton and Seka
14 as contributors. (Motion, Ex. 51 - 03/19/2019 DNA Results.)

15 **M. The state district court grants a new trial, but the**
16 **Nevada Supreme Court reverses**

17 At the conclusion of the DNA testing, Seka moved for a new trial on November
18 11, 2019, arguing that the new DNA results "absolve[] Mr. Seka of responsibility for
19 these murders." (11/19/2019 Motion for a New Trial.). The state district court granted
20 the motion and ordered a new trial on both murders. (03/24/2020 Order.) However, in
21 a published opinion, a three-justice panel of the Nevada Supreme Court reversed.
22 (07/08/2021 NSC Opinion.) The court denied en banc reconsideration over a three-
23 justice dissent. (10/7/2021 NSC Order.) Remittitur issued on November 2, 2021.
24 (11/02/2021 Remittitur.)

25 **GROUND FOR RELIEF**
26
27

1 **Ground One: Seka’s right to due process under the Fifth and Fourteenth**
2 **Amendments to the United States Constitution was**
3 **violated when the State suppressed an exonerating and**
4 **material latent fingerprint report. U.S. Const. Amends. V**
5 **and XIV.**

6 The Statement of Facts section and the statement regarding Ground Two are
7 incorporated and adopted into this ground for relief as though fully set forth herein,
8 as are the responses to questions 17 and 19. NRCP 10(c).

9 The prosecution’s suppression of evidence favorable to an accused violates
10 federal due process where the evidence is material either to guilt or to punishment,
11 irrespective of the prosecutor’s good or bad faith. *Brady v. Maryland*, 373 U.S. 83, 87
12 (1963). To establish a *Brady* violation, a party must demonstrate that (1) the evidence
13 at issue is favorable to the accused; (2) the evidence was suppressed by the State; and
14 (3) the suppression of that evidence was prejudicial. *Huebler*, 128 Nev. at 198, 275
15 P.3d at 95; *Comstock v. Humphries*, 786 F.3d 701, 708 (9th Cir. 2015).

16 *Brady* evidence is material when “there is a reasonable probability that, had
17 the evidence been disclosed to the defense, the result of the proceeding would have
18 been different.” *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). A “showing of materiality
19 does not require demonstration by a preponderance that disclosure of the suppressed
20 evidence would have resulted ultimately in the defendant’s acquittal.” *Id.* In other
21 words, a reasonable probability does not mean that the defendant “would more likely
22 than not have received a different verdict with the evidence,” only that the likelihood
23 of a different result is great enough to “undermine[] confidence in the outcome of the
24 trial.” *Smith v. Cain*, 565 U.S. 73, 75-76 (2012) (quoting *Kyles*, 514 U.S. at 434).
25 Reversal is required upon a “showing that the favorable evidence could reasonably be
26 taken to put the whole case in such a different light as to undermine confidence in
27 the verdict.” *Id.* at 435.

1 **A. The State suppressed the latent fingerprint report in the**
2 **purse case**

3 The prosecution's duty to disclose evidence extends beyond evidence within the
4 prosecutor's actual possession. It includes evidence within the prosecution's
5 constructive possession, which includes evidence known to law enforcement agencies
6 working with the prosecution. *Kyles v. Whitley*, 514 U.S. at 437.

7 Here, the latent fingerprint report was patently in the State's possession. The
8 stolen purse was a part of the investigation into the murders. The investigating
9 detective, Thowsen, discussed the purse in his December 10, 1998 report, indicating
10 that he investigated the purse after it had been recovered at 1933. (*See* 11/19/2019
11 Motion for a New Trial, Ex. 11 at 13.) The detective then mentioned the same
12 information about the purse in his declaration in support of an arrest warrant.
13 Moreover, the declaration accused Seka of committing a series of crimes "which
14 included the theft of the purse." (*See* 11/19/2019 Motion for New Trial, Ex. 17 at 8.)
15 Clearly, the stolen purse case was a part of this case from the beginning, providing
16 the State actual knowledge of any documents connected to that case.

17 Furthermore, the latent fingerprint report was well within the knowledge of
18 law enforcement personnel working on this case. The investigating detective on the
19 murders **was the detective who ordered the latent fingerprint report** in the
20 purse case. In fact, the prints on the purse were compared against the relevant people
21 in the murder cases: Seka, Limanni, and Hamilton. It was clear the report was done
22 to try to establish a link between the purse and the murders. The same Latent Print
23 Examiner, Fred Boyd, conducted the fingerprint analysis with respect to the murders
24 and the purse case. (*See* 11/19/2019 Motion for New Trial, Exs. 35 & 50.) Thus, the
25 prosecution, at the very least, had constructive possession of this document.

26 This fingerprint report was not turned over to the defense. The defense did not
27 see this report until November 2017, after the state district court granted Seka's DNA

1 petition and ordered the State to inventory any relevant evidence. Prior to its
2 disclosure in 2017, the defense had never seen it. It was not a part of the discovery
3 material contained in Seka's trial counsel's files.

4 No argument can be made that the defense could have, or should have,
5 discovered this report on its own. The defense was never put on notice that this
6 fingerprint report existed. There is nothing in the discovery material indicating that
7 latent prints were obtained from the purse or that fingerprint comparisons were
8 made. Neither the crime scene report nor the latent fingerprint report in the murder
9 case indicates that latent prints were obtained from the purse or that they were
10 compared to Seka's fingerprints.

11 Moreover, the defense had no onus to investigate the purse because the State
12 led the defense to believe the purse was not relevant. The prosecutor took active steps
13 to send this message. In fact, the prosecutor crossed the purse off the crime scene
14 diagram shown to the jury. The prosecutor also specifically stated at trial that the
15 purse was "not important." The U.S. Supreme Court has held that it is reasonable for
16 the defense to rely on representations from the State that no *Brady* evidence exists
17 and, as a result, not conduct any further investigation of that evidence. *Banks v.*
18 *Dretke*, 540 U.S. 668, 692-93 (2004); *Strickler v. Greene*, 527 U.S. 263, 283-84 (1999).⁶
19 That is precisely what happened here. The prosecution directly indicated the purse
20 was not important to the murder cases. It was reasonable for Seka to rely on the
21 prosecutor's statement and not spend resources investigating.

22
23 ⁶ See also *Banks*, 540 U.S. at 695-96 ("Our decisions lend no support to the
24 notion that defendants must scavenge for hints of undisclosed *Brady* material when
25 the prosecution represents that all such material has been disclosed. . . . The State
26 here nevertheless urges, in effect, that 'the prosecution can lie and conceal and the
27 prisoner still has the burden to discover the evidence[]' so long as the 'potential
existence' of a prosecutorial misconduct claim might have been detected A rule
thus declaring 'prosecutor may hide, defendant must seek' is not tenable in a system
constitutionally bound to accord defendants due process.").

Seka only fortuitously obtained the fingerprint report in 2017 when the district court granted his DNA petition. This report was turned over only as result of LVMPD apparently misinterpreting the order granting DNA testing as a subpoena.

Accordingly, the State suppressed the fingerprint report.

B. The fingerprint report was both favorable and material

The fingerprint report was favorable. The police had originally alleged that Seka had stolen the purse. But the latent fingerprint report showed that Seka was not the contributor to the fingerprints found on the purse. It is clear evidence showing that he did not steal the purse. That is obviously favorable.

The fingerprint report is also material. The fingerprint report exonerates Seka of stealing the purse. The report shows that Seka, as well as Hamilton and Limanni, were excluded as the source of the fingerprints connected to the purse.

Just as important, a comparison of the deformed lead bullet found in Gorzoch's car and two bullets found in the Hamilton case established a likely connection between the two crimes. The class characteristics found on the bullets were consistent, potentially linking them to the same gun. If Seka did not steal the purse, then he very likely did not commit the Hamilton murder due to this ballistics connection. This evidence standing alone would raise a reasonable doubt in any reasonable juror's mind as to whether Seka committed the Hamilton murder.

And this evidence becomes even more impactful in light of the weak evidence of guilt presented at trial. The State's case on the Hamilton murder was entirely circumstantial, causing the jury to deliberate for five days. There was no evidence found at 1929 Western directly tying him to the crime.⁷ Unidentified fingerprints

⁷ In his report the fingerprint examiner indicated that he compared the latent prints found at 1929 Western to Seka's prints and there was no identification. (Motion, Ex. 50 - 02/17/1999 Fingerprint Report at 1, 2, 4.) He did not discuss these findings in his trial testimony.

1 were discovered on the wood at the location where Hamilton's body was found.⁸ The
2 State presented no real motive.⁹ There was no evidence that Hamilton was robbed,
3 given that his property was left at 1929 Western and the jail records showed he had
4 no money. In such a weak, circumstantial case, evidence affirmatively showing that
5 Seka was not connected to the crime is highly material.

6 Furthermore, this evidence fully undermines one of the State's main
7 arguments against Seka. The State's case relied almost entirely on the purported
8 connections between evidence related to the Hamilton murder and evidence found in
9 or connected to 1933 Western.¹⁰ Specifically, the State argued that cartridge cases
10 found in 1933 Western were the same caliber as bullets found at the murder scene in
11 1929 Western. Hamilton's blood was found in a Cinergi truck. The keys for the
12 Cinergi vehicles were kept in 1933 Western. The State argued that, due to these
13 connections between the murder and 1933 Western, Seka was guilty because he had
14 "control over" 1933 Western. (02/23/2001 Trial Tr. vol. 1 at 51.)

16 ⁸ The wood also had Seka's and Limanni's fingerprints. It is unremarkable that
17 their fingerprints appear on this lumber considering it was taken from the lumber
18 being used to build the humidor. Indeed, Limanni couldn't have been involved in the
19 murder, as he had already gone missing. As such, Limanni's fingerprints must have
come from his handling of the wood to build the humidor. Seka's fingerprints would
have been on there for the same reason as Limanni's.

20 ⁹ The State's original theory appeared to be that Seka's motive for murdering
21 Hamilton was financial. However, the trial evidence didn't support this theory as
22 Hamilton had no money when he was released from custody right before the murder
and his belongings were found at 1929 Western. Thus, the State turned to the bizarre
and argued, without any supporting evidence, that Hamilton must have been present
23 when Limanni was murdered and Seka killed Hamilton to tie up a loose end.
(XI.App.2458.) To note, Hamilton was in jail on November 6, the same day that Cerda
24 saw Limanni still alive.

25 ¹⁰ Beyond the evidence found in 1933 Western and the truck, the only
26 remaining circumstantial evidence was the paper in Hamilton's pocket with Seka's
27 name and the Cinergi phone number on it. Because Hamilton had worked at 1933
Western and Seka had asked him to reach out again if he needed more work, it is
unremarkable that he had Seka's name and the Cinergi number with him.

1 However, the existence of the purse inside 1933 Western provides concrete
2 physical evidence that someone else had access to 1933 Western. And this other
3 person not only had access to 1933 Western but was hiding crimes inside 1933
4 Western. This means that the evidence found in 1933 Western—including keys to the
5 truck in which the police found Hamilton’s blood—can actually be used to connect the
6 **purse thief**. This evidence fully undermines a central tenet of the State’s case.

7 Just as important, the State took steps to exclude the purse from the jury’s
8 consideration, knowing that the purse pointed the finger away from Seka. In fact, the
9 fingerprint report plus the class consistency between the bullets provided **stronger**
10 evidence of Seka’s innocence than the circumstantial evidence the State presented at
11 trial of Seka’s guilt. At trial, the State argued that Seka was guilty because the same
12 caliber of ammunition was found in 1933 Western and 1929 Western. Specifically,
13 four .357 caliber cartridge cases were found in 1933 Western while three .357 caliber
14 bullets were found in 1929 Western.

15 However, the examiner’s class consistency finding between the purse bullet
16 and two of the bullets found in 1929 Western goes beyond just caliber, which is solely
17 the diameter of the ammunition. The examiner made the connection between the
18 purse bullet and the bullets from 1929 Western based upon markings found on the
19 bullets themselves. The criminalist testified that markings on bullets can be used to
20 connect the bullets to a make or model or type of firearm. (02/21/2001 Trial Tr. vol. 1
21 at 52.) The criminalist’s reference to “class characteristics” “found” on these bullets
22 was clearly to these markings because the examiner listed in his reports what specific
23 firearms possessed the class characteristics found on these bullets. (See Motion, Ex.
24 36 - 04/27/1999 Ballistics Report; & Motion, Ex. 37 - 12/17/1998 Ballistics Report.)
25 Thus, this class consistency from the markings **potentially connects them to the**
26 **same gun**. (See Motion, Ex. 36 - 04/27/1999 Ballistics Report; & Motion, Ex. 37 -
27 12/17/1998 Ballistics Report at 2 (in reference to the bullets found at 1929 Western,

1 “These bullets/bullet fragments have consistent class characteristics and could have
2 been fired from a single firearm.”.) That is a stronger connection than simply the
3 caliber similarity the State argued at trial.

4 By removing the purse from the jury’s consideration, it bolstered the State’s
5 circumstantial case. The exonerating *Brady* evidence undermines the very
6 foundation of the State’s circumstantial case. The failure to disclose the exonerating
7 fingerprint report undermines confidence in the verdict as to the Hamilton murder
8 and robbery.

9 The report is also material as to the Limanni murder and robbery. If the *Brady*
10 evidence undermines confidence in the verdict as to the Hamilton murder, it
11 necessarily undermines confidence in the verdict as to the Limanni murder. The
12 State’s theory, from the day of Seka’s arrest through trial, was that these two crimes
13 were part of a pattern of conduct. (02/23/2001 Trial Tr. vol. 2 at 67.) The Nevada
14 Supreme Court even adopted the State’s joinder argument, viewing them “as part of
15 a common scheme or plan.” (04/08/2003 Order of Affirmance at 10.) Thus, the report
16 is material as to the Limanni counts because the murders were prosecuted as part of
17 the same scheme.

18 Further, the new evidence undermines the circumstantial connection to 1933
19 Western for the Limanni murder as it does for the Hamilton murder. It is clear that
20 someone besides Seka had access to 1933 Western and the Cinergi vehicles. Just as
21 with Hamilton, this other person could be the one responsible for the ballistics
22 evidence found in 1933 Western that was consistent with the Limanni murder. This
23 other person also would have access to the van in which Limanni’s blood was found.

24 The State’s case against Seka on the Limanni murder was also a weak,
25 circumstantial case. Indeed, the State could never definitively establish where
26 Limanni was even murdered. Evidence discovered during post-conviction review
27 contradicts the State’s arguments as to motive for the Limanni murder, including

1 that Limanni had been mistreating Seka. There are many reasons to disbelieve the
2 purported confession to Cramer. Cramer was mentally ill and had an obvious motive
3 for harming Seka. In addition, Cramer's girlfriend was present and did not hear Seka
4 make any type of confession.

5 Finally, there were far more likely suspects for the murder, including a violent
6 and dangerous individual who had invested in the cigar shop and disappeared shortly
7 after Hamilton's body was found.¹¹

8 Accordingly, the suppressed, favorable fingerprint report was material as to
9 both the Hamilton and Limanni murders and robberies. The petition should be
10 granted and the judgment of conviction vacated.

11
12 **Ground Two: Seka's conviction and sentence are invalid because new**
13 **evidence, including exonerating DNA evidence, establishes**
14 **he is actually innocent of first-degree murder, second-**
15 **degree murder and robbery. U.S. Const. Amends. V, VI, VIII**
16 **and XIV; Nev. Const. art. 1, §§ 1, 6, and 8.**

17 The Statement of Facts section and the statement regarding Ground One are
18 incorporated and adopted into this ground for relief as though fully set forth herein,
19 as are the responses to questions 17 and 19. NRCP 10(c).

20 **A. Legal standard**

21 The U.S. and Nevada Constitutions both independently prohibit the conviction
22 of someone who is actually innocent. That is true as a matter of procedural and
23 substantive due process, as well as the right to a fair trial, not to be subject to cruel
24 and unusual punishment, and to state-guaranteed inalienable rights. *See* U.S. Const.
25 amends. V, VI, VIII, XIV; Nev. Const. art. 1, § 1 (inalienable rights clause); Nev.

26 ¹¹ Harrison described Limanni as "like a con artist." (02/14/2001 Trial Tr. vol.
27 1 at 90-91.) She thought his disappearance had something to do with the mafia.
(02/14/2001 Trial Tr. vol. 1 at 90-91.)

1 Const. art. 1, § 6 (cruel or unusual punishments clause); Nev. Const. art. 1, § 8 (due
2 process clause).

3 Although it has yet to resolve this issue squarely, the U.S. Supreme Court has
4 given strong indication that the imprisonment (and especially the execution) of an
5 innocent person violates the Constitution. In *Herrera v. Collins*, 506 U.S. 390 (1993),
6 the Court assumed without deciding that “a truly persuasive demonstration of ‘actual
7 innocence’ made after trial would render the execution of a defendant
8 unconstitutional, and warrant federal habeas relief.” *Id.* at 417; *see also In re Davis*,
9 130 S.Ct. 1 (2009) (remanding original habeas petition for a hearing on the
10 petitioner’s innocence); *House v. Bell*, 547 U.S. 518, 554-55 (2006); *Jones v. Taylor*,
11 763 F.3d 1242, 1246 (9th Cir. 2014) (assuming without deciding that *Herrera* claims
12 are available in non-capital habeas cases); *Berry*, 131 Nev. at 967 n.3, 363 P.3d at
13 1154 n.3 (explaining that the Nevada Supreme Court has not yet addressed “whether
14 and, if so, when a free-standing actual innocence claim exists”). A majority of Justices
15 in *Herrera* would have explicitly held that proof of actual innocence warrants relief.
16 *See Carriger v. Stewart*, 132 F.3d 463, 476 (9th Cir. 1996). The Ninth Circuit has
17 repeatedly assumed a freestanding actual innocence claim is cognizable in a federal
18 habeas petition. *See, e.g., Ayala v. Chappell*, 829 F.3d 1081, 1116-17 (9th Cir. 2016);
19 *Jones v. Taylor*, 763 F.3d 1242, 1246 (9th Cir. 2014); *Boyde v. Brown*, 404 F.3d 1159,
20 1168 (9th Cir. 2005), *as amended on reh’g*, 421 F.3d 1154 (9th Cir. 2005); *Jackson v.*
21 *Calderon*, 211 F.3d 1148, 1164-65 (9th Cir. 2000).

22 The Ninth Circuit has also elaborated on a petitioner’s burden of proof on a
23 *Herrera* claim. In *Carriger*, the court said that “to be entitled to relief, a habeas
24 petitioner asserting a freestanding innocence claim must go beyond demonstrating
25 doubt about his guilt and must affirmatively prove that he is probably innocent.” 132
26 F.3d at 477-78 (citing *Herrera*, 506 U.S. at 442-44 (Blackmun, J., dissenting)); *accord*
27 *Herrera*, 506 U.S. at 399-400 & 407 n.6. That standard should be persuasive to this

1 Court. This Court may also find that the standard for asserting a freestanding
2 innocence claim is an even less onerous one than that expressed in *Carringer*, either
3 by interpreting the provisions of the U.S. Constitution discussed above or those of the
4 Nevada Constitution. *See, e.g., Berry*, 131 Nev. at 966, 363 P.3d at 1154 (explaining
5 that for miscarriage of justice gateway, petitioner must show it is more likely than
6 not no reasonable juror would have convicted in light of the new evidence); *Berkson*
7 *v. LePome*, 126 Nev. 492, 501 n.5, 245 P.3d 560, 566 n.5 (2010) (indicating that the
8 Nevada Constitution may in some instances be more protective of rights). Of course,
9 the U.S. Constitution provides a floor of protection.

10 **B. Seka can affirmatively show he is probably innocent**

11 Previously unavailable evidence affirmatively shows Seka is probably innocent
12 of the Hamilton murder. The recent DNA evidence establishes Seka's innocence. The
13 previously unavailable DNA results show that a foreign DNA profile was found on
14 Hamilton's right and left fingernails. It was the same profile on both hands. Seka was
15 excluded as the contributor of this DNA.

16 This exclusion alone establishes that Seka is innocent by clear and convincing
17 evidence. There is every reason to believe the murderer left his DNA on Hamilton's
18 fingernails. The murderer removed Hamilton's jacket from his body and left it at the
19 scene before dragging Hamilton's body from 1929 Western to the parking lot. The
20 murderer also likely dragged Hamilton by the wrist, or at least grabbed Hamilton
21 near his wrist at some point, because Hamilton's bracelet (found at 1929 Western)
22 had been pulled off his arm, leaving an injury on Hamilton's wrist. All of these actions
23 could have potentially led to the murderer's skin cells being left on Hamilton's
24 fingernails. (*See* 12/14/2018 Hearing Tr. at 23 (DNA examiner testified, "Any kind of
25 contact with somebody else may end up with your DNA underneath there.")).

26 This new DNA evidence is powerful exonerating evidence. Any reasonable
27 juror would find reasonable doubt based on this DNA exclusion.

1 Further, Seka was excluded from the evidence collected at the site where
2 Hamilton's body was found. The police originally deemed this evidence to be of
3 evidentiary value and attempted to test it before trial, with not much success.
4 However, the new DNA testing of the cigarette butt found right next to Hamilton's
5 body excludes Seka as a contributor. When viewed along with the fingernail evidence,
6 the DNA exclusions all point in the same direction—away from Seka.

7 The same conclusion can be drawn from the latent fingerprint report. As
8 discussed in Ground One, this report in conjunction with the ballistics examination
9 established that someone other than Seka stole the purse found at 1933 Western and
10 that person was likely the one who committed the Hamilton murder.

11 The new evidence together presents a highly compelling case for innocence.
12 And it becomes even more compelling when viewed in light of the weak,
13 circumstantial case against Seka on the Hamilton case, as discussed in detail in
14 Ground One. The new evidence not only strongly points to Seka's innocence directly,
15 but it would also cause a jury to draw a different set of inferences regarding the
16 circumstantial evidence the State presented, leading to a conclusion that Seka had
17 nothing to do with the Hamilton murder and robbery.

18 Accordingly, Seka can establish that he is probably innocent of the Hamilton
19 murder and robbery.

20 Seka can also establish he is actually innocent of the Limanni murder and
21 robbery. If Seka is innocent of the Hamilton murder, he is also innocent of the
22 Limanni murder. As discussed in detail in Ground One, the State argued that the
23 murders were part of a plan or scheme. Showing innocence on one necessarily
24 establishes innocence on the other. For the same reasons discussed in the materiality
25 section in Ground One, the evidence as a whole shows Seka's innocence of the
26 Limanni murder and robbery.

1 In sum, the writ should be granted and the judgment of conviction should be
2 vacated.

3
4 **PRAYER FOR RELIEF**

5 Accordingly, John Seka respectfully requests that this Court:

6 1. Issue a writ of habeas corpus to have John Seka brought before the
7 Court so that he may be discharged from his unconstitutional confinement;

8 2. Conduct an evidentiary hearing at which proof may be offered
9 concerning the allegations in this amended petition and any defenses that may be
10 raised by respondents; and

11 3. Grant such other and further relief as, in the interests of justice, may be
12 appropriate.

13 Dated November 1, 2022.

14 Respectfully submitted,

15 Rene L. Valladares
16 Federal Public Defender

17 */s/ Jonathan M. Kirshbaum*
18 Jonathan M. Kirshbaum
19 Assistant Federal Public Defender
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VERIFICATION

Under penalty of perjury, the undersigned declares that he is counsel for the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of her own knowledge except as to those matters stated on information and belief and as to such matters she believes them to be true. Petitioner personally authorized undersigned counsel to commence this action.

Dated November 1, 2022

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Jonathan M. Kirshbaum

Jonathan M. Kirshbaum
Assistant Federal Public Defender

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2022, I electronically filed the foregoing with the Clerk of the Eighth Judicial District Court by using the Court’s electronic filing system.

Participants in the case who are registered users in the electronic filing system will be served by the system and include: Steven Wolfson, Steven.Wolfson@clarkcountyda.com, Motions@clarkcountyda.com.

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

John Joseph Seka, #69025 High Desert State Prison P.O. Box 650 Indian Springs, NV 89070	Attorney General 555 E. Washington Ave. Ste. 3900 Las Vegas, NV 89101
Clark County District Attorney 200 Lewis Ave. Las Vegas, NV 89101	

/s/ Rosana Aporta
An Employee of the Federal Public
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY

John Joseph Seka,

Petitioner,

v.

Calvin Johnson, Warden,

Respondents.

Case No. _____
(99C159915)

Dept. No. XXV

INDEX OF EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF
HABEAS CORPUS (POST-CONVICTION)

Petitioner John Seka submits the following exhibits in support of his Petition for Writ of Habeas Corpus (Post-Conviction).

No.	Date	Document	Court	Case #
1.	11/05/1998	LVMPD Incident Report for No. 98-1106-0539	N/A	N/A
2.	11/17/1998	Evidence Photos - Purse	N/A	N/A
3.	11/17/1998	LVMPD Crime Scene Diagram for 1933 Western	N/A	N/A
4.	11/18/1998	Phone Records for John Seka	N/A	N/A
5.	02/17/2016	RMIC Records Request in 98-1116-0443	N/A	N/A
6.	03/29/2016	LVMPD Response to RMIC Records Request in 98-1116-0443	N/A	N/A
7.	07/26/2016	RMIC Supplemental Records Request in 98-1116-0443	N/A	N/A
8.	08/01/2016	LVMPD Response to RMIC Supplemental Records Request	N/A	N/A
9.	08/21/2017	RMIC Records Request in 98-1106-0539	N/A	N/A
10.	09/15/2017	LVMPD Response to RMIC Records Request in 98-1106-0539	N/A	N/A
11.	10/24/2017	Email to LVMPD, re: Records Request in 98-1106-0539	N/A	N/A
12.	10/03/2022	Declaration of Kurt London	N/A	N/A
13.	10/06/2022	Declaration of Ed Heddy	N/A	N/A
14.	10/06/2022	Declaration of John Seka	N/A	N/A
15.	10/17/2022	Declaration of Jennifer Springer	N/A	N/A

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Dated November 1, 2022.

Respectfully submitted,
RENE L. VALLADARES
Federal Public Defender

/s/ Jonathan M. Kirshbaum
JONATHAN M. KIRSHBAUM
Assistant Federal Public Defender

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AFFIRMATION PURSUANT TO NEV. REV. STAT. § 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this November 1, 2022.

/s/ Jonathan M. Kirshbaum
JONATHAN M. KIRSHBAUM
Assistant Federal Public Defender

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2022, I electronically filed the foregoing with the Clerk of the Eighth Judicial District Court by using the Court’s electronic filing system.

Participants in the case who are registered users in the electronic filing system will be served by the system and include: Alexander Chen, Alexander.Chen@clarkcountyda.com, Motions@clarkcountyda.com.

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

John Joseph Seka,#69025 High Desert State Prison P.O. Box 650 Indian Springs, NV 89070	Charles L. Finlayson Office of the Attorney General 100 North Carson Street Carson City, NV 89701-4717
Clark County District Attorney 200 Lewis Ave. Las Vegas, NV 89101	

/s/ Rosana Aporta
An Employee of the
Federal Public Defender
District of Nevada

EXHIBIT 1

EXHIBIT 1

Event

Event#	Form Type	Report type
LLV981106000539	FIELD INCIDENT REP	CRIMINAL
Premise Type	Address	
OTHER PREMISE		
Building	Apartment/Suite	City
		LV
County	State/Province	
CLARK	NEVADA	
Postal Code	Sector/Beat	
	C12	
Occurred Start Date/Time	Occurred End Date/Time	Reported Date/Time
11/05/1998 10:30	11/06/1998 07:00	00/00/0000 00:00
Dispatch Date/Time	Arrival Date/Time	Report Taken Date/Time
00/00/0000 00:00	00/00/0000 00:00	11/06/1998 09:52
Contact Nature	<input type="checkbox"/> Domestic	
RRES	Gang Related	
<input type="checkbox"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Unknown	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Unknown	
Substance	Citizen Follow-up	
<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Unknown	<input type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> N/P	
Primary Officer	Detail	
	BURGLARY	
Jurisdiction	Disposition	
CITY OF LAS VEGAS	ZEROED	
Approval Status	Case Status	
P	CLOSED	
Approved Date/Time	First Approved Date	Solvability
00/00/0000 00:00	00/00/0000 00:00	<input checked="" type="checkbox"/> Routed

Statutes

Counts	Attempted	Conspired	Statute code	Description
1	<input type="checkbox"/>	<input type="checkbox"/>	BURG205.060C	BURGLARY - AUTO
1	<input type="checkbox"/>	<input type="checkbox"/>	WEAP202.285A	DISCHARGE A FIREARM AT OR INTO

Officers

Event Association	Emp#	Badge#	Name
PRIMARY ASSIGNED OFFICER	3005		HARVICK, ALBERT S
SPECIALIST	4793		SAMS, JESSIE K
PRIMARY RESPONDING OFFICER	6094		BURRIS, MATTHEW RAYMOND
RESPONDING OFFICER	3539		FARRELL, JOHN C
	3945		OSBORNE, PAUL G

Solvability Factors

Solvability Factor

CRIMINALISTICS WORK WAS PERFORMED

Sum of weights:

VICTIM ADVISED
11-18-98

SHE DOES NOT KNOW
POTER OR JACA

- PURSE FOUND INSIDE

Questions

- why wasn't I
charged
- where is crime
scene reports

APP2828

Persons

Person Primary Key Person #		Event Association		Vehicle #	
3218752		1		VICTIM	
1				1	
Means of Attack					
<input type="checkbox"/> Arrested at Scene <input type="checkbox"/> Cited <input type="checkbox"/> Juvenile					
Last Name		First Name		Middle Name	
GORZUCH		LYDIA		F	
Name Prefix		Name Suffix		Marital Status	
Social Security#		Blood Type		Fingerprint Code	
839					
Driver's License State		Driver's License#		Driver's License Expires	
				00/0000	
Birth Date		Age Low		Age High	
1973		25		25	
Race		Sex		Hair Color	
WHITE/CAUCASIAN		FEMALE		BROWN	
Eye Color		Height Low		Height High	
GREEN		5'8"		128	
Weight Low		Weight High		Address	
				Building	
				Apartment/Suite	
City		County		Postal Code	
LAS VEGAS		CLARK			
State/Province		Country		Sector/Beat	
NEVADA					
Phone Type 1		Phone# 1		Extension 1	
RESIDENCE		4312			
Phone Type 2		Phone# 2		Extension 2	
Occupation		Employer/School		Days Off	
STUDENT		UNLV			
Work Schedule		City of Birth		State of Birth	
<input type="checkbox"/> Visitor		Departure Date		Summons#	
		00/00/0000			
<input type="checkbox"/> Statement Obtained		Citation#			
<input type="checkbox"/> Can ID Suspect					

Names

Last Name	Middle Name	First Name	Pref
GORZUCH	F	LYDIA	

Additional IDs

ID Type	ID Number	State	Exp
SSN			00/0

APP2829

Persons

Birth Dates

Birth Date

973

APP2830

Vehicles

Vehicle Primary Key	Vehicle Type	Vehicle #	
3036301	Automobile	1	<input type="checkbox"/> Juv Family Member
Event Association		Vehicle Status	
VICTIM'S			
Recovered Date	# of Passengers		
00/00/0000	<input type="checkbox"/> Truck Or Bus		
Year	Make	Model	
1994	JAGUAR		
VIN	Engine Serial#		
SAJHX1748RC687349			
Engine Make	Engine Model	Horsepower	
Serial#	Propulsion Type		
License Type	License#	License State	License Expires
REGULAR PASSENG	3XSY790	CALIFORNIA	01/1999
Style	Body Material		
4-DOOR			
Vehicle Length	Vehicle Height	Vehicle Width	
Max. # of Passengers	# of Axles		
Primary Color	Secondary Color	Tertiary Color	
GOLD	GOLD	GOLD	
Identifying Marks	Condition		
Value	<input type="checkbox"/> Keys in Vehicle		
\$00			
WVS Notified Date/Time	WVS Notified By		
00/00/00 00:00			

APP2831

Vehicles**Owner/Insurance****Registered Owner Name**

GORZUCH, LYDIA F

Registered Owner SSN

[REDACTED] 5839

Registered Owner DOB

[REDACTED] 1973

R.O. Address**R.O. City/State/Postal**

ROSAMOND, CA 93560

R.O. Phone #1

[REDACTED] 4312

R.O. Phone #2**R.O. Insurance Co.****R.O. Policy#****R.O. Agent Name****R.O. Agent Phone****Legal Owner Name****L.O. Address****L.O. City/State/Postal****L.O. Phone #1****L.O. Phone #2****L.O. Insurance Co.****L.O. Policy#****L.O. Agent Name****L.O. Agent Phone****Driver Insurance Co.****Driver Policy#****Driver Agent Name****Driver Agent Phone**☐ Payments Current**Vehicle Features****Vehicle Feature**

BUCKET SEATS

SUNROOF

TINTED WINDOWS

FRONT BUMPER

STICKER ON WINDOW

BROKEN WINDOWS

REAR BUMPER

APP2832

Modus Operandi

<input type="checkbox"/> Against Persons	<input checked="" type="checkbox"/> Against Property	<input type="checkbox"/> Occupied
General Premise		Specific Premise
VEHICLE		PARKING LOT
Surround Area	Entry Point	Exit Point
MIDDLE OF BLOCK	WINDOW	DOOR
Entry Location	Entry Method	Entry Tool
SIDE	SMASH & GRAB	FIREARM
Safe Entry		Vehicle Entry
		PASSENGER SIDE WINDOW
Suspect Action 1	Suspect Action 2	Suspect Action 3
MALICIOUS DAMAGE	SELECTIVE IN LOOT	
Additional Factor 1	Additional Factor 2	Additional Factor 3
Maid	Inspectress	
<input type="checkbox"/> Electronic locks		<input type="checkbox"/> Video surveillance
Relationship To Suspect		Pre-Incident Contact
NONE		
Victim Condition		Victim Location
		ON THE PREMISES
Suspect Solicited	Suspect Pretended to Be	Suspect Action
Sex Crime 1	Sex Crime 2	Sex Crime 3
Sex Crime 4		
Vehicle Involvement		

Property

Property#	Article Type	Event Association	Property Type	UCR Code
1	O	STOLEN	PURSE	MISCELLANEOUS, (BIC
Make/Brand	Model/Name	Color	Serial#	Description
				PURSE
Gun Type	Caliber	Barrel Length	OAN	Condition
Securities Type	Denomination	Issuer	Issue Date	Quantity Qty Units
			00/00/0000	1.00
Recovered Date	Person #			Value
00/00/0000	1			\$0.00

Property

Property#	Article Type	Event Association	Property Type	UCR Code
2	O	STOLEN	WALLET	MISCELLANEOUS, (BIC
Make/Brand	Model/Name	Color	Serial#	Description
				WALLET W/MISC. ID &
Gun Type	Caliber	Barrel Length	OAN	Condition
Securities Type	Denomination	Issuer	Issue Date	Quantity Qty Units
			00/00/0000	1.00
Recovered Date	Person #			Value
00/00/0000	1			\$0.00

Property#	Article Type	Event Association	Property Type	UCR Code
3	S	STOLEN	US CURRENCY	CURRENCY, NOTES, C
Make/Brand	Model/Name	Color	Serial#	Description
				US CURRENCY
Gun Type	Caliber	Barrel Length	OAN	Condition
Securities Type	Denomination	Issuer	Issue Date	Quantity Qty Units
CASH			00/00/0000	1.00
Recovered Date	Person #			Value
00/00/0000	1			\$100.00

Property#	Article Type	Event Association	Property Type	UCR Code
4	S	STOLEN	US CURRENCY	CURRENCY, NOTES, C
Make/Brand	Model/Name	Color	Serial#	Description
				US CURRENCY
Gun Type	Caliber	Barrel Length	OAN	Condition
Securities Type	Denomination	Issuer	Issue Date	Quantity Qty Units
CAHS			00/00/0000	1.00
Recovered Date	Person #			Value
00/00/0000	1			\$7.00

APP2834

Property

Property#	Article Type	Event Association	Property Type	UCR Code
5	O	STOLEN	FIRST AID KIT	MISCELLANEOUS, (BIC
Make/Brand	Model/Name	Color	Serial#	Description
				FIRST AID KIT
Gun Type	Caliber	Barrel Length	OAN	Condition
Securities Type	Denomination	Issuer	Issue Date	Quantity Qty Units
			00/00/0000	1.00
Recovered Date	Person #			Value
00/00/0000	1			\$.00

Property#	Article Type	Event Association	Property Type	UCR Code
6	O	STOLEN	MANUAL HANDBOOK, M	MISCELLANEOUS, (BIC
Make/Brand	Model/Name	Color	Serial#	Description
				JAGUAR MANUAL, HAN
Gun Type	Caliber	Barrel Length	OAN	Condition
Securities Type	Denomination	Issuer	Issue Date	Quantity Qty Units
			00/00/0000	1.00
Recovered Date	Person #			Value
00/00/0000	1			\$.00

Property#	Article Type	Event Association	Property Type	UCR Code
7	O	STOLEN	SUNGLASSES	MISCELLANEOUS, (BIC
Make/Brand	Model/Name	Color	Serial#	Description
REVO				SUNGLASSES
Gun Type	Caliber	Barrel Length	OAN	Condition
Securities Type	Denomination	Issuer	Issue Date	Quantity Qty Units
			00/00/0000	1.00
Recovered Date	Person #			Value
00/00/0000	1			\$300.00

APP2835

Property

Property#	Article Type	Event Association	Property Type	UCR Code
8	O	STOLEN	SUNGLASSES CASE	MISCELLANEOUS, (BIC)
Make/Brand	Model/Name	Color	Serial#	Description
ARMANI				SUNGLASSES CASE
Gun Type	Caliber	Barrel Length	OAN	Condition
Securities Type	Denomination	Issuer	Issue Date	Quantity Qty Units
			00/00/0000	1.00
Recovered Date	Person #			Value
00/00/0000	1			\$30.00

Property#	Article Type	Event Association	Property Type	UCR Code
9	O	STOLEN	GATE ACCESS CARD	MISCELLANEOUS, (BIC)
Make/Brand	Model/Name	Color	Serial#	Description
				GATE ACCESS CARD
Gun Type	Caliber	Barrel Length	OAN	Condition
Securities Type	Denomination	Issuer	Issue Date	Quantity Qty Units
			00/00/0000	1.00
Recovered Date	Person #			Value
00/00/0000	1			\$100.00

Narratives

Entered Date/Time	Type
11/06/1998 09:52	INCIDENT
Subject	Author
BURGLARY VEH/DISCHARGING F/A INTO	BURRIS, MATTHEW RAYMOND

Narrative

VEHICLE WAS PARKED IN THE PARKING LOT WHEN THE SUSPECT(S) FIRED A BULLET THROUGH THE FRONT PASSENGER WINDOW. THE BULLET THEN WENT THROUGH THE PASSENGER SEAT AND LODGED INTO THE REAR DRIVER'S SIDE DOOR.

THE SUSPECT(S) THEN TOOK THE LISTED ITEMS AND FLED.

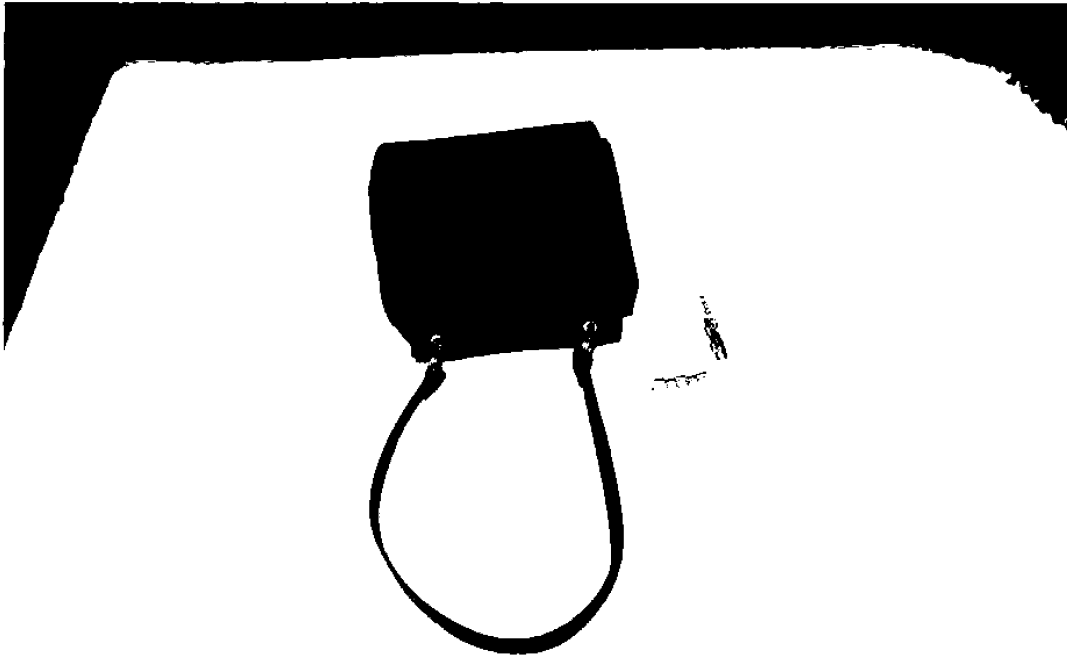
J.D. PROCESSED THE SCENE.

APP2836

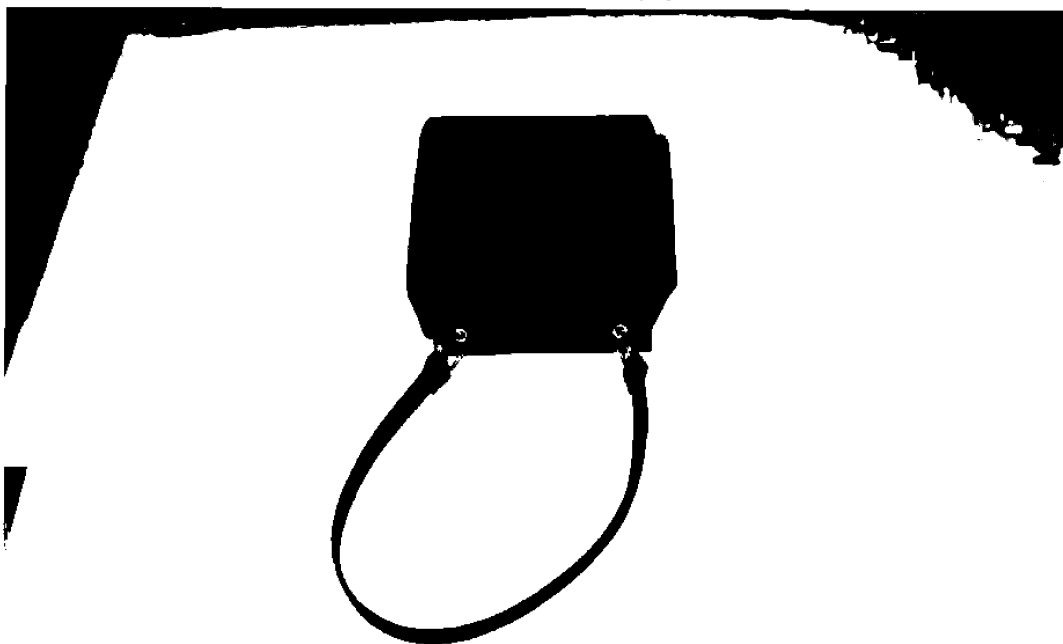
EXHIBIT 2

EXHIBIT 2

41700006.pg (1545x1024x24b jpeg)



41700013.jpg (1545x1024x24b jpeg)



41700020.jpg (1545x1024x24b.jpg)

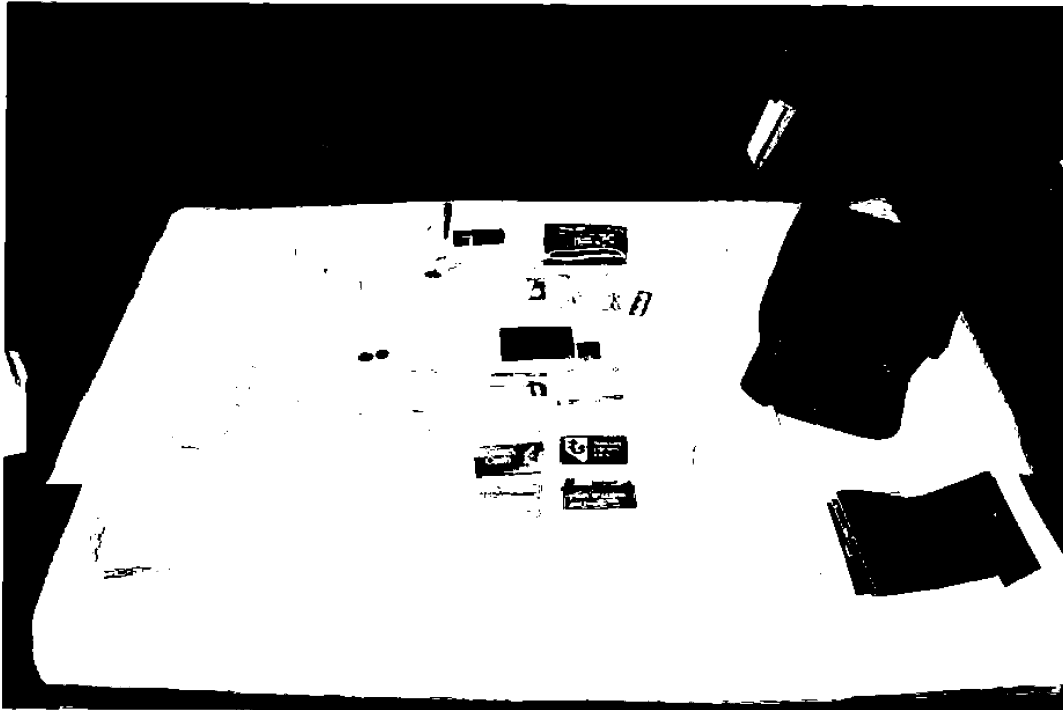


EXHIBIT 3

EXHIBIT 3

Homicide Investigation

Event: 981716-0443

Date: 11-17-96

Time: 1402

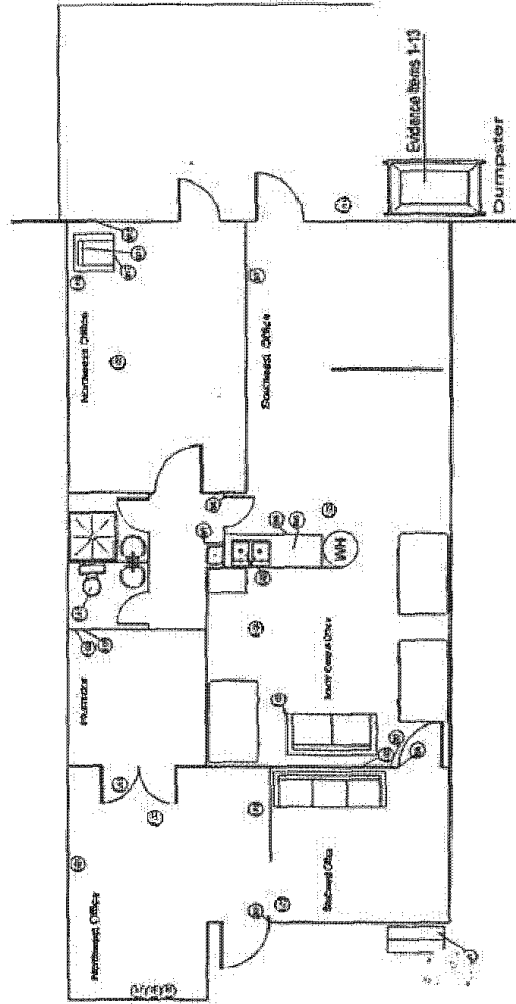
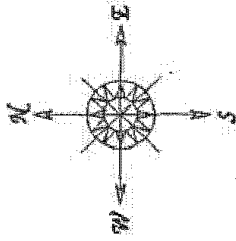
Victim: John "Lumber" Doe

Location: [REDACTED]

CSAs: A. Cabrales #2045

D. Ruffino #1502

R. McPhail #3326



Evidence Items

- E/1 Photos and personal papers in the name of Peter Limanni
- E/2 3 1/2 inch computer disk
- E/3 MCI phone card
- E/4 New Jersey boat operator's license
- E/5 Two canceled "Cinergi" checks
- E/6 Blue check book with "Limanni Mechanical Services" checks inside
- E/7 Black appointment book
- E/8 Keys
- E/9 Metal container with seeds and green leafy flakes inside
- E/10 Right "K-Swiss" athletic shoe
- E/11 Blue "Limanni Mechanical Services" shirt
- E/12 Brass belt buckle
- E/13 Green colored shirt
- E/14 Ballys, Sands, and Palace Station slot cards
- E/15 Brown Purse (with money inside E/16)
- E/17 32 caliber cartridge
- E/18 357 Magnum cartridge case
- E/19 357 Magnum cartridge case
- E/20 357 Magnum cartridge case
- E/21 357 Magnum cartridge case
- E/22 Bullet
- E/23 Broken glass
- E/25 Wall calendar
- E/26 Multiple photos
- E/27 Business card holder
- E/28 Left "K-Swiss" athletic shoe
- E/29 Plastic cartridge holder
- E/30 Piece of press board
- E/31 Piece of cedar wood
- E/32 Piece of pine wood (1X4X2)
- E/33 Pair of "Levis" blue jeans
- E/34 Piece of pine wood (3X1X8)
- E/35 Piece of pine wood (1X6X8)
- B/1 - B/10 Apparent blood
- B/11 Reddish brown stain
- B/12 Apparent blood

APP2842

EXHIBIT 4

EXHIBIT 4

Page 5

Account Name
For Billing Inquiries Call 1-800-639-6111
Cinergi Uvacr Inc

Account Number Invoice Date
[REDACTED] Nov 18, 1998

TELECOMMUNICATIONS SERVICES Detail [REDACTED] 5957

Monthly Access Charges

Total Access Charges

119.99

Other Charges and Credits

	Rate	Amount	Total
11/15/98-12/14/98 CALLER ID	1 Unit	3.00	3.00
11/15/98-12/14/98 MONTHLY SERVICE - CALL WAITING	1 Unit	.00	.00
11/15/98-12/14/98 ENHANCED SERVICES VALUE PACKAGE	1 Unit	3.00or	3.00or
Total Other Charges and Credits			0.00

Airtime Charges	Number of Calls	Average Call Time	Total Min:Sec	Free Min:Sec	Billable Min:Sec	Rate	Total Charge
LV PERFORMANCE 1200 APR/9							
10/15/98-11/14/98							
Peak	334	3:00	649:41	645:31	0:00	.20	.00
Weekend	91	1:55	180:16	161:46	0:00	.20	.00
Total Airtime Charges							.00

Long Distance Charges

Long Distance							
10/15/98-11/14/98	63	2:40	173:22				27.46
Directory Assistance							
10/15/98-11/14/98	3	0:47	3:55				1.53
Total Long Distance Charges							29.01

Total TELECOMMUNICATIONS SERVICES Charges

149.00

Detail of Call Charges [REDACTED] 5957

Line	Date	Time	Call To	From Called	Desc	Per	Min:Sec	Airtime Charge	Long Dist Charge	Total Charge
1	10-13	12:22P	INCOMING	CL [REDACTED] 5957	PA	P	2:30	0.57		0.00
2	10-13	12:23P	INCOMING	CL [REDACTED] 5957	PA,CW	P	1:00	0.30		0.00
3	10-13	1:03P	LAS VEGAS	SV [REDACTED] 0919	PA	P	1:00	0.30		0.00
4	10-13	1:04P	INCOMING	CL [REDACTED] 5957	PA	P	3:42	0.74		0.00
5	10-13	1:57P	INCOMING	CL [REDACTED] 5957	PA,CW	P	1:49	0.36		0.00

Footnote: Period

P-Peak	Features	Networks	Services
O-Off Peak	CW-Call Waiting	NN-National Network	PA-Plan/Promo Airtime
M-Multiple Period	CF-Call Forward	CS-Canadian Network	PF-Partial Free
	3W-Three Way Call	WW-Worldwide	PC-Partial Call
	AL-Additional Lines		PO-Payphone Originated

Exhibit 30

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APP2844

Account Name

Account Number

Invoice Date

For Billing Inquiries
Call 1-800-639-6111

Cinergy Hvacr Inc

Nov 18, 1998

Detail of Call Charges [REDACTED] 5357)

Line	Date	Time	Call To	No Called	Desc	Par	Min:Sec	Airtime Charge	Long Dist Charge	Total Charge
6	10-15	2:02P	INCOMING	CL	-3957	PA	P	1:00	0.20	0.00
7	10-15	2:05P	INCOMING	CL	-3957	PA	P	1:30	0.30	0.00
8	10-15	2:18P	MOBILE	CL	-7438	PA	P	1:00	0.20	0.00
9	10-15	2:22P	INCOMING	CL	-3957	PA	P	1:00	0.20	0.00
10	10-15	3:11P	MOBILE	CL	-3342	PA	P	2:45	0.55	0.00
11	10-15	3:16P	INCOMING	CL	-3957	PA	P	1:00	0.20	0.00
12	10-15	3:16P	LAS VEGAS	NV	-4811	PA	P	3:10	0.63	0.00
13	10-15	3:19P	LAS VEGAS	NV	-4811	PA	P	1:41	0.34	0.00
14	10-15	4:33P	INCOMING	CL	-5957	PA	P	1:05	0.22	0.00
15	10-15	4:41P	PHILA	PA	-6411	PA	P	3:55	1.18	0.00
16	10-15	5:00P	INCOMING	CL	-5957	PA	P	1:02	0.21	0.00
17	10-15	5:32P	INCOMING	CL	-5957	PA	P	1:00	0.20	0.00
18	10-15	7:55P	PHILA	PA	-6411	PA	P	1:08	0.23	0.17
19	10-15	10:03P	INCOMING	CL	-5957	PA	P	1:00	0.20	0.00
20	10-16	12:00P	INCOMING	CL	-3957	PA	P	1:00	0.20	0.00
21	10-16	1:17P	LAS VEGAS	NV	-4811	PA	P	1:00	0.20	0.00
22	10-16	1:41P	INCOMING	CL	-3957	PA	P	2:45	0.55	0.00
23	10-16	4:23P	SOUTHTABOR	CA	-3557	PA	P	3:25	0.68	0.51
24	10-16	5:14P	TOLL FREE	CL	-3957	PA	P	2:43	0.54	0.00
25	10-16	5:39P	PHILA	PA	-6411	PA	P	3:52	0.71	0.58
26	10-16	5:44P	FLOORTOWN	PA	-3557	PA	P	2:30	0.50	0.38
27	10-16	8:17P	MOBILE	CL	-125	PA	P	1:00	0.20	0.00
28	10-16	8:29P	MOBILE	CL	-125	PA	P	1:00	0.20	0.00
29	10-17	3:09P	INCOMING	CL	-3957	PA	O	1:00	0.20	0.00
30	10-17	4:23P	LAS VEGAS	NV	-3444	PA	O	1:00	0.20	0.00
31	10-17	6:16P	LAS VEGAS	NV	-4811	PA	O	1:40	0.33	0.00
32	10-17	10:26P	INCOMING	CL	-3957	PA	O	3:26	0.69	0.00
33	10-17	10:28P	INCOMING	CL	-3957	PA	O	1:23	0.28	0.00
34	10-18	8:54A	ST. LOUIS	CA	-1212	PA	O	1:00	0.20	0.44
35	10-18	10:03A	TAUCAN	CA	-1580	PA	O	6:42	1.24	1.01
36	10-18	10:47A	TOLL FREE	CL	-3957	PA	O	9:53	0.00	0.00
37	10-18	3:19P	LAS VEGAS	NV	-3557	PA	O	1:00	0.20	0.00
38	10-18	3:49P	INCOMING	CL	-3957	PA	O	1:00	0.20	0.00
39	10-19	8:22P	INCOMING	CL	-3957	PA	O	7:31	1.51	0.00
40	10-19	3:27P	INCOMING	CL	-3957	PA	P	1:00	0.20	0.00
41	10-19	3:53P	INCOMING	CL	-3957	PA	P	1:05	0.22	0.00
42	10-19	4:17P	LAS VEGAS	NV	-4811	PA	P	1:00	0.20	0.00
43	10-19	7:32P	INCOMING	CL	-3957	PA	P	8:01	1.60	0.00
44	10-19	10:12P	LAS VEGAS	NV	-3376	PA	P	1:00	0.20	0.00
45	10-19	11:43P	INCOMING	CL	-3957	PA	P	1:00	0.20	0.00
46	10-20	4:03P	MOBILE	CL	-1255	PA	P	2:17	0.45	0.00
47	10-20	5:00P	LAS VEGAS	NV	-4811	PA	P	1:00	0.20	0.00
48	10-20	5:18P	LAS VEGAS	NV	-4811	PA	P	1:17	0.28	0.00
49	10-20	5:48P	PHILA	PA	-6411	PA	P	1:22	0.27	0.21
50	10-20	7:04P	LAS VEGAS	NV	-3957	PA	P	3:00	0.60	0.00
51	10-20	7:07P	LAS VEGAS	NV	-3957	PA	P	8:33	1.71	0.00
52	10-20	8:27P	PHILA	PA	-6411	PA	P	1:00	0.20	0.15
53	10-20	9:54P	PHILA	PA	-6411	PA	P	1:24	0.28	0.21
54	10-21	2:14P	PHILA	PA	-6411	PA	P	4:11	0.90	0.68
55	10-21	2:33P	INCOMING	CL	-3957	PA	P	1:07	0.23	0.00
56	10-21	3:44P	TOLL FREE	CL	-3957	PA	P	1:18	0.24	0.00
57	10-21	3:45P	LAS VEGAS	NV	-4811	PA	P	1:00	0.20	0.00
58	10-21	3:48P	INCOMING	CL	-3957	PA	P	1:58	0.39	0.00
59	10-21	4:14P	INCOMING	CL	-3957	PA	P	1:00	0.20	0.00
60	10-21	4:32P	LAS VEGAS	NV	-3957	PA	P	1:00	0.20	0.00

Footnote

Period

P-Peak

O-Off Peak

M-Multiple Period

Features

CW-Call Waiting

CV-Call Forward

JW-Three Way Call

AL-Additional Lines

Networks

NM-National Network

CN-Canadian Network

NW-National Worldwide

Services

PA-Plan/Promo Airtime

PF-Partial Free

PC-Partial Call

PO-Payphone Originated

Exhibit 30

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APP2845

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Account Name
 For Billing Inquiries Cibergr Svcs Inc
 Call 1-800-639-6111

Account Number Invoice Date
 [REDACTED] Nov 18, 1998

Detail of Call Charges ([REDACTED] 5957)

Line	Date	Time	Call To	No Called	Desc	Per	Min/Sec	Airtime Charge	Long Dist Charge	Total Charge
61	10-21	6:44P	LAS VEGAS NV	7664	PA	P	1:00	0.20		0.00
62	10-22	3:31A	INCOMING CL	5957	PA	P	1:00	0.20		0.00
63	10-22	8:59A	LAS VEGAS NV	Voice Mail	PA	P	1:00	0.20		0.00
64	10-22	11:56A	INCOMING CL	5957	PA	P	3:23	0.68		0.00
65	10-23	10:35A	INCOMING CL	5957	PA	P	1:00	0.20		0.00
66	10-23	11:10A	INCOMING CL	5957	PA	P	6:33	1.31		0.00
67	10-23	11:17A	INCOMING CL	5957	PA	P	1:00	0.20		0.00
68	10-23	3:13P	INCOMING CL	5957	PA	P	1:00	0.20		0.00
69	10-23	7:06P	INCOMING CL	5957	PA	P	3:11	0.64		0.00
70	10-23	7:47P	INCOMING CL	5957	PA	P	1:00	0.20		0.00
71	10-23	8:43P	PHILA PA	6411	PA	P	1:00	0.20	0.15	0.15
72	10-24	3:31P	PHILA PA	0060	PA	O	1:00	0.20	0.15	0.15
73	10-24	3:52P	WOODBURY NJ	7272	PA	O	1:31	0.30	0.20	0.23
74	10-24	7:08P	LOS ANGELES CA	810	PA	O	1:00	0.20		0.00
75	10-24	7:08P	LOS ANGELES CA	810	PA	O	1:00	0.20		0.00
76	10-24	9:11P	PHILA PA	6411	PA, NH	O	1:00	0.20	0.15	0.15
77	10-24	10:09P	SAN MONTICA CA	439	PA, NH	O	1:00	0.20		0.00
78	10-24	10:09P	SAN MONTICA CA	439	PA, NH	O	1:00	0.20		0.00
79	10-24	10:16P	INCOMING CL	5957	PA, NH	O	3:08	0.63	0.47	0.47
80	10-24	11:16P	SAN MONTICA CA	438	PA, NH	O	1:00	0.20		0.00
81	10-24	11:22P	INCOMING CL	5957	PA, NH	O	2:31	0.50	0.38	0.38
82	10-24	11:56P	SAN MONTICA CA	438	PA, NH	O	1:00	0.20		0.00
83	10-25	12:13A	SAN MONTICA CA	438	PA, NH	O	1:00	0.20		0.00
84	10-25	12:28A	INCOMING CL	5957	PA, NH	O	1:39	0.40	0.30	0.30
85	10-25	1:08A	INCOMING CL	5957	PA, NH	O	4:10	0.83	0.63	0.63
86	10-25	1:35P	PHILA PA	6411	PA, NH	O	1:00	0.20	0.15	0.15
87	10-25	1:57P	PHILA PA	6411	PA, NH	O	1:00	0.20	0.15	0.15
88	10-26	12:06P	LAS VEGAS NV	11	PA, CD	P	1:00	0.20		0.00
89	10-26	12:08P	INCOMING CL	5957	PA, NH	P	1:00	0.20	0.15	0.15
90	10-27	12:51P	LAS VEGAS NV	6144	PA	P	1:00	0.20		0.00
91	10-27	1:29P	PHILA PA	6298	PA	P	3:23	0.68	0.51	0.51
92	10-27	1:32P	LAS VEGAS NV	9708	PA	P	2:01	0.40		0.00
93	10-27	1:34P	INCOMING CL	5957	PA, CV	P	6:31	1.37		0.00
94	10-27	1:36P	TOLL FREE CL	4577	PA	P	1:08	0.22		0.00
95	10-27	1:57P	DIA ASST CL	1212	PA	P	1:00	0.20		0.00
96	10-27	1:58P	PHILA PA	5980	PA	P	2:24	0.48	0.54	0.54
97	10-27	2:03P	MCLAREN VA	2223	PA	P	1:00	0.20	0.15	0.15
98	10-27	2:04P	PHILA PA	6411	PA	P	3:17	0.66	0.49	0.49
99	10-27	2:11P	PHILA PA	0060	PA	P	1:00	0.20	0.15	0.15
100	10-27	2:26P	LAS VEGAS NV	811	PA	P	3:18	0.66		0.00
101	10-27	2:39P	DIA ASST CL	1212	PA	P	1:00	0.20	0.00	0.00
102	10-27	4:29P	MOBILE CL	9449	PA	P	1:00	0.20		0.00
103	10-27	5:44P	MCLAREN VA	2223	PA	P	1:58	0.39	0.30	0.30
104	10-27	8:19P	INCOMING CL	5957	PA	P	1:17	0.24		0.00
105	10-28	1:23P	PHILA PA	9212	PA	P	2:01	0.40	0.30	0.30
106	10-28	2:22P	INCOMING CL	5957	PA	P	1:53	0.38		0.00
107	10-28	2:31P	INCOMING CL	5957	PA	P	1:00	0.20		0.00
108	10-28	2:49P	INCOMING CL	5957	PA	P	4:48	0.96		0.00
109	10-28	2:49P	OPERATOR CL	5957	PA	P	1:00	0.20		0.00
110	10-28	4:06P	INCOMING CL	1257	PA	P	1:54	0.39		0.00
111	10-28	4:17P	INCOMING CL	5957	PA	P	3:14	1.12		0.00
112	10-28	4:46P	INCOMING CL	5957	PA	P	3:49	1.16		0.00
113	10-28	8:28P	INCOMING CL	5957	PA	P	1:00	0.20		0.00
114	10-28	9:19P	INCOMING CL	5957	PA	P	1:00	0.20		0.00
115	10-28	9:59P	LAS VEGAS NV	700	PA	P	1:00	0.20		0.00

Footnote Period
 P-Peak
 O-Off Peak
 M-Multiple Period

Features
 CW-Call Waiting
 CF-Call Forward
 JW-Three Way Call
 AL-Additional Lines

Networks
 NM-National Network
 CN-Canadian Network
 WM-Worldwide

Services
 PA-Plan/Promo Airtime
 PF-Partial Free
 PC-Partial Call
 PO-Payphone Originated

Exhibit 30

Pg 142

APP2846

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Account Name
 For Billing Inquiries Call 1-800-639-6111
 Cinergi Svcs Inc

Account Number Invoice Date
 [REDACTED] Nov 18, 1998

Detail of Call Charges [REDACTED]-5957]

Line	Date	Time	Call To	No Called	Desc	Per	Min:Sec	Airtime Charge	Long Dist Charge	Total Charge
116	10-28	8:05A	PHILA	PA	6411	PA	2:25	0.48	0.16	0.36
117	10-28	8:25A	WOODBURY NJ	7222	PA	P	1:21	0.27	0.10	0.30
118	10-28	3:45P	WOODBURY NJ	7222	PA,NM	P	1:00	0.20		0.00
119	10-28	4:04P	PHILA	PA	6223	PA,NM	P	1:00	0.20	0.00
120	10-28	4:06P	MCLEAN VA	2227	PA,NM	P	1:00	0.20		0.00
121	10-28	4:09P	LOGANSVILLE CA	7810	PA,NM	P	15:48	3.16	2.37	2.37
122	10-28	4:25P	WOODBURY NJ	7222	PA,NM	P	1:00	0.20		0.00
123	10-28	4:39P	LAS VEGAS NV	Voice Mail	PA,CD	P	1:00	0.20		0.00
124	10-28	5:49P	LAS VEGAS NV	Voice Mail	PA,CD	P	1:37	0.33		0.00
125	10-28	5:51P	LAS VEGAS NV	7433	PA,NM	P	4:08	0.83	0.62	0.62
126	10-28	5:57P	PHILA	PA	6411	PA,NM	P	2:10	0.43	0.00
127	10-28	6:02P	PHILA	PA	6411	PA,NM	P	2:31	0.56	0.00
128	10-28	6:08P	PHILA	PA	6411	PA,NM	P	1:03	0.21	0.00
129	10-28	6:18P	FLOORTOWN PA	5680	PA,NM	P	1:00	0.20		0.00
130	10-28	6:27P	PHILA	PA	6040	PA,NM	P	1:00	0.20	0.00
131	10-28	6:34P	PHILA	PA	6411	PA,NM	P	1:00	0.20	0.00
132	10-28	6:38P	INCOMING	CL	5933	PA,NM	P	3:03	0.41	0.31
133	10-28	6:48P	FLOORTOWN PA	5680	PA,NM	P	1:00	0.20		0.00
134	10-28	7:50P	LAS VEGAS NV	Voice Mail	PA,CD	P	1:00	0.20		0.00
135	10-28	9:32P	PRASSTOWN PA	1884	PA,NM	P	6:47	1.36		0.00
136	10-28	9:37A	PHILA	PA	6040	PA,NM	P	1:00	0.20	0.00
137	10-28	9:47A	TOLL FREE	CL	Custom Care	NM	P	1:00	0.00	0.00
138	10-28	10:32A	PHILA	PA	7722	PA,NM	P	1:04	0.21	0.00
139	10-28	10:33A	PHILA	PA	7222	PA,NM	P	1:25	0.28	0.00
140	10-28	10:57A	PHILA	PA	5960	PA,NM	P	1:00	0.20	0.00
141	10-28	4:35P	INCOMING	CL	5844	PA,NM	P	1:00	0.20	0.15
142	10-28	11:02A	FLOORTOWN PA	5680	PA,NM	P	1:00	0.20		0.00
143	10-31	11:11A	PHILA	PA	6040	PA,NM	O	1:00	0.20	0.00
144	10-31	11:05A	FLOORTOWN PA	5680	PA,NM	O	3:23	1.48		0.00
145	10-31	1:34P	INCOMING	CL	5945	PA,NM	O	3:38	0.73	0.55
146	10-31	1:40P	WILLOW CRY PA	5891	PA,NM	O	1:00	0.20		0.00
147	10-31	1:49P	PHILA	PA	5431	PA,NM	O	1:00	0.20	0.00
148	10-31	2:11P	LAS VEGAS NV	11	PA,CD	O	1:03	0.21		0.00
149	10-31	2:23P	INCOMING	CL	5933	PA,NM	O	7:13	1.44	1.08
150	10-31	4:33P	PHILA	PA	6411	PA,NM	O	1:00	0.20	0.00
151	10-31	7:46P	LAS VEGAS NV	4811	PA,NM	O	1:00	0.20	0.15	0.15
152	10-31	9:39P	INCOMING	CL	5957	PA,NM	O	4:55	0.98	0.74
153	10-31	11:02P	PHILA	PA	5386	PA,NM	O	1:00	0.20	0.00
154	10-31	11:14P	PHILA	PA	5386	PA,NM	O	1:00	0.20	0.00
155	11-01	12:04A	LAS VEGAS NV	4700	PA,NM	O	1:00	0.20	0.15	0.15
156	11-01	12:08A	INCOMING	CL	5944	PA,NM	O	2:42	0.54	0.41
157	11-01	1:18P	LAS VEGAS NV	4811	PA,NM	O	2:17	0.46	0.34	0.34
158	11-01	1:35P	FLOORTOWN PA	0228	PA,NM	O	1:00	0.20		0.00
159	11-01	1:04P	LAS VEGAS NV	11	PA,CD	O	1:00	0.20		0.00
160	11-01	2:07P	FLOORTOWN PA	0728	PA,NM	O	1:00	0.20		0.00
161	11-01	2:08P	WILLOW CRY PA	8891	PA,NM	O	1:34	0.31		0.00
162	11-01	7:35P	PHILA	PA	3289	PA,NM	O	1:00	0.20	0.00
163	11-01	3:45P	LAS VEGAS NV	Voice Mail	PA,CD	O	1:00	0.20		0.00
164	11-01	7:40P	INCOMING	CL	5682	PA,NM	O	1:00	0.20	0.15
165	11-01	8:10P	PHILA	PA	3289	PA,NM	O	1:00	0.20	0.00
166	11-02	12:17A	TOLL FREE	CL	4520	PA,NM	P	1:00	0.20	0.00
167	11-02	2:24P	LAS VEGAS NV	Voice Mail	PA,CD	P	2:11	0.44		0.00
168	11-02	2:35P	LAS VEGAS NV	7433	PA,NM	P	11:27	2.28	1.72	1.72
169	11-02	3:33P	LAS VEGAS NV	4811	PA,NM	P	1:00	0.20	0.15	0.15
170	11-02	5:10P	INCOMING	CL	5944	PA,NM	P	1:49	0.36	0.17

Footnote Period
 P-Peak
 O-Off Peak
 M-Multiple Period

Features
 CW-Call Waiting
 CF-Call Forward
 3W-Three Way Call
 AL-Additional Lines

Networks
 NM-National Network
 CN-Canadian Network
 NW-Northern Worldwide

Services
 PA-Plan/Promo Airtime
 PF-Partial Free
 PC-Partial Call
 PO-Payphone Originated

Exhibit 30

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APP2847

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Account Name
 For Billing Inquiries Call 1-800-639-5111
 Cinergy Svcs Inc

Account Number Invoice Date
 Nov 16, 1998

Detail of Call Charges (1997)

Line	Date	Time	Call To	No. Called	Desc	Par	Minutes	Airtime Charge	Long Dist Charge	Total Charge
171	11-03	5:15P	INCOMING	CL	5957	PA, NW P	4:03	0.31	0.41	0.41
172	11-03	5:25P	LAS VEGAS	NV	4811	PA, NW P	1:39	0.30	0.33	0.33
173	11-03	6:01P	PHILA	PA	3289	PA, NW P	1:00	0.30	0.33	0.33
174	11-03	6:30P	MILWAU	VA	3233	PA, NW P	6:41	1.34	1.00	1.00
175	11-03	6:44P	LAS VEGAS	NV	4811	PA, NW P	1:16	0.25	0.19	0.19
176	11-03	7:18P	LAS VEGAS	NV	4811	PA, NW P	1:29	0.30	0.23	0.23
177	11-03	7:18P	INCOMING	CL	5957	PA, NW P	6:59	1.40	1.05	1.05
178	11-03	9:03P	LAS VEGAS	NV	41	PA, CD P	1:00	0.20	0.00	0.00
179	11-03	10:33P	INCOMING	CL	5967	PA, NW P	7:03	1.41	1.04	1.04
180	11-03	10:54P	LAS VEGAS	NV	41	PA, CD P	1:03	0.21	0.00	0.00
181	11-03	1:00A	PHILA	PA	3281	PA, NW P	1:00	0.30	0.00	0.00
182	11-03	1:17P	TOLL FREE	CL	5977	PA, NW P	1:00	0.20	0.00	0.00
183	11-03	1:18P	LAS VEGAS	NV	5041	PA, NW P	1:00	0.20	0.13	0.13
184	11-03	4:36P	INCOMING	CL	5957	PA, NW P	1:13	0.24	0.18	0.18
185	11-03	4:38P	LAS VEGAS	NV	7432	PA, NW P	6:59	1.40	1.05	1.05
186	11-03	4:50P	LAS VEGAS	NV	4700	PA, NW P	1:00	0.20	0.13	0.13
187	11-03	5:39P	LAS VEGAS	NV	4700	PA, NW P	1:00	0.20	0.13	0.13
188	11-03	6:44P	PHILA	PA	6411	PA, NW P	1:44	0.36	0.15	0.15
189	11-03	8:35P	LAS VEGAS	NV	4700	PA, NW P	1:00	0.20	0.13	0.13
190	11-03	9:07P	LAS VEGAS	NV	7433	PA, NW P	1:06	0.29	0.19	0.19
191	11-03	11:47P	INCOMING	CL	5957	PA	2:12	0.44	0.19	0.19
192	11-03	11:47P	MOBILE	CL	7433	PA	1:00	0.20	0.00	0.00
193	11-03	11:47P	LAS VEGAS	NV	4811	PA	2:50	0.57	0.00	0.00
194	11-03	11:47P	LAS VEGAS	NV	4811	PA	1:00	0.20	0.00	0.00
195	11-03	11:47P	LAS VEGAS	NV	4811	PA	1:00	0.20	0.00	0.00
196	11-03	11:47P	LAS VEGAS	NV	4811	PA	1:00	0.20	0.00	0.00
197	11-03	11:47P	INCOMING	CL	5957	PA	2:14	0.45	0.00	0.00
198	11-03	11:47P	LAS VEGAS	NV	5957	PA	6:11	1.24	0.00	0.00
199	11-03	11:47P	LAS VEGAS	NV	41	PA	1:00	0.20	0.00	0.00
200	11-03	11:16P	INCOMING	CL	7766	PA	1:01	0.22	0.00	0.00
201	11-03	11:25P	INCOMING	CL	5957	PA	4:09	1.23	0.00	0.00
202	11-03	9:43P	LAS VEGAS	NV	5957	PA	1:00	0.20	0.00	0.00
203	11-03	11:35P	LAS VEGAS	NV	7766	PA	1:23	0.28	0.00	0.00
204	11-03	11:37P	LAS VEGAS	NV	4811	PA	1:00	0.20	0.00	0.00
205	11-03	7:32P	INCOMING	CL	5957	PA	5:08	1.00	0.00	0.00
206	11-03	7:37P	INCOMING	CL	5957	PA	1:00	0.20	0.00	0.00
207	11-03	7:52P	LAS VEGAS	NV	4811	PA	1:00	0.20	0.00	0.00
208	11-03	8:25P	INCOMING	CL	5957	PA	4:34	0.91	0.00	0.00
209	11-03	8:31P	INCOMING	CL	5957	PA	4:12	0.86	0.00	0.00
210	11-03	10:02P	LAS VEGAS	NV	4431	PA	3:44	1.16	0.00	0.00
211	11-03	10:07P	INCOMING	CL	5957	PA, CV P	1:00	0.20	0.00	0.00
212	11-03	10:17P	INCOMING	CL	5957	PA	1:24	0.40	0.00	0.00
213	11-03	10:20P	LAS VEGAS	NV	4811	PA	1:51	0.37	0.00	0.00
214	11-03	10:30P	MOBILE	CL	5242	PA	1:00	0.20	0.00	0.00
215	11-03	10:31P	LAS VEGAS	NV	3348	PA	1:00	0.20	0.00	0.00
216	11-03	10:31P	LAS VEGAS	NV	5335	PA	1:00	0.20	0.00	0.00
217	11-03	11:01P	LAS VEGAS	NV	4811	PA	1:00	0.20	0.00	0.00
218	11-03	11:03P	LAS VEGAS	NV	4811	PA	1:21	0.27	0.00	0.00
219	11-03	11:27P	MOBILE	CL	7433	PA	1:00	0.20	0.00	0.00
220	11-03	11:49P	MOBILE	CL	5449	PA	1:33	0.31	0.00	0.00
221	11-03	11:53P	LAS VEGAS	NV	3348	PA	1:00	0.20	0.00	0.00
222	11-07	1:00A	LAS VEGAS	NV	3348	PA	1:00	0.20	0.00	0.00
223	11-07	1:12A	MOBILE	CL	5449	PA	1:00	0.20	0.00	0.00
224	11-07	2:07P	INCOMING	CL	5957	PA	1:33	0.31	0.00	0.00
225	11-07	10:46A	INCOMING	CL	5957	PA	4:33	0.91	0.00	0.00

DISCONNECTED
 5/10/00

Dub

From Sen

From Sen

From Sen

Features
 CW-Call Waiting
 CF-Call Forward
 JW-Three Way Call
 AL-Additional Lines

Networks
 NN-National Network
 CW-Canadian Network
 NW-Norwest Worldwide

Services
 PA-Plan/From Airtime
 PF-Partial Free
 PC-Partial Call
 PO-Payphone Originated

Exhibit 30

Pg 144

APP2848

Account Name
 For Billing Inquiries Cingular Swann Inc
 Call 1-800-639-6111

Account Number Invoice Date
 [REDACTED] Nov 19, 1998

Detail of Call Charges [REDACTED] 957]

Line	Date	Time	Call To	No Called	Desc	Per	Min:Sec	Airtime Charge	Long Dist Charge	Total Charge
226	11-07	12:02P	LAS VEGAS NV	[REDACTED]	2970	PA	0	1:00	0.20	0.00
227	11-07	12:03P	LAS VEGAS NV	[REDACTED]	1133	PA	0	1:00	0.20	0.00
228	11-07	12:10P	LAS VEGAS NV	[REDACTED]	4276	PA	0	3:10	0.63	0.00
229	11-07	12:16P	TOLL FREE CL	[REDACTED]	Cara	0	5:12	0.00	0.00	0.00
230	11-07	12:23P	LOS ANGELES CA	[REDACTED]	6175	PA	0	1:00	0.20	0.00
231	11-07	12:24P	LAS VEGAS NV	[REDACTED]	9174	PA	0	1:00	0.20	0.00
232	11-07	12:28P	LAS VEGAS NV	[REDACTED]	9929	PA	0	1:00	0.20	0.00
233	11-07	1:10P	LAS VEGAS NV	[REDACTED]	6274	PA	0	1:00	0.20	0.00
234	11-07	1:20P	LAS VEGAS NV	[REDACTED]	9929	PA	0	1:00	0.20	0.00
235	11-07	1:25P	LAS VEGAS NV	[REDACTED]	1913	PA	0	1:00	0.20	0.00
236	11-07	1:29P	LAS VEGAS NV	[REDACTED]	9929	PA	0	1:00	0.20	0.00
237	11-07	2:02P	LAS VEGAS NV	[REDACTED]	9929	PA	0	1:00	0.20	0.00
238	11-07	2:31P	INCOMING CL	[REDACTED]	9957	PA	0	2:09	0.43	0.00
239	11-07	3:49P	LAS VEGAS NV	[REDACTED]	8011	PA	0	1:00	0.20	0.00
240	11-07	3:57P	LAS VEGAS NV	[REDACTED]	4376	PA	0	4:25	0.18	0.00
241	11-07	6:24P	INCOMING CL	[REDACTED]	3907	PA	0	3:16	0.43	0.00
242	11-07	6:37P	MOBILE CL	[REDACTED]	9449	PA	0	1:40	0.33	0.00
243	11-07	9:43P	MOBILE CL	[REDACTED]	9449	PA	0	4:18	0.86	0.00
244	11-07	10:51P	MOBILE CL	[REDACTED]	9449	PA	0	1:00	0.20	0.00
245	11-07	11:50P	INCOMING CL	[REDACTED]	3957	PA	0	1:03	0.21	0.00
246	11-08	5:36P	MOBILE CL	[REDACTED]	9449	PA	0	1:00	0.20	0.00
247	11-08	6:41P	MOBILE CL	[REDACTED]	6411	PA	0	1:00	0.20	0.00
248	11-08	6:41P	MOBILE CL	[REDACTED]	6411	PA	0	1:00	0.20	0.13
249	11-08	6:41P	MOBILE CL	[REDACTED]	6411	PA	0	1:00	0.20	0.30
250	11-08	8:18P	LAS VEGAS NV	[REDACTED]	4811	PA	0	1:00	0.20	0.13
251	11-08	8:34P	LAS VEGAS NV	[REDACTED]	6700	PA	0	1:00	0.20	0.00
252	11-08	11:52P	LAS VEGAS NV	[REDACTED]	4811	PA	0	1:00	0.20	0.00
253	11-08	12:22A	LAS VEGAS NV	[REDACTED]	4811	PA	0	1:00	0.20	0.00
254	11-08	8:47A	INCOMING CL	[REDACTED]	3957	PA	0	3:17	0.66	0.00
255	11-08	9:12P	TOLL FREE CL	[REDACTED]	2577	PA	0	1:00	0.20	0.00
256	11-08	9:25P	LAS VEGAS NV	[REDACTED]	6700	PA	0	1:00	0.20	0.00
257	11-08	9:43P	INCOMING CL	[REDACTED]	5999	PA	0	3:31	0.70	0.00
258	11-08	9:43P	MOBILE CL	[REDACTED]	9449	PA	0	1:00	0.20	0.00
259	11-08	9:43P	MOBILE CL	[REDACTED]	9242	PA	0	1:00	0.20	0.00
260	11-08	9:43P	MOBILE CL	[REDACTED]	9242	PA	0	1:00	0.20	0.00
261	11-08	9:43P	MOBILE CL	[REDACTED]	2253	PA	0	8:51	1.77	0.00
262	11-08	9:43P	MOBILE CL	[REDACTED]	9242	PA	0	1:00	0.20	0.00
263	11-08	9:43P	MOBILE CL	[REDACTED]	9449	PA	0	1:00	0.20	0.00
264	11-08	9:43P	INCOMING CL	[REDACTED]	3957	PA	0	2:37	0.53	0.00
265	11-08	9:43P	SAN MONICA CA	[REDACTED]	6274	PA	0	1:00	0.20	0.00
266	11-08	9:43P	INCOMING CL	[REDACTED]	3957	PA	0	3:12	0.64	0.00
267	11-08	9:43P	TOLL FREE CL	[REDACTED]	6577	PA	0	1:00	0.20	0.00
268	11-08	9:43P	LAS VEGAS NV	[REDACTED]	6700	PA	0	1:00	0.20	0.00
269	11-08	9:43P	LAS VEGAS NV	[REDACTED]	6700	PA	0	1:00	0.20	0.00
270	11-08	9:43P	INCOMING CL	[REDACTED]	3957	PA	0	2:01	0.40	0.00
271	11-08	9:43P	INCOMING CL	[REDACTED]	8052	PA	0	1:00	0.20	0.00
272	11-08	9:43P	LAS VEGAS NV	[REDACTED]	6700	PA	0	1:40	0.33	0.00
273	11-08	9:43P	LAS VEGAS NV	[REDACTED]	9299	PA	0	1:30	0.30	0.00
274	11-08	9:43P	LAS VEGAS NV	[REDACTED]	9299	PA	0	1:00	0.20	0.00
275	11-08	9:43P	MOBILE CL	[REDACTED]	9449	PA	0	1:00	0.20	0.00
276	11-08	9:43P	INCOMING CL	[REDACTED]	9984	PA	0	4:08	0.83	0.00
277	11-08	9:43P	INCOMING CL	[REDACTED]	9984	PA	0	1:00	0.20	0.00
278	11-08	9:43P	LAS VEGAS NV	[REDACTED]	11	PA	0	1:00	0.20	0.00
279	11-08	9:43P	LAS VEGAS NV	[REDACTED]	3913	PA	0	1:00	0.20	0.00
280	11-08	9:43P	LAS VEGAS NV	[REDACTED]	6700	PA	0	1:00	0.20	0.00

Footnote Period
 P-Peak
 O-Off Peak
 M-Multiple Period

Features
 CV-Call Waiting
 CF-Call Forward
 JM-Three Way Call
 AL-Additional Lines

Networks
 NM-National Network
 CN-Canadian Network
 WM-Worldwide

Services
 PA-Plan/Prepaid Airtime
 PP-Partial Free
 PC-Partial Call
 PO-Payphone Originated

Exhibit 30

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Account Name
 For Billing Inquiries Call 1-800-639-6111
 Cinergi Svcs Inc

Account Number Invoice Date
 [REDACTED] Nov 18, 1998

Detail of Call Charges [REDACTED] 59571

Line	Date	Time	Call To	No. Called	Desc	Per	Min./Sec	Airtime Charge	Long Dist Charge	Total Charge
281	11-09	6:31P	LAS VEGAS NV	4811	PA	F	1:00	0.20		0.00
282	11-09	7:18P	LAS VEGAS NV	6143	PA	F	1:00	0.20		0.00
283	11-09	7:21P	INCOMING CL	5957	PA	F	1:49	0.36		0.00
284	11-09	7:23P	INCOMING CL	5957	PA	F	1:24	0.30		0.00
285	11-09	8:11P	LAS VEGAS NV	4000	PA	F	1:00	0.20		0.00
286	11-09	8:53P	INCOMING CL	5957	PA	F	2:08	0.42		0.00
287	11-09	9:13P	INCOMING CL	5957	PA	F	2:27	0.49		0.00
288	11-09	9:37P	INCOMING CL	5957	PA	F	1:19	0.26		0.00
289	11-09	10:17P	INCOMING CL	5957	PA	F	2:25	0.48		0.00
290	11-09	10:28P	INCOMING CL	5957	PA	F	1:00	0.20		0.00
291	11-09	10:33P	LAS VEGAS NV	7000	PA	F	1:00	0.20		0.00
292	11-10	12:11P	LAS VEGAS NV	7000	PA	F	1:00	0.20		0.00
293	11-10	12:11P	TOLL FREE CL	4577	PA	F	1:00	0.20		0.00
294	11-10	12:15P	MOBILE CL	9449	PA	F	1:24	0.30		0.00
295	11-10	12:30P	LAS VEGAS NV	4811	PA	F	1:00	0.20		0.00
296	11-10	12:31P	LAS VEGAS NV	4811	PA	F	1:00	0.20		0.00
297	11-10	12:50P	LAS VEGAS NV	5213	PA	F	1:00	0.20		0.00
298	11-10	1:01P	MOBILE CL	1109	PA	F	1:00	0.20		0.00
299	11-10	1:18P	LAS VEGAS NV	9213	PA	F	1:00	0.20		0.00
300	11-10	1:37P	INCOMING CL	5957	PA	F	1:03	0.23		0.00
301	11-10	1:47P	WILLOW CRYV PA	8891	PA	F	1:00	0.20		0.00
302	11-10	1:51P	LAS VEGAS NV	4811	PA	F	1:00	0.20	0.15	0.15
303	11-10	1:58P	MOBILE CL	2255	PA	F	3:14	0.65		0.00
304	11-10	2:17P	LAS VEGAS NV	7744	PA	F	1:00	0.20		0.00
305	11-10	2:18P	INCOMING CL	5957	PA, CW	F	0:04	1.61		0.00
306	11-10	2:19P	INCOMING CL	5957	PA, CW	F	1:08	0.23		0.00
307	11-10	2:23P	INCOMING CL	5957	PA, CW	F	1:41	0.34		0.00
308	11-10	2:39P	DIX ASST CL	5957	PA	F	1:00	0.20		0.00
309	11-10	2:52P	INCOMING CL	5957	PA	F	1:00	0.20	0.00	0.00
310	11-10	3:08P	INCOMING CL	5957	PA	F	1:00	0.20		0.00
311	11-10	3:11P	INCOMING CL	5957	PA	F	1:00	0.20		0.00
312	11-10	3:15P	INCOMING CL	5957	PA	F	2:11	0.44		0.00
313	11-10	3:16P	INCOMING CL	5957	PA	F	1:00	0.20		0.00
314	11-10	3:18P	INCOMING CL	5957	PA, CW	F	1:00	0.20		0.00
315	11-10	3:37P	LAS VEGAS NV	5957	PA	F	1:13	0.24		0.00
316	11-10	3:40P	INCOMING CL	4811	PA	F	1:00	0.20		0.00
317	11-10	4:17P	INCOMING CL	5957	PA	F	1:00	0.20		0.00
318	11-10	4:20P	INCOMING CL	5957	PA	F	1:00	0.20		0.00
319	11-10	4:49P	INCOMING CL	5957	PA	F	1:00	0.20		0.00
320	11-10	5:18P	LAS VEGAS NV	811	PA	F	13:59	2.80		0.00
321	11-10	5:23P	INCOMING CL	989	PA	F	1:00	0.20		0.00
322	11-10	6:28P	LAS VEGAS NV	4000	PA	F	18:46	3.75		0.00
323	11-10	6:31P	INCOMING CL	5957	PA	F	1:00	0.20		0.00
324	11-10	6:37P	LAS VEGAS NV	4811	PA	F	1:00	0.20		0.00
325	11-10	7:18P	DIX ASST CL	5957	PA	F	1:00	0.20		0.00
326	11-10	7:41P	INCOMING CL	5957	PA	F	1:00	0.20	0.25	0.25
327	11-10	8:24P	INCOMING CL	5957	PA	F	1:02	0.21		0.00
328	11-10	8:32P	LAS VEGAS NV	4811	PA	F	1:00	0.20		0.00
329	11-10	9:34P	LAS VEGAS NV	3348	PA	F	1:00	0.20		0.00
330	11-10	10:05P	INCOMING CL	5957	PA	F	1:00	0.20		0.00
331	11-10	10:10P	LAS VEGAS NV	415	PA	F	1:55	0.38		0.00
332	11-10	10:15P	LAS VEGAS NV	0745	PA	F	1:31	0.30		0.00
333	11-10	10:22P	LAS VEGAS NV	4811	PA	F	1:31	0.30		0.00
334	11-10	10:28P	LAS VEGAS NV	3348	PA	F	1:00	0.20		0.00
335	11-10	10:38P	LAS VEGAS NV	2744	PA	F	1:21	0.28		0.00

Footnote Period
 P-Peak
 O-Off Peak
 M-Multiple Period

Features
 CN-Call Waiting
 CF-Call Forward
 3W-Three Way Call
 AL-Additional Lines

Networks
 NN-National Network
 CN-Canadian Network
 WW-Worldwide

Services
 PA-Plan/From Airtime
 PF-Partial Free
 PC-Partial Call
 PO-Phone Originated

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Account Name
For Billing Inquiries Call 1-800-639-6111
Cinergi Svcs Inc

Account Number Invoice Date
[REDACTED] Nov 18, 1998

Detail of Call Charges [REDACTED]-5957]

Line	Date	Time	Call To	No Called	Desc	Per	Min/Sec	Airtime Charge	Long Dist Charge	Total Charge
336	11-18	10:41P	INCOMING	CL	-5957	PA	F	1:00	0.20	
337	11-11	8:43P	MOBILE	CL	-9449	PA	F	1:00	0.20	0.00
338	11-11	5:11P	TOLL FREE	CL	-9449	PA	F	1:00	0.20	0.00
339	11-11	5:23P	LAS VEGAS	NV	-8299	PA	F	3:70	0.00	0.00
340	11-11	5:49P	LAS VEGAS	NV	-4811	PA	F	1:16	0.25	0.00
341	11-11	5:58P	INCOMING	CL	-5957	PA	F	1:12	0.26	0.00
342	11-11	6:54P	LAS VEGAS	NV	-4811	PA	F	1:00	0.20	0.00
343	11-11	7:15P	INCOMING	CL	-5957	PA	F	1:00	0.20	0.00
344	11-11	7:22P	INCOMING	CL	-5957	PA	F	1:00	0.20	0.00
345	11-11	8:24P	INCOMING	CL	-5957	PA	F	1:00	0.20	0.00
346	11-11	8:46P	INCOMING	CL	-5957	PA	F	1:00	0.20	0.00
347	11-11	9:08P	INCOMING	CL	-5957	PA	F	1:00	0.20	0.00
348	11-11	9:11P	INCOMING	CL	-5957	PA	F	1:00	0.20	0.00
349	11-11	9:30P	INCOMING	CL	-5957	PA	F	1:33	0.32	0.00
350	11-11	9:49P	INCOMING	CL	-5957	PA	F	1:47	0.38	0.00
351	11-11	10:13P	LAS VEGAS	NV	-4811	PA	F	1:00	0.20	0.00
352	11-11	10:23P	LAS VEGAS	NV	-4811	PA	F	1:00	0.20	0.00
353	11-11	11:18P	LAS VEGAS	NV	-2099	PA	F	1:00	0.20	0.00
354	11-12	11:02A	LAS VEGAS	NV	-4700	PA	F	3:01	0.60	0.00
355	11-12	12:03A	LAS VEGAS	NV	-4700	PA	F	1:00	0.20	0.00
356	11-12	12:41A	INCOMING	CL	-5957	PA	F	1:00	0.20	0.00
357	11-12	10:31A	MOBILE	CL	-9449	PA	F	1:18	0.25	0.00
358	11-12	10:34A	INCOMING	CL	-5957	PA	F	1:00	0.20	0.00
359	11-12	10:39A	LAS VEGAS	NV	-4022	PA	F	1:00	0.20	0.00
360	11-12	10:44A	PRILA	PA	-4441	PA	F	1:00	0.20	0.00
361	11-12	10:44A	LAS VEGAS	NV	-4700	PA	F	1:00	0.20	0.15
362	11-12	10:48A	LAS VEGAS	NV	-4022	PA	F	1:43	0.34	0.00
363	11-12	11:01A	INCOMING	CL	-5957	PA	F	2:37	0.52	0.00
364	11-12	11:01A	MOBILE	CL	-9449	PA	F	1:00	0.20	0.00
365	11-12	11:31A	INCOMING	CL	-5957	PA	F	2:34	0.69	0.00
366	11-12	11:34A	INCOMING	CL	-5957	PA, CW	F	1:17	0.26	0.00
367	11-12	12:25P	LAS VEGAS	NV	-3110	PA	F	1:35	0.32	0.00
368	11-12	12:32P	LAS VEGAS	NV	-7764	PA	F	1:09	0.21	0.00
369	11-12	12:48P	INCOMING	CL	-5957	PA	F	1:31	0.27	0.00
370	11-12	1:14P	INCOMING	CL	-5957	PA	F	15:15	3.03	0.00
371	11-12	4:08P	INCOMING	CL	-5957	PA	F	1:00	0.20	0.00
372	11-12	4:31P	INCOMING	CL	-5957	PA	F	1:00	0.20	0.00
373	11-12	4:41P	INCOMING	CL	-5957	PA	F	1:00	0.20	0.00
374	11-12	8:16P	MOBILE	CL	-9449	PA	F	1:00	0.20	0.00
375	11-12	8:18P	INCOMING	CL	-5957	PA	F	2:09	0.43	0.00
376	11-12	8:20P	LAS VEGAS	NV	-7764	PA	F	1:00	0.20	0.00
377	11-12	8:26P	INCOMING	CL	-5957	PA, CW	F	1:00	0.20	0.00
378	11-12	8:29P	MOBILE	CL	-9449	PA	F	1:04	0.21	0.00
379	11-12	8:30P	INCOMING	CL	-5957	PA	F	1:00	0.20	0.00
380	11-12	8:31P	INCOMING	CL	-5957	PA	F	2:14	0.51	0.00
381	11-12	9:14P	LAS VEGAS	NV	-4700	PA	F	1:00	0.20	0.00
382	11-12	9:33P	MOBILE	CL	-9449	PA	F	1:00	0.20	0.00
383	11-12	9:44P	INCOMING	CL	-5957	PA	F	1:02	0.21	0.00
384	11-12	10:13P	LAS VEGAS	NV	-7764	PA	F	1:00	0.20	0.00
385	11-12	10:22P	LAS VEGAS	NV	-3100	PA	F	1:00	0.20	0.00
386	11-12	11:33P	INCOMING	CL	-5957	PA	F	3:31	0.70	0.00
387	11-12	12:09A	LAS VEGAS	NV	-3100	PA	F	1:00	0.20	0.00
388	11-12	3:24A	INCOMING	CL	-5957	PA	F	2:18	0.53	0.00
389	11-12	4:04A	PRILA	PA	-4411	PA	F	1:00	0.20	0.15
390	11-12	7:01A	INCOMING	CL	-5957	PA	F	1:00	0.20	0.00

Footnote Period
P-Peak
O-Off Peak
M-Multiple Period

Features
CW-Cell Waiting
CF-Call Forward
3W-Three Way Call
AL-Additional Lines

Networks
CW-National Network
CN-Canadian Network
NW-Nortel Worldwide

Services
PA-Plan/Primo Airtime
PF-Partial Free
PC-Partial Call
PO-Payphone Originated

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Account Name
For Billing Inquiries
Call 1-800-639-6111

Cinergy Svcs Inc

Account Number
Invoice Date
Nov 18, 1998

Detail of Call Charges (5957)

Line	Date	Time	Call To	No Called	Desc	Fac	Min:Sec	Airtime Charge	Long Dist Charge	Total Charge
391	11-13	9:18A	LAS VEGAS	NV	6700	PA	F	1:00	0.30	0.00
392	11-13	11:28A	MOBILE	CL	9449	PA	F	1:00	0.30	0.00
393	11-13	11:59A	MOBILE	CL	9449	PA	F	1:00	0.30	0.00
394	11-13	12:14P	INCOMING	CL	5957	PA	F	1:15	0.35	0.00
395	11-13	5:39P	MOBILE	CL	9449	PA	F	1:33	0.31	0.00
396	11-13	7:17P	INCOMING	CL	5957	PA	F	1:34	0.31	0.00
397	11-13	7:18P	INCOMING	CL	5957	PA	F	1:01	0.30	0.00
398	11-13	7:15P	INCOMING	CL	5957	PA	F	1:07	0.32	0.00
399	11-13	8:19P	LAS VEGAS	NV	6700	PA	F	1:00	0.30	0.00
400	11-13	8:25P	INCOMING	CL	5957	PA	F	1:00	0.30	0.00
401	11-13	8:39P	INCOMING	CL	5957	PA	F	4:52	0.97	0.00
402	11-13	9:19P	INCOMING	CL	5957	PA	F	1:19	0.36	0.00
403	11-13	9:53P	LAS VEGAS	NV	7744	PA	P	1:00	0.30	0.00
404	11-13	9:54P	LAS VEGAS	NV	8811	PA	P	1:00	0.30	0.00
405	11-13	10:07P	LAS VEGAS	NV	6700	PA	F	1:00	0.30	0.00
406	11-14	5:11A	INCOMING	CL	5957	PA	O	1:00	0.30	0.00
407	11-14	11:40A	LAS VEGAS	NV	6143	PA	O	1:00	0.30	0.00
408	11-14	11:42A	INCOMING	CL	5957	PA	O	1:37	0.32	0.00
409	11-14	12:00P	INCOMING	CL	5957	PA	O	1:00	0.30	0.00
410	11-14	12:00P	MOBILE	CL	9449	PA	O	1:00	0.30	0.00
411	11-14	7:45P	MOBILE	CL	9449	PA	O	1:00	0.30	0.00
412	11-14	9:32P	TOLL FREE	CL	Customer Care	O	3:36	0.00	0.00	0.00
413	11-14	9:56P	LAS VEGAS	NV	6700	PA	O	1:00	0.30	0.00
414	11-14	9:57P	INCOMING	CL	5957	PA	O	1:16	0.35	0.00
415	11-14	9:57P	LAS VEGAS	NV	8444	PA	O	1:00	0.30	0.00
416	11-14	10:11P	INCOMING	CL	5957	PA	O	1:02	0.31	0.00
417	11-14	11:01P	INCOMING	CL	5957	PA	O	1:49	0.36	0.00
418	11-14	11:19P	INCOMING	CL	5957	PA	O	1:00	0.30	0.00
Credit for Minutes Included with Airtime Plan								141.33cr		
Total Airtime and Long Distance Charges								429:57	0.00	29.01

TELECOMMUNICATIONS SERVICES Detail (155)

Monthly Access Charges	Rate	Amount	Total
10/20/98-11/14/98 LV PERFORMANCE 400 APR/98	1 Unit	52.99	44.44cr
Total Access Charges			-44.44
Other Charges and Credits			
10/20/98-11/14/98 CALLER ID	1 Unit	3.00	2.52cr
10/20/98-11/14/98 ENHANCED SERVICES VALUE PACKAGE	1 Unit	3.00cr	2.52
Total Other Charges and Credits			0.00
Footnote	Period	Features	Networks
P-Peak		CR-Call Waiting	NW-National Network
O-Off Peak		CF-Call Forward	CC-Canadian Network
M-Multiple Period		JW-Three Way Call	MN-Worldwide
		AL-Additional Lines	
		Services	
		PA-Plan/Plan Airtime	
		PP-Partial Free	
		PC-Partial Call	
		PO-Payphone Originated	

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EXHIBIT 5

EXHIBIT 5

ROCKY MOUNTAIN INNOCENCE CENTER

February 17, 2016

Board of Directors

Chris J. Martinez
President

Gil A. Miller, CPA, CFE, CIRA
Treasurer

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Jensie L. Anderson
Legal Director

Diane E. Courselle

Lance J. Hendron

Michael J. Langford

Aaron J. Lytle

David J. (DJ) Williams

Las Vegas Metropolitan Police Department
Police Records Bureau
Attn: Nevada Public Records Request
400 S. Martin Luther King Blvd.,
Building C
Las Vegas, NV 89106

Dear Records Officer:

The Rocky Mountain Innocence Center ("RMIC"), pursuant to the Nevada Public Records statute, NRS 239.010, formally requests all Public Books and Records, whether official or unofficial, related in any way to: John "Jack" Seka, (DOB [REDACTED] 968; SSN [REDACTED] 5812) and (2) the homicide investigation of Eric Hamilton and Peter Limanni including, but not limited to, LVMPD event number 89 1116-0043.

This request extends to all departments and divisions of the Las Vegas Metropolitan Police Department, as well as applicable divisions and departments of Clark County, Nevada, including, but not limited to:

Staff

Maria Kennedy
Executive Director

Jennifer Springer
Staff Attorney

358 South 700 East B235
Salt Lake City, Utah 84102

801-355-1888
www.rminnocence.org

1. the Homicide/Robbery Bureau,
2. the Criminalistics Bureau,
3. the Fingerprint Bureau,
4. the Logistics Bureau,
5. the Communications Bureau,
6. the Information Technologies Bureau,
7. the Radio Systems Bureau,
8. the Detention Services Records Bureau,
9. the Technical Services Division,
10. the Communication and Technology Service Division,
11. the Special Operations Division,
12. the Homeland Security Division,
13. the Evidence Vault,
14. the Photo Lab,

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15. the Canine Unit,
16. the Patrol Unit, and
17. the Problem Solving Unit.

This request encompasses all writings, recordings and photographs (as those terms are defined in NRS 52.215-52.225), as well as all other books and records in you Department's possession, custody or control, including, but not limited to:

With respect to Mr.Seka:

- 1) All photographs, audio recordings and video recordings;
- 2) All lab documents, records, bench notes, books and reports including, but not limited to, hair, fingerprint and blood analysis;
- 3) All investigatory documents, records, bench notes, books and reports;
- 4) All other agency documents, records, bench notes, books and reports;
- 5) All witness and suspect statements, including but not limited to, handwritten, typed and audio notes; transcripts of interviews; audio recordings of interviews; and video recordings of interviews; and
- 6) All other materials, including, but not limited to, photo lineups, papers, documents, data, recordings, transcripts, notes, receipts of monies disbursed and received, electronic mail and cellular transmissions, photographs, tangible objects and copies and portions of any of these items within your possession, custody or control.

With respect to the homicide investigation of Eric Hamilton and Peter Limanni:

- 1) All photographs, audio recordings and video recordings;
- 2) All lab documents, records, bench notes, books and reports including, but not limited to, hair, fingerprint and blood analysis;
- 3) All investigatory documents, records, bench notes, books and reports;
- 4) All other agency documents, records, bench notes, books and reports;
- 5) All witness and suspect statements, including but not limited to, handwritten, typed and audio notes; transcripts of interviews; audio recordings of interviews; and video recordings of interviews; and

All other materials, including, but not limited to, photo lineups, papers, documents, data, recordings, transcripts, notes, receipts of monies disbursed and received, electronic mail and cellular transmissions, photographs, tangible objects and copies and portions of any of these items within your possession, custody or control.

Pursuant to NRS 239.0107, please:

- Make all documents, records and books available for inspection and copying no later than five business days after the date of receiving this written request; or
- if you are unable to make the requested documents, records and books available for inspection and copying by the end of the fifth business day after receiving this request, provide written notice of that fact and provide a date and time after which the record will be available for inspection and copying; or
- if the requested records are not in your possession or control, provide written notice of that fact, along with the name and address of the governmental entity that has legal custody or control of the record; or
- if you deny this request because the requested records, or part thereof, are confidential, provide in writing a notice of the fact that the record or part thereof cannot be disclosed because it is confidential and a citation to the specific statute or other legal authority that makes the public record or part thereof confidential. In the event any portion of the requested materials is deemed confidential, please release all reasonably segregable, nonexempt portions of documents and materials.

If any of the materials requests in this letter have been transferred to any other agencies at any time or destroyed by your agency at any time please identify when the materials were transferred or destroyed, identify which agency the materials were transferred to and provide a copy of the evidence and/or destruction logs demonstrating the transfer or destruction of the materials.

To the extent necessary for you to release the requested records, I am enclosing a signed, notarized release from Mr. Seka. If you have any questions regarding this request, or if you need anything further to comply with it, please contact me by either phone or email. Thank you for your prompt consideration.

Sincerely,



Jennifer Springer
Staff Attorney
Rocky Mountain Innocence Center
jspringer@rminnocence.org
801-355-1888

EXHIBIT 6

EXHIBIT 6



**LAS VEGAS METROPOLITAN
POLICE DEPARTMENT**

JOSEPH LOMBARDO, Sheriff

Partners with the Community

Date: March 29, 2016

RECEIVED

BY:

Rocky Mountain Innocence Center

358 South 700 East B 235

Salt Lake City, Utah 84102

Re: *Roger Denard*

Greetings:

Your request for Public Records in accordance with the Freedom Of Information Act has been received in our office. Your request will be reviewed and a response will be sent to you within 45 days whether or not there are public documents responsive to your request.

Thank you for your courtesy in this matter.

Respectfully Submitted,
SUSANA MCCURDY
DIRECTOR, POLICE RECORDS BUREAU

By: *Cheryl Blair*
Cheryl Blair, P#7022
Supervisor, Records and Fingerprint Bureau



EXHIBIT 7

EXHIBIT 7

ROCKY MOUNTAIN INNOCENCE CENTER

July 26, 2016

Board of Directors

Chris J. Martinez
President

Gil A. Miller
Treasurer

Jeffrey W. Shields
Secretary

Jensie L. Anderson
Legal Director

Aaron J. Lyttle

Cynthia L. Alexander

Diane E. Courselle

Lance J. Hendron

Michael J. Langford

David J. Williams

Staff

Marla Kennedy
Executive Director

Jennifer Springer
Managing Attorney

358 South 700 East B235
Salt Lake City, Utah 84102

801-355-1888
www.rm innocence.org

Las Vegas Metropolitan Police Department
Police Records Bureau
Attn: Nevada Public Records Request
400 S. Martin Luther King Blvd.,
Building C
Las Vegas, NV 89106

Dear Records Officer:

On February 17, 2016, the Rocky Mountain Innocence Center ("RMIC"), pursuant to NRS 239.010, formally requested "all public books and records, whether official or unofficial, related in any way to: John "Jack" Seka (DOB [REDACTED] 1968; SSN [REDACTED] 5812) and (2) the homicide investigation of Eric Hamilton and Peter Limanni including, but not limited to, LVMPD event number 89 1116-0043."

Under NRS 239.0107, the Police Department was required to make all documents, records and books available for inspection and copying no later than five business days after the date of receiving the written request. On April 22, 2016 the Las Vegas Metropolitan Police Department produced forty-nine pages of typed reports associated with RMIC's request. The production included only nine documents:

- 5/19/1999 Officer's Report dictated by Detective T. Thowsen P#1467
- 5/13/1999 Officer's Report dictated by Detective T. Thowsen P#1467
- 1/11/1999 Officer's Report dictated by Detective T. Thowsen P#1467
- 12/05/1998 Officer's Report dictated by Officer R. Nogues/Kroll P#5622
- 12/1/1998 Officer's Report dictated by Detective J. Buczek P#3702
- 12/10/1998 Officer's Report dictated by Detective T. Thowsen P#1467
- 12/10/1998 Officer's Report dictated by Officer R. Kroll P#4850
- 12/29/1998 Officer's Report dictated by Detective J. Buczek P#3702
- 9/2/1999 Officer's Report dictated by Detective T. Thowsen P#1467

While RMIC is grateful for what has been provided, we believe there are additional documents that were created through the course of this double homicide investigation. After an exhaustive review of the documents produced, RMIC discovered that a

APP2860

significant portion of the documents created during the investigation were not provided to RMIC. Below is a list of documents that are specifically referenced in the nine documents produced, but were not provided to RMIC:

- 11/17/1998 Voluntary Police Statement of Michael Kirk Cerda
- 11/17/1998 Voluntary Police Statement of John "Jack" Seka
- 11/17/1998 Copy of the LVMPD Consent to Search Card for John "Jack" Seka – 1933 Western Ave
- 11/17/1998 Copy of the LVMPD Consent to Search Card for John "Jack" Seka
- 11/17/1998 Copy of signed Rights of Persons Arrested Card for John "Jack" Seka
- Copy of "to-do" list written by John "Jack" Seka
- 11/7/1998 Pawn Shop Receipt
- 11/10/1998 Pawn Shop Receipt
- 11/10/1998 Pawn Shop Receipt
- Toxicology Report, Autopsy Report, and Crime Scene Report for Eric Hamilton
- 11/17/1998 Application and Affidavit for Search Warrant given by Sgt. K. Hefner
- 11/17/1998 Search Warrant
- Investigative materials and police reports created by the San Bernardino County Sheriff's Officer and given to the LVMPD
- Toxicology Report, Autopsy Report, and Crime Scene Report for Peter Limanni
- 12/23/1998 Officer's Report dictated by Detective T. Thowsen P#1467
- 11/16/1998 Officer's Report dictated by Detective J. Buczek P#3702
- LVMPD Incident Recalls
- 12/18/1998 DNA Reports by David Welch
- 12/17/1998 Forensic Laboratory Report of Examination
- 2/8/1999 DNA Reports by David Welch
- 12/18/1998 DNA Reports by David Welch
- LVMPD Evidence Impound Reports
- LVMPD Vehicle Recovery/Impound Reports
- Peter Limanni's Phone Records
- Nextel Cell Phone Records
- Recomm Wireless Phone Records
- Cinergi Phone Records
- LVMPD Forensic Laboratory Statement of Qualifications for Fred M. Boyd
- Forensic Laboratory Examination Request forms (numerous filled out by T. Thowsen)
- Cinergi Tahoe location information provided by Peggy Eichhorn
- 11/16/1998 Voluntary Statement of Michael Stanish
- Information on Thomas Cramer provided by the Philadelphia Police Department to T. Thowsen
- 12/7/1998 Voluntary Statement by Jennifer Harrison
- 11/16/1998 Voluntary Statement by Jeffrey Lowery
- 11/16/1998 Voluntary Statement by Kevin Banks
- Crime Scene Photographs, maps, and evidence items at the crime scene
- Photographs of John "Jack" Seka taken at the scene
- Photographs and list of physical evidence confiscated and tested

The above list is not inclusive of everything RMIC believes is missing. This list simply includes missing case documents that are specifically referenced in the nine police reports that were provided on April 22,

2016. However, there are likely additional documents produced as part of this homicide investigation that were not specifically referenced in the materials RMIC received. Pursuant to NRS 52.215-52.225, RMIC is entitled to all writings, recordings, photographs, books and records in your Department's possession, custody or control, including, but not limited to:

- 1) All photographs, audio recordings and video recordings;
- 2) All lab documents, records, bench notes, books and reports including, but not limited to, hair, fingerprint and blood analysis;
- 3) All investigatory documents, records, bench notes, books and reports;
- 4) All other agency documents, records, bench notes, books and reports;
- 5) All witness and suspect statements, including but not limited to, handwritten, typed and audio notes; transcripts of interviews; audio recordings of interviews; and video recordings of interviews; and
- 6) All other materials, including, but not limited to, photo lineups, papers, documents, data, recordings, transcripts, notes, receipts of monies disbursed and received, electronic mail and cellular transmissions, photographs, tangible objects and copies and portions of any of these items within your possession, custody or control.

As stated above, RMIC requests all public books and records, whether official or unofficial, related in any way to: (1) John "Jack" Seka (DOB [REDACTED] 968; SSN [REDACTED] 812) and (2) the homicide investigation of Eric Hamilton and Peter Limanni including, but not limited to, LVMPD event number 89 1116-0043.

If any of the materials requested in this letter were transferred to any other agencies at any time or destroyed by your agency at any time please identify when the materials were transferred or destroyed, identify which agency the materials were transferred to and provide a copy of the evidence and/or destruction logs demonstrating the transfer or destruction of each item.

If you have any questions regarding this request, or if you need any further information to comply, please contact me by either the phone or email address listed below. Thank you for your prompt consideration.

Sincerely,



Jennifer Springer
Managing Attorney
Rocky Mountain Innocence Center
jspringer@rminnocence.org
801-355-1888

EXHIBIT 8

EXHIBIT 8



**LAS VEGAS METROPOLITAN
POLICE DEPARTMENT**

JOSEPH LOMBARDO, Sheriff

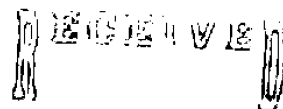
Partners with the Community

Rocky Mountain Innocence Center

358 South 700 East B235

Salt Lake City, Utah 84102

Attn: Jennifer Springer



BY [signature] 8/1/2016

DATE: August 1, 2016

Event # 83-46132

To Whom It May Concern:

The Las Vegas Metropolitan Police Department, Records/Fingerprint Bureau, is in receipt of your request for records. The Records Bureau is working diligently to honor your request, and is providing this letter as confirmation of receipt of your request and our intent to provide the best customer service possible.

LVMPD is mandated by Nevada Revised Statute 239 to provide information, or acknowledge receipt of the request for public book or record, within 5 business days of receipt. Please be advised that the report(s) will be provided as soon as we are able to process your request.

Thank you for your cooperation in this matter.

Respectfully Submitted,

SUSANA MCCURDY, DIRECTOR

By: JERICHO MAMUYAC, LES1

LES1 Records/DRM



EXHIBIT 9

EXHIBIT 9

ROCKY MOUNTAIN INNOCENCE CENTER

Board of Directors

8/21/17

Jeffery W. Shields
President

Las Vegas Metropolitan Police Department
Police Records Bureau

David J. Williams
Vice President

Attn: Nevada Public Records Request
400 S. Martin Luther King Blvd.,

Gil A. Miller
Treasurer

Building C
Las Vegas, NV 89106

Kate Conyers
Secretary

Dear Records Officer:

Jensie L. Anderson
Legal Director

This is a request under the Nevada Public Records Statute (NRS 239.010) and the Freedom of Information Act for records, whether official or unofficial, related to The theft of Lydia Gorzoch's purse case number #98 1106-0539. Ms. Gorzoch's purse was stolen from her vehicle after someone shot through her vehicle window. The purse was found shortly thereafter at the scene a double homicide for which our client, John "Jack" Joseph Seka was convicted in 2001. The State asserted that Jack stole the purse, and killed two men in an attempt to rob them. I request all writings, recordings, and photographs (as those terms are defined in NRS 52.215-52.225) in your Department's records, including, but not limited to records kept by:

Chris J. Martinez

Aaron J. Lytle

Lance J. Hendron

Michael J. Langford

Carl Hernandez

Adria Swindle

- (1) the homicide division
- (2) the fingerprint division
- (3) the photo lab
- (4) the criminalistics division

Staff

Blair Hodson
Executive Director

- (5) the evidence vault
- (6) the Clark County Detention Center records Division
- (7) the technical services division

Jennifer Springer
Managing Attorney

- (8) the information services division
- (9) the Special Operations division

358 South 700 East B235
Salt Lake City, Utah 84102

relating to Ms. Gorzoch's purse and the investigation of Mr. Limanni and Mr. Hamilton's death, including, but not limited to:

801-355-1888
www.rmnnocence.org

- 1) All lab, investigatory, or other agency documents, records, or reports, including, but not limited to, hair analysis and blood analysis, pertaining to the theft of Ms. Gorzoch's purse, including any copies of materials that may have been transferred to any other agencies at any time or destroyed by your agency at any time.

APP2866

- 2) All witness or suspect statements, including transcripts of interviews, audio recordings of interviews, and video recordings of interviews relating in any way to the theft of Ms. Gorzoch's purse.
- 3) All other photograph books, papers, documents, data, photographs, tangible objects, or copies or portions of any of these items within your possession, custody, or control and relating in any way to the theft of Ms. Gorzoch's purse.
- 4) All photos, lab, investigatory, or other agency documents, records, or reports, including, but not limited to, hair analysis and blood analysis in any form pertaining to the investigation of the theft of Ms. Gorzoch's purse, including any copies of materials that may have been transferred to any other agencies at any time or destroyed by your agency at any time;
- 5) All witness or suspect statements, including, but not limited to, transcripts of interviews, audio recordings of interviews, and video recordings of interviews relating to the theft of Ms. Gorzoch's purse.
- 6) All other photograph books, papers, documents, data, photographs, tangible objects, or copies or portions of any of these items within your possession, custody, or control and relating to the theft of Ms. Gorzoch's purse.;
- 7) All information related to the bullet, bullet casings, or bullet fragments found at the scene (her vehicle) of the theft of Ms. Gorzoch's purse, and whether there has, at any point in time, been a match to these bullets and casings in the Integrated Ballistics Identification System.

Please mail these documents to:

Rocky Mountain Innocence Center
Attn: Kurt London
358 South 700 East, B235
Salt Lake City, UT 84102

If any of the materials requested in this letter have been transferred to any other agencies at any time or destroyed by your agency at any time please identify when the materials were transferred or destroyed, identify which agency the materials were transferred to, and provide a copy of the evidence and/or destruction logs demonstrating the transfer or destruction of the material.

Ms. Lydia Gorzoch's date of birth is in [REDACTED] 1973. Attached is a Waiver and Consent for Release of Records and Information, signed by Mr. John Joseph Seka.

Please release all reasonably segregable nonexempt portions of documents.

APP2867

If you have any questions regarding this request, please contact me at (801) 355-1888 or legal@rminnocence.org. I look forward to receiving your response. Thank you for your consideration of this request.

Best Regards,

A handwritten signature in black ink, appearing to read 'Kurt London', with a stylized flourish at the end.

Kurt London
Galbraith Legal Fellow

WAIVER AND CONSENT FOR RELEASE OF RECORDS AND INFORMATION

NAME John Joseph Sika
BIRTHDATE [REDACTED] 768
SOCIAL SECURITY NUMBER [REDACTED] 5812

By signing below, I authorize the Rocky Mountain Innocence Center ("RMIC") to assign one or more law students, working under the direct and immediate supervision of an attorney, and/or a cooperating attorney, working in conjunction with RMIC, to investigate my case. This includes, but is not limited to, authorizing correspondence and/or telephone calls to prior counsel, prosecutors, or witnesses. I authorize any and all entities and persons, including my former attorney(s), investigator(s), and appellate programs who worked on my case, to release to RMIC or to its staff, student representatives or cooperating attorneys, any and all records, files, reports, and information of any kind related to me or to any criminal case involving me, including police reports, witness statements, post-conviction pleadings, and correctional records, pre-sentencing reports and other documents in prison social services and legal files, legal papers, court documents, medical records, laboratory analyses, probation reports, attorneys files and records, and any other information necessary to the Center's work on my behalf. I understand there may be statutes, rules, and regulations that protect the confidentiality of some of the records, files, reports, and information covered by this release; it is my specific intent to waive the protection of all such statutes, rules, and regulations so that confidential information can be shared with RMIC. This authorization shall remain effective unless and until any such revocation signed by me is received and acknowledged by the RMIC.

I understand that by conducting an initial investigation, the Rocky Mountain Innocence Center ("RMIC") is only agreeing to represent me in the investigation of my case and not to represent me in court. I further understand that at any point the RMIC, at its sole discretion, may determine that further investigation is not warranted, and is under no obligation to continue to investigate my case.

Per Nevada Revised Statute 208.165, I represent by my signature below under penalty of perjury that this waiver is voluntary and given without any reservation. This authorization is effective until revoked by the undersigned in writing.

[Signature]
Signature

3/16/17
Date

WAIVER AND CONSENT FOR RELEASE OF RECORDS AND INFORMATION

NAME John Joseph Seke
BIRTHDATE [REDACTED] 968
SOCIAL SECURITY NUMBER [REDACTED] 5812

By signing below, I authorize the Rocky Mountain Innocence Center ("RMIC") to assign one or more law students, working under the direct and immediate supervision of an attorney, and/or a cooperating attorney, working in conjunction with RMIC, to investigate my case. This includes, but is not limited to, authorizing correspondence and/or telephone calls to prior counsel, prosecutors, or witnesses. I authorize any and all entities and persons, including my former attorney(s), investigator(s), and appellate programs who worked on my case, to release to RMIC or to its staff, student representatives or cooperating attorneys, any and all records, files, reports, and information of any kind related to me or to any criminal case involving me, including police reports, witness statements, post-conviction pleadings, and correctional records, pre-sentencing reports and other documents in prison social services and legal files, legal papers, court documents, medical records, laboratory analyses, probation reports, attorneys files and records, and any other information necessary to the Center's work on my behalf. I understand there may be statutes, rules, and regulations that protect the confidentiality of some of the records, files, reports, and information covered by this release; it is my specific intent to waive the protection of all such statutes, rules, and regulations so that confidential information can be shared with RMIC. This authorization shall remain effective unless and until any such revocation signed by me is received and acknowledged by the RMIC.

I understand that by conducting an initial investigation, the Rocky Mountain Innocence Center ("RMIC") is only agreeing to represent me in the investigation of my case and not to represent me in court. I further understand that at any point the RMIC, at its sole discretion, may determine that further investigation is not warranted, and is under no obligation to continue to investigate my case.

Per Nevada Revised Statute 208.165, I represent by my signature below under penalty of perjury that this waiver is voluntary and given without any reservation. This authorization is effective until revoked by the undersigned in writing.

[Signature]
Signature

3/16/07
Date

EXHIBIT 10

EXHIBIT 10



**LAS VEGAS METROPOLITAN
POLICE DEPARTMENT**

JOS LOMBARDO, Sheriff

Partners with the Community

September 15, 2017

Kurt London
Rocky Mountain Innocence Center
358 South 700 East, B235
Salt Lake City, UT 84102

BY:

Dear Mr. London:

This letter is to acknowledge receipt of your Freedom of Information Act request dated August 21, 2017, in reference to the following:

RE: Case #: 981106-0539
Lydia Gorzoch's purse
John Seka

Having reviewed your request, we are able to provide you with the Incident Report for the above case number. Please send a business check, money order or cashier's check in the amount of \$9.00 made payable to LVMPD and send to the address below.

We have requested detective approval to release laboratory reports and witness statements. Once we have an answer, we will respond back to you.

We have forwarded your request regarding photos to our photo detail. Their phone number is 702-828-3345.

If you have any questions regarding your request, please contact the LVMPD Correspondence Section Supervisor at 702-828-7395.

Sincerely,

LVMPD Police Records
Correspondence Department
400 S Martin L. King Blvd.
Las Vegas, NV 89106
702-828-7395



EXHIBIT 11

EXHIBIT 11

RMIC Legal

From: RMIC Legal
Sent: Tuesday, October 24, 2017 1:34 PM
To: [REDACTED]
Cc: Jennifer Springer
Subject: Seka Records Request
Attachments: 2017 0915_LVMPD Response to Request_Seka.pdf; 2017 0824_LVMPD Response to Purse Records Request_Seka.pdf; 2017 0821_LVMPD Records Request - Lydia Gorzoch Purse_Seka.pdf

Stephana,

Thank you for your assistance with this request.

I have attached our original records request as well as LVMPD's written responses, as we discussed over the phone.

The attorneys on records are Jennifer Springer, RMIC's Managing Attorney, and Poala Armeni, co-counsel. If you need their contact information, or any additional information, please let me know.

Thank you!

Best Regards,

Kurt London
Attorney
Rocky Mountain Innocence Center
358 South 700 East, B235
Salt Lake City, Utah 84102
(801)355-1888
[REDACTED]
www.rminnocence.org

Be a part of the #MeToo Movement – donate.me/toomuchtoooften

EXHIBIT 12

EXHIBIT 12

Declaration of Kurt London

I, Kurt London, hereby declare as follows:

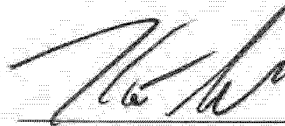
1. I worked at the Rocky Mountain Innocent Center ("RMIC") from August 2014 to June 2018. From August 2014 to June 2016, I was a legal intern. From June 2016 to July 2018, I worked as an attorney. During my entire time at RMIC, I worked on John "Jack" Seka's case.
2. In 2015, the language of the Nevada Public Records Act, NRS 239.010 was amended, making it easier to obtain public records from law enforcement. Prior to the change, RMIC had a difficult time obtaining documents from the Las Vegas Metro Police Department ("LVMPD"). On February 17, 2016, RMIC filed a request under the Public Records Act with the LVMPD for all documents related to Seka and the homicide investigation of Eric Hamilton and Peter Limanni under event number 98 1116-0043. On March 29, 2016, LVMPD responded indicating they will review the request and respond within 45 days.
3. On May 5, 2016, RMIC received some police reports related to the homicide investigation. However, the few documents provided named and referred to numerous other documents that had not been provided. On July 26, 2016, RMIC submitted an updated request specifically listing the numerous documents referred in the provided documents and, again, requesting all documents related to the homicide investigation under event number 98 1116-0043. On August 1, 2016, LVMPD responded indicating they were reviewing the updated request.
4. On June 6, 2016, I spoke to Lydia Gorzoch. Her purse was taken from her car on November 6, 1998. The purse was found in the ceiling tiles at a location believed to be one of the crime scenes for the homicides. Although the purse robbery was mentioned in the declaration of warrant/summons for Seka, Seka was never charged with stealing the purse. Gorzoch indicated to me that she was notified when the purse was found at the scene of a murder. The police returned the purse to her with cash still inside of it shortly after finding it. She believed fingerprint testing had been done on the purse.
5. On June 19, 2017, RMIC filed a petition in the Eighth Judicial District Court seeking DNA testing on items in Seka's case.
6. At some point during my review of the documents related to the homicide investigation, I noticed a different incident case number than the one related to the homicide. The homicide incident case number was 98 1116-0443. In the documents, I saw a reference to case number 98 1106-0539. This was the case associated with the theft of Lydia Gorsuch's purse.

7. On August 21, 2017, RMIC submitted a public records request to LVMPD for all of the documents related to case number 98 1106-0539. The request was broad and sought, among other things, any documents related to the investigation on the homicides as well as any fingerprint or lab reports. On August 24, 2017, LVMPD sent a response acknowledging receipt of the request.
8. On September 11, 2017, I called LVMPD and spoke to someone named Diane. She said that someone named Karen in a different department would be handling the request. On September 13, 2017, I spoke to someone named Pam. She said that the request would be processed in one to two weeks.
9. In a letter dated September 15, 2017, but which RMIC did not receive until September 22, 2017, LVMPD responded saying that they were only authorized to provide the "Incident Report." They indicated that they have otherwise requested detective approval to release laboratory reports and witness statements.
10. On September 19, 2017, the state district court issued an order granting, in part, the petition seeking DNA testing.
11. On September 19, 2017, I received a call from Tasha in the LVMPD Photo Lab about the request related to the purse case. She stated she needed \$11 and a subpoena to look for the photos in the case. She said the police reports would be processed from another department and that department would be in touch with me.
12. On October 4, 2017, RMIC received the incident report in the Gorzoch purse theft.
13. On October 23, 2017, I spoke with Karen to follow up on the documents in the request in the purse case that required detective approval. She said that it was on the "Subpoena desk" because they had received a subpoena for the documents from RMIC. I believe the "subpoena" she referenced was the order granting the DNA testing.
14. On October 24, 2017, I received a call from Karen. She told me to call Stephana in the Forensics Department about what can be released for the purse. I called Stephana and she told me I needed to email her the request and the letters we received from LVMPD. I sent Stephana an email with that information. They told me they would look for the records we requested.

15. On November 7, 2017, RMIP received the forensic laboratory report of fingerprint examination related to case number 98 1106-0539. In my work on the case, I had reviewed the files from all of Seka's prior attorneys. Those files included the discovery material received from the prosecution. This fingerprint examination report was not in any of those files. I had never seen this document before.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signed this 3 day of
October, 2022.



Kurt London

EXHIBIT 13

EXHIBIT 13

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2. When I worked at the Federal Public Defender, I was assigned to investigate John Seka's case. I created investigation memorandums memorializing my investigative work in the case. My typical practice was to be as accurate as possible in my memos and I would include all relevant information I learned in my investigative work.

4. On August 18, 2022, I reviewed my February 21, 2007 investigation memo concerning my interview of Lydia Gorzoch. I do not have a specific recollection of what was said during the interview. The memo does not indicate that Gorzoch told me that her stolen purse had been fingerprinted. If she had told me that the purse had been fingerprinted, I would have included that in my memorandum as I believe that would have been a relevant fact to the investigation.

5. During my time as an investigator with the Federal Public Defender, I found that it was nearly impossible to obtain police reports, including any type of forensics report, from the Las Vegas Metropolitan Police Department without a subpoena.

SIGNED this 6th day of Oct, 2022, under penalty of perjury.

Edmund Heald

Error! Reference source not found. HEDDY

EXHIBIT 14

EXHIBIT 14

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EXHIBIT 15

EXHIBIT 15

Declaration of Jennifer Springer

I, Jennifer Springer, hereby declare as follows:

1. I am currently the Managing Attorney at the Rocky Mountain Innocence Center ("RMIC"). I have been a full-time employee of RMIC since October 2014. I am licensed to practice law in Utah and Nevada.
2. The RMIC is a 501(c)3 non-profit that seeks to correct and prevent wrongful convictions in Nevada, Utah, and Wyoming. RMIC is a member of the Innocence Network and provides pro-bono legal services to people who have been wrongfully convicted in our three-state region. We carefully and thoroughly screen cases first for investigation, and later potential litigation if we develop newly discovered evidence of innocence or pursue post-conviction DNA testing of physical evidence.
3. Mr. Seka originally requested assistance in January 2010. At that time, Mr. Seka was represented by counsel and his appeal of the dismissal of his habeas corpus was pending at the Ninth Circuit Court of Appeals. Because of our limited resources, RMIC generally does not accept cases if the individual is represented by counsel and is in active litigation.
4. In 2012, after Mr. Seka's appeal was affirmed and he was no longer represented by counsel, RMIC accepted his case for an innocence investigation.
5. RMIC is small, maintaining a 1-3 person staff since 2012. Because of the center's small staff and limited resources, law student interns from participating law schools in Nevada, Utah, and Wyoming assist staff attorneys investigating client's claims of innocence. Mr. Seka's case was assigned to two law students participating in the Innocence Clinic at the William S. Boyd School of Law from fall 2012 through spring 2013. In the summer of 2013, Mr. Seka's case was assigned to a law student participating in the Innocence Clinic at the University of Utah S.J. Quinney College of Law. Throughout the spring of 2014, another University of Utah S.J. Quinney College of Law student was assigned to Mr. Seka's case. From fall 2014 through June 2018, Mr. Seka's case was assigned to Brigham Young University J. Reuben Clark Law student, and later RMIC staff attorney, Kurt London.
6. RMIC's innocence investigation begins by collecting all documents related to the case from all police departments, courts, crime labs, and attorneys

involved. In some instances, it takes years to develop the record, and sometimes despite our best efforts we are unable to collect all case documents.

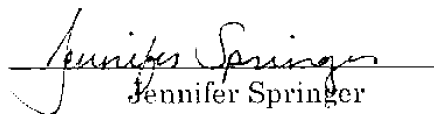
7. As RMIC collected records related to Mr. Seka's case, the investigation began with staff and interns meeting with Mr. Seka, visiting the crime scenes, and pursuing non-DNA avenues, including several witness interviews, including over-the-phone interviews and, eventually, in-person interviews on the East Coast.
8. As advancements in "touch DNA" progressed, RMIC started to consider post-conviction DNA testing of physical evidence left at the crime scenes. RMIC began to trace the physical evidence that had been collected in Mr. Seka's case. In December 2014, during the initial record collection efforts, RMIC representatives visited the Eighth Judicial District Court evidence vault to view the evidence in the court's possession. RMIC reviewed the photos and evidence again and determined that we needed to obtain additional case materials from the Las Vegas Metropolitan Police Department to better assess the DNA testing potential.
9. When RMIC first accepted Mr. Seka's case for investigation, the Las Vegas Metropolitan Police Department had been regularly denying RMIC's records requests and demanding a subpoena to release records. In 2012, RMIC retained counsel to assist in gaining access to the Las Vegas Metropolitan Police Department case materials necessary to perform our post-conviction innocence investigation. In 2013, the Las Vegas Metropolitan Police Department disclosed several case files to RMIC for other cases in active investigation, but shortly thereafter, the department began charging excessive fees for case files that RMIC could not afford. In 2015, RMIC again retained counsel to assist RMIC with the excessive fee issue.
10. In February 2016, RMIC formally requested records from the Las Vegas Metropolitan Police Department. In that request, we asked for "all Public Books and Records, whether official or unofficial, related in any way to: John "Jack" Seka, (DOB [REDACTED] 1968) and (2) the homicide investigation of Eric Hamilton and Peter Limanni including, but not limited to, LVMPD event number 89 1116-0043." On April 22, 2016, the Las Vegas Metropolitan Police Department produced nine typed officer reports totaling forty-nine pages associated with the double homicide.

11. On July 26, 2016, RMIC submitted a follow-up request seeking additional case materials that were not previously disclosed. RMIC specifically requested thirty-eight reports or other case materials that were referenced in the nine police reports previously provided, but that themselves had not been disclosed. RMIC also requested any additional case documents in the Las Vegas Metropolitan Police Department's possession that were not previously disclosed.
12. On August 1, 2016, the Las Vegas Metropolitan Police Department acknowledged our second request for more complete records. The Las Vegas Metropolitan Police Department did not send responsive records to our request.
13. After completing our review and investigation, we determined that there were several pieces of physical evidence that could be subject to DNA testing. On June 19, 2017, RMIC filed Mr. Seka's Post-Conviction Petition Requesting a Genetic Marker Analysis of Evidence Within Possession or Custody of the State of Nevada (NRS 176.0918) requesting post-conviction DNA testing of those pieces of evidence.
14. On August 21, 2017, RMIC requested records related to the theft of Lydia Gorzoch's purse. On September 22, 2017, RMIC received a response from the Las Vegas Metropolitan Police Department explaining that we would be provided a copy of the Incident Report, but they were seeking approval from the detective to release any laboratory reports and witness statements.
15. On November 7, 2017, the Las Vegas Metropolitan Police Department responded by forwarding two forensic laboratory reports associated with the Gorzoch purse theft. The forensic laboratory reports were dated April 28, 1999, and March 4, 1999.
16. The April 28, 1999, forensic laboratory report listed case numbers 98 1106-0539 and 98 1116-0443. The report described the firearm and toolmark examination of the bullet collected from the Gorzoch vehicle burglary and compared it to bullets collected from the [REDACTED] crime scene.

17. The March 4, 1999, forensic laboratory report listed case number 98 1106-0539. The report stated that latent print comparison was performed, and Mr. Seka, Mr. Limanni, and Mr. Hamilton were excluded as the source of the fingerprints identified. I had never seen this report before. The report was not contained in any of the discovery material we had received from Mr. Seka's prior attorneys.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signed this 17th day of
October, 2022.


Jennifer Springer



MOT
Rene L. Valladares
Federal Public Defender
Nevada State Bar No. 11479
*Jonathan M. Kirshbaum
Assistant Federal Public Defender
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*Attorney for Petitioner John Joseph Seka

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY

John Joseph Seka,
Petitioner,

v.

Director, NDOC, et al.,
Respondents.

Case No. _____
(99C159915)

Dept. No. XXV

NO HEARING REQUESTED

(Not a Death Penalty Case)

**MOTION FOR THE COURT TO TAKE JUDICIAL NOTICE OF THE
FILINGS IN MR. SEKA'S CRIMINAL CASE NUMBER**

As set forth in the attached points and authorities, Petitioner Seka would respectfully request this Court take judicial notice of all the documents filed in his criminal case.

POINTS AND AUTHORITIES

Mr. Seka respectfully request the Court to take judicial notice of the documents filed in his original criminal case number in this Court—99C159915.

Generally, Nevada courts consider only documents that are filed in the operative case number. *See Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (Nev. 2009); *see also* Nev. Rev. Stat. § 47.130 *et seq.* However, Nevada courts may take judicial notice of certain other categories of documents that haven't been filed in the relevant case number. For example, Nevada courts may take judicial notice of documents filed in the record of "another and different case" in the state court system. *Mack*, 125 Nev. at 91, 206 P.3d at 106. Whether judicial notice is appropriate depends in part on "the closeness of the relationship between the two cases." 125 Nev. at 91-92, 206 P.3d at 106.

This motion concerns the procedure in this Court's clerk's office of requiring new post-conviction habeas petitions to be filed not in the petitioner's original criminal case number, but instead in a new civil case number. Before this change occurred in around 2017, many attorneys often followed a practice of *not* refileing the relevant documents from the original criminal case number (for example, pre-trial motions, trial transcripts, or previous petitions) as exhibits to a new postconviction petition. That is because the new postconviction petition was filed in the original criminal case number, so those documents were already on file in the operative case number. This process promoted judicial economy and allowed for cost-saving measures (in terms of copying and staff time) for indigent defense offices.

Mr. Seka followed the same practice when he filed his post-conviction petition contemporaneously with this motion to this Court. While he filed certain exhibits that hadn't been filed in a previous proceeding or are not readily available by download or in the evidence vault, he did not refile documents that had been previously filed in

1 that case number (again, for example, pre-trial motions, trial transcripts, or previous
2 petitions plus exhibits) and are available on the docket. Instead, he assumed the
3 Court would access those documents through Mr. Seka's original criminal case
4 number. On information and belief, when a petitioner files a new postconviction
5 petition and institutes a new civil case in this Court under this new procedure, the
6 Court's clerk's office has been instructed to link or associate the civil and criminal
7 cases in such a way that the criminal and prior civil filings are accessible to the Court
8 through the civil case number. However, it is not clear when this will happen in this
9 case.

10 In light of the current procedure for filing postconviction petitions in this
11 Court, and in an abundance of caution, Mr. Seka requests the Court formally take
12 judicial notice of the documents filed in his original criminal case number, district
13 court no. 99C159915. Judicial notice is particularly appropriate given "the closeness
14 of the relationship between the two cases." *Mack*, 125 Nev. at 91-92, 206 P.3d at 106.
15 Mr. Seka's petition in this civil case number challenges the judgment of conviction in
16 his criminal case number and raises constitutional claims regarding pre-trial and
17 trial; these claims turn on events that are memorialized by the documents filed in the
18 criminal case number. It is hard to imagine a closer relationship between two case
19 numbers, so the Court should take judicial notice of the documents filed in the
20 original criminal case number. Again, Mr. Seka has already filed an exhibit that
21 hasn't previously been filed in the original criminal case number as an exhibit to his
22 new petition, and he proposes to continue doing so as necessary in this litigation.

23 In the event the Court prefers not to take judicial notice of the documents in
24 the original criminal case number, Mr. Seka respectfully requests the opportunity to
25 file the relevant documents in this civil case number before the Court enters any
26 relevant orders in this case number, in order to ensure a complete record for this
27 Court, and, if necessary, for the Nevada appellate courts.

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CONCLUSION

For the forgoing reasons, Mr. Seka respectfully requests the Court take judicial notice of the documents filed in his criminal case number.

Dated November 1, 2022.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Jonathan M. Kirshbaum
Jonathan M. Kirshbaum
Assistant Federal Public Defender

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2022, I electronically filed the foregoing with the Clerk of the Eighth Judicial District Court by using the Court’s electronic filing system.

Participants in the case who are registered users in the electronic filing system will be served by the system and include: Alexander Chen, Alexander.Chen@clarkcountynvda.com, Motions@clarkcountynvda.com.

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

John Joseph Seka #69025 High Desert State Prison P.O. Box 650 Indian Springs, NV 89070	Attorney General 555 E. Washington Ave. Ste. 3900 Las Vegas, NV 89101
Clark County District Attorney 200 Lewis Ave. Las Vegas, NV 89101	

/s/ Rosana Aporta
An Employee of the
Federal Public Defender
District of Nevada

1 **ORDR**

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 ****

7 **JOHN JOSEPH SEKA,**

Case No.: A-22-860668-W

Dept. No.: XXV

8 Petitioner,

9 vs.

10 **DIRECTOR, NDOC, et al,**

11 Respondents.

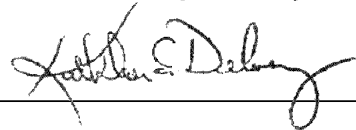
12
13 **ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS**

14 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief)
15 on November 1, 2022. The Court has reviewed the Petition and has determined that a
16 response would assist the Court in determining whether Petitioner is illegally
17 imprisoned and restrained of his/her liberty, and good cause appearing therefore,

18 **IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the
19 date of this Order, answer or otherwise respond to the Petition and file a return in
20 accordance with the provisions of NRS 34.360 to 34.830, inclusive.

21 **IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on
22 this Court's Calendar on April 12, 2023 at 9:30 a.m. for further proceedings.

23 Dated this 13th day of February, 2023

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25
26 **588 A3F 8224 7373**
27 **Kathleen E. Delaney**
28 **District Court Judge**

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 John Seka, Plaintiff(s)

CASE NO: A-22-860668-W

7 vs.

DEPT. NO. Department 25

8 Calvin Johnson, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/13/2023

15 ECF Notifications NCH Unit

ecf_nvnc@fd.org

16 Jonathan Kirshbaum

jonathan_kirshbaum@fd.org

17 Rosana Aporta

rosana_aporta@fd.org

18 Steven Wolfson

Steven.Wolfson@clarkcountyda.com

19 ECF Notification Email CCDA

motions@clarkcountyda.com



1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 TALEEN PANDUKHT
6 Chief Deputy District Attorney
7 Nevada Bar #5734
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 JOHN SEKA,
10 #69025,

Petitioner,

CASE NO: A-22-860668-W

-vs-

C-99-159915

12 THE STATE OF NEVADA,

DEPT NO: XXV

13 Respondent.
14

15 **STATE'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS**
16 **CORPUS (POST-CONVICTION) AND**
17 **MOTION TO DISMISS PURSUANT TO THE DOCTRINE OF LACHES**

18 DATE OF HEARING: APRIL 19, 2023

19 TIME OF HEARING: 9:30 A.M.

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
21 District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and
22 hereby submits the attached Points and Authorities in Response to Petitioner's Petition for
23 Writ of Habeas Corpus (Post-Conviction) and Motion to Dismiss Pursuant to the Doctrine of
24 Laches.

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

28 ///

///

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On June 30, 1999, John Joseph Seka (hereinafter "Petitioner") was charged by way of
4 Information with: Counts 1 & 2 – Murder With Use of a Deadly Weapon (Open Murder)
5 (Felony – NRS 200.010, 200.030, 193.165); and Counts 3 & 4 – Robbery With Use of a Deadly
6 Weapon (Felony – NRS 200.380, 193.165). On July 26, 1999, the State filed its Notice of
7 Intent to Seek the Death Penalty.

8 Jury trial commenced on February 12, 2001. On March 1, 2001, the jury returned a
9 verdict of guilty of First Degree Murder With Use of a Deadly Weapon as to Count 1, guilty
10 of Second Degree Murder With Use of a Deadly Weapon as to Count 2, and guilty of Robbery
11 as to Counts 3 and 4. The penalty hearing commenced on March 2, 2001. However, the jury
12 could not return a special verdict. On March 13, 2001, the parties filed a Stipulation and
13 Agreement to Waive Sentencing by Three-Judge Panel and stipulated to a sentence of life
14 without the possibility of parole as to Count 1.

15 On April 26, 2001, Petitioner was sentenced to the Nevada Department of Corrections
16 as follows: as to Count 1 – Life without the possibility of parole with an equal and consecutive
17 term of Life without the possibility of parole for use of a deadly weapon; as to Count 2 – Life
18 with the possibility of parole after ten (10) years with an equal and consecutive term of Life
19 with the possibility of parole after ten (10) years for use of a deadly weapon consecutive to
20 Count 1; as to Count 3 – thirty-five (35) to one hundred fifty-six (156) months consecutive to
21 Count 2; and as to Count 4 – thirty-five (35) to one hundred fifty-six (156) months consecutive
22 to Count 3. The Judgment of Conviction was filed on May 9, 2001.

23 On May 15, 2001, Petitioner filed a Notice of Appeal. On April 8, 2003, the Nevada
24 Supreme Court issued an Order affirming Petitioner's Judgment of Conviction and Remittitur
25 issued on May 9, 2003.

26 On February 13, 2004, Petitioner filed a Petition for Writ of Habeas Corpus (Post-
27 Conviction) (hereinafter "First Petition"). The State filed its Response on April 6, 2004. On

28 ///

1 November 5, 2004, the District Court denied the First Petition. On January 31, 2005, the
2 Findings of Fact, Conclusions of Law and Order was filed.

3 On February 9, 2005, Petitioner filed a Notice of Appeal. On June 8, 2005, the Nevada
4 Supreme Court issued an Order affirming the district court's decision and Remittitur issued on
5 July 15, 2005.

6 On June 19, 2017, Petitioner filed a post-conviction Petition Requesting a Genetic
7 Marker Analysis of Evidence Within the Possession or Custody of the State of Nevada. The
8 State filed its Response on August 15, 2017. Petitioner filed his Reply on September 5, 2017.
9 On September 13, 2017, the District Court granted Petitioner's Petition. The District Court
10 filed its Order granting Petitioner's Petition on September 19, 2017.

11 On December 14, 2018, the District Court held an evidentiary hearing regarding
12 additional testing on the DNA evidence. On December 19, 2018, the District Court granted
13 Petitioner's Petition in part and denied the Petition in part. On July 24, 2019, the District Court
14 set a briefing schedule based on the DNA testing.

15 On November 19, 2019, Petitioner filed a Motion for New Trial. The State filed its
16 Response on January 30, 2020. Petitioner filed his Reply on March 4, 2020. On March 11,
17 2020, the District Court granted Petitioner's Motion. The District Court entered its Order on
18 March 24, 2020.

19 On March 27, 2020, the State filed a Notice of Appeal.

20 On June 15, 2020, Petitioner filed a Motion for Release Pending Appeal and Retrial
21 Pursuant to NRS 178.488 and 178.484. The State filed its Response on June 18, 2020. On June
22 29, 2020, the District Court denied Petitioner's Motion and noted that "proof is evident or the
23 presumption is great" that Petitioner committed the crimes charged. The District Court further
24 noted that the State demonstrated, by clear and convincing evidence, that the detention order
25 was appropriate.

26 On July 8, 2021, the Nevada Supreme Court reversed the District Court's decision
27 granting Petitioner's Motion for New Trial. Remittitur issued on November 2, 2021.

28 ///

1 On November 1, 2022, Petitioner filed the instant Second Petition for Writ of Habeas
2 Corpus (Post-Conviction) (hereinafter "Second Petition") and Request for Evidentiary
3 Hearing. The State's Response now follows.

4 **STATEMENT OF THE FACTS**

5 The Nevada Supreme Court stated:

6 Peter Limanni established Cinergi HVAC, Inc., in May 1998. The business,
7 located at 1933 Western Avenue in Las Vegas, was funded by investors Takeo
8 Kato and Kaz Toe. Limanni hired his friend Jack Seka to help out with the
9 business, paying Seka in cash. Limanni and Seka lived together at
10 Cinergi. Limanni typically drove the business's brown Toyota truck, while Seka
drove one of the company vans.

11 The business did poorly, and by the beginning of that summer Kato and Toe
12 wanted their investment returned. Instead, Limanni decided to open a cigar shop
13 at Cinergi's address, and he, along with Seka, began building a wooden walk-in
humidor to display the cigars.

14 Limanni also began dating Jennifer Harrison that August. He told Harrison and
15 others that he could disappear and become a new person. Limanni closed his
16 bank accounts on November 2 after removing large sums of money. On
17 November 4, Limanni visited Harrison at her home and spoke of his plans for
the cigar shop. As he left, he mentioned calling Harrison the next day and going
18 with her to lunch. That same day, Limanni picked Seka up from the airport and
drove him back to Cinergi after Seka returned from visiting family back East.

19 The morning of November 5, Harrison was unable to reach Limanni. Harrison
20 drove to Cinergi and arrived around noon to find Seka passed out on the floor
and a girl on the couch. A few hundred dollars in cash was lying on the desk.
21 Limanni's clothes, belt, and shoes were in his room, but Limanni was not there.
22 Harrison also found a bullet cartridge on the floor, which did not look as though
it had been fired. Limanni's dog, whom Limanni took everywhere, was also at
23 Cinergi. At the time, Harrison believed Limanni had simply disappeared, as he'd
24 previously threatened to do. Seka dissuaded her from filing a missing person
report.

25 On the morning of November 16, a truck driver noticed a body lying in a remote
26 desert area between Las Vegas Boulevard South and the I-15, south of what is
27 now St. Rose Parkway. The body, a male, was located approximately 20 feet off
28 Las Vegas Boulevard South, in the middle of two tire tracks that made a half
circle off and back onto that road. He had been shot through the back, in the left

1 flank, and in the back of the right thigh with a .357 caliber gun. There was no
2 evidence of skin stippling, suggesting the bullets were not fired at a close range.
3 The victim was wearing a "gold nugget" ring and had a small laceration on his
4 right wrist. Seven pieces of lumber had been haphazardly stacked on the body.
5 The victim had a piece of paper in his pocket with the name "Jack" and a
6 telephone number. Detectives learned the victim was Eric Hamilton, who
7 struggled with drug use and mental illness and had come from California to
8 Nevada for a fresh start. According to his sister, Hamilton had been doing
9 construction work for a local business owner. Detectives determined Hamilton
10 had died sometime in the prior 24 hours. They traced the telephone number in
11 his pocket to Cinergi.

12 Notably, a cigarette butt was found a few feet from the body. A Skoal tobacco
13 container, a second cigarette butt, a beer bottle, and a second beer bottle were
14 found at varying distances of approximately 15 to 120 feet away from the body.
15 All of the items were located in the desert area within several yards of Las Vegas
16 Boulevard South.

17 The following day, a break-in was reported at 1929 Western Avenue, a vacant
18 business next door to Cinergi. The front window was broken, and the glass and
19 carpet were bloodied. There were also blood drag marks, and three bullets and
20 bullet fragments. A bloodied dark blue jacket contained bullet holes that
21 matched Hamilton's injuries. A baseball hat and a "gold nugget" bracelet were
22 also found at the scene. An officer checked the perimeter that morning and
23 looked into the communal dumpster, which contained only a few papers. A
24 nearby business owner indicated the dumpster had been recently emptied.

25 While the police were investigating 1929 Western, Seka drove up in Cinergi's
26 Toyota truck—Limanni's work vehicle. The truck had been recently washed.
27 Officers talked to Seka, who seemed nervous. Seka told them he worked at
28 Cinergi with Limanni, who was in the Reno area with his girlfriend. Officers
asked Seka if they could check inside Cinergi to see if anyone was injured, and
Seka agreed. Officers became concerned after spotting a bullet on the office desk
and some knives, and they handcuffed Seka and searched the business. In the
room being remodeled as a humidor, they found lumber that matched the lumber
covering Hamilton's body. They also found a bullet hole in the couch, a .32
cartridge bullet in the toilet, and both .357 and .32 bullets in the ceiling. Officers
looked above the ceiling tiles and found a wallet containing Limanni's driver's
license, social security card, and birth certificate as well as credit cards and a
stolen purse. In a garbage can inside, they found Limanni's photographs
alongside some papers and personal belongings. The officers eventually left to
go to lunch, unhandcuffing Seka and leaving him at Cinergi. They were gone for
a little over an hour.

1 When the officers returned, they noticed that the bullet that had been on the desk
2 was missing. Seka opined that the building owner had removed it, but the
3 building owner denied having been inside or having touched the bullet. Officers
4 also checked the dumpster again and this time saw the bottom of the dumpster
5 was now filled with clothing, papers, cards, and photographs, some of it in
6 Limanni's name. Some of the items were burnt. Detectives also investigated and
7 impounded the Toyota truck Seka
8 drove up to the premises with, which had apparent blood inside of the truck and
9 on a coil of twine inside.

10 Officers Mirandized Seka, who agreed to be interviewed at the detective bureau.
11 Seka told the detective that Limanni had vanished weeks ago and that Seka was
12 trying to keep up the business, alone. He described a man named "Seymore who
13 had done odd jobs for Cinergi and claimed he last spoke to Seymore in late
14 October, when Seymore called Seka's cell phone to ask about doing odd jobs.
15 Detectives determined "Seymore" was Hamilton. The detective interviewing
16 Seka told Seka he was a murder suspect, at which point Seka "smiled" and stated,
17 "You're really starting to scare me now. I think you'd better arrest me or take me
18 home. Do you have enough to arrest me right now?" The detective explained
19 that officers would wait until the forensic evidence returned before making an
20 arrest, and then he drove Seka back to Cinergi.

21 Seka told detectives he had a dinner appointment and needed a vehicle.
22 Detectives explained they were impounding the Toyota truck but told Seka that
23 he could take a company van. At the time, there were two vans: a solid white
24 van and a van with large advertising decals. Detectives handed Seka the keys to
25 the solid white van, and Seka made a comment that suggested he would rather
26 take the decaled van. Becoming suspicious, detectives searched the decaled van
27 and found blood droplets in the back. They allowed Seka to leave in the solid
28 white van; Seka promised to return following dinner. But Seka did not return.
Instead he told property manager Michael Cerda he was leaving and asked Cerda
to look after the dog. Seka also asked Harrison if he could borrow her car, telling
her he needed to leave town to avoid prosecution for murder and that he was
"going underground." Eventually, Seka returned to the East Coast to stay with
his girlfriend.

Limanni's body was discovered December 23 in California, approximately 20
feet from Nipton Road in an isolated desert area near the Nevada border.
Limanni was wearing only boxer shorts. Faded tire tracks showed a vehicle had
driven away from the body. The body's condition indicated Limanni had been
dead for several weeks. He had been shot at least 10 times with a .32 caliber gun.
Seven shots were to the head.

Seka was arrested in Pennsylvania in March 1999. The murder weapons, a .32
caliber firearm and a .357 caliber firearm, were never found.

1 State v. Seka, 13 Nev 305, 306-08, 490 P.3d 1272, 1273-75 (2021).

2
3 **ARGUMENT**

4 **I. THE SECOND PETITION IS PROCEDURALLY BARRED**

5 **A. Application Of The Procedural Bars Is Mandatory**

6 The Nevada Supreme Court has granted no discretion to the district courts regarding
7 whether to apply the statutory procedural bars. Instead, the Nevada Supreme Court has
8 emphatically and repeatedly stated that the procedural bars *must* be applied.

9 The district courts have *a duty* to consider whether post-conviction claims are
10 procedurally barred. State v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112
11 P.3d 1070, 1076 (2005). Riker held that the procedural bars “cannot be ignored when properly
12 raised by the State.” Id. at 233, 112 P.3d at 1075. Accord, State v. Huebler, 128 Nev. 192,
13 197, 275 P.3d 91, 94-95, footnote 2 (2012), cert. denied, 571 U.S. ___, 133 S.Ct. 988 (2013)
14 (“under the current statutory scheme the time bar in NRS 34.726 is *mandatory*, *not*
15 *discretionary*” (emphasis added)).

16 Even “a stipulation by the parties cannot empower a court to disregard the mandatory
17 procedural default rules.” State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003);
18 accord, Sullivan v. State, 120 Nev. 537, 540, footnote 6, 96 P.3d 761, 763-64, footnote 6 (2004)
19 (concluding that a petition was improperly treated as timely and that a stipulation to the
20 petition’s timeliness was invalid). The Sullivan Court “expressly conclude[d] that the district
21 court should have denied [a] petition” because it was procedurally barred. Sullivan, 120 Nev.
22 at 542, 96 P.3d at 765.

23 The district courts have zero discretion in applying the procedural bars because to allow
24 otherwise would undermine the finality of convictions. In holding that “[a]pplication of the
25 statutory procedural default rules to post-conviction habeas petitions is mandatory,” the Riker
26 Court noted:

27 Habeas corpus petitions that are filed many years after conviction are an
28 unreasonable burden on the criminal justice system. The necessity for a
workable system dictates that there must exist a time when a criminal conviction
is final.

1 Riker, 121 Nev. at 231, 112 P.3d at 1074.

2 Moreover, strict adherence to the procedural bars promotes the best interests of the
3 parties:

4 At some point, we must give finality to criminal cases. Should we
5 allow [petitioner's] post-conviction relief proceeding to go
6 forward, we would encourage defendants to file groundless
7 petitions for federal habeas corpus relief, secure in the knowledge
8 that a petition for post-conviction relief remained indefinitely
9 available to them. This situation would prejudice both the accused
10 and the State since the interests of both the petitioner and the
11 government are best served if post-conviction claims are raised
12 while the evidence is still fresh.

13 Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (citations omitted).

14 **B. The Second Petition Is Time-Barred**

15 The Second Petition is time-barred pursuant to NRS 34.726(1):

16 Unless there is good cause shown for delay, a petition that
17 challenges the validity of a judgment or sentence must be filed
18 within 1 year of the entry of the judgment of conviction or, if an
19 appeal has been taken from the judgment, within 1 year after the
20 Supreme Court issues its remittitur. For the purposes of this
21 subsection, good cause for delay exists if the petitioner
22 demonstrates to the satisfaction of the court:

- 23 (a) That the delay is not the fault of the petitioner; and
- 24 (b) That dismissal of the petition as untimely will unduly
25 prejudice the petitioner.

26 The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain
27 meaning. Pellegrini v. State, 117 Nev. 860, 873–74, 34 P.3d 519, 528 (2001). As per the
28 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.

Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133–34 (1998).

23 The one-year time limit for preparing petitions for post-conviction relief under NRS
24 34.726 is strictly applied. In Gonzales v. State, the Nevada Supreme Court rejected a habeas
25 petition that was filed two (2) days late despite evidence presented by the defendant that he
26 purchased postage through the prison and mailed the petition within the one-year time limit.
27 118 Nev. 590, 596, 53 P.3d 901, 904 (2002).

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1 This is not a case wherein the Judgment of Conviction was, for example, not final. See,
2 e.g., Johnson v. State, 133 Nev. ___, 402 P.3d 1266 (2017) (holding that the defendant's
3 judgment of conviction was not final until the district court entered a new judgment of
4 conviction on counts that the district court had vacated); Whitehead v. State, 128 Nev. 259,
5 285 P.3d 1053 (2012) (holding that a judgment of conviction that imposes restitution in an
6 unspecified amount is not final and therefore does not trigger the one-year period for filing a
7 habeas petition). Nor is there any other legal basis for running the one-year time-limit from
8 the filing of the Amended Judgment of Conviction. Thus, Petitioner had one year from the
9 filing of his original Judgment of Conviction to file a timely petition.

10 Petitioner failed to file this Second Petition prior to the one-year deadline. Remittitur
11 issued from Petitioner's direct appeal on May 9, 2003; therefore, Petitioner had until May 9,
12 2004, to file a timely habeas petition. Petitioner filed this Second Petition on November 1,
13 2022. This is over nineteen (19) years and five (5) months after Petitioner's one-year deadline.
14 Absent a showing of good cause and prejudice to excuse this delay, Petitioner's Second
15 Petition must be denied.

16 C. The Second Petition Is Barred As Successive

17 NRS 34.810(2) reads:

18 A second or successive petition must be dismissed if the judge or
19 justice determines that it fails to allege new or different grounds
20 for relief and that the prior determination was on the merits or, if
21 new and different grounds are alleged, the judge or justice finds
22 that the failure of the petitioner to assert those grounds in a prior
23 petition constituted an abuse of the writ.

24 Second or successive petitions are petitions that either fail to allege new or different
25 grounds for relief and the grounds have already been decided on the merits or that allege new
26 or different grounds, but a judge or justice finds that the petitioner's failure to assert those
27 grounds in a prior petition would constitute an abuse of the writ. Second or successive petitions
28 will only be decided on the merits if the petitioner can show good cause and prejudice. NRS
34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); see also Hart v.
State, 116 Nev. 558, 563–64, 1 P.3d 969, 972 (2000) (holding that “where a defendant

1 previously has sought relief from the judgment, the defendant's failure to identify all grounds
2 for relief in the first instance should weigh against consideration of the successive motion.")

3 The Nevada Supreme Court has stated: "Without such limitations on the availability of
4 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
5 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
6 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
7 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require
8 a careful review of the record, successive petitions may be dismissed based solely on the face
9 of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
10 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
11 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-98 (1991).
12 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

13 Here, Petitioner has filed a prior petition for habeas relief. On February 13, 2004,
14 Petitioner filed his First Petition. The State filed its Response on April 6, 2004. On November
15 5, 2004, the District Court denied the First Petition. On January 31, 2005, the Findings of Fact,
16 Conclusions of Law and Order was filed. On February 9, 2005, Petitioner filed a Notice of
17 Appeal. On June 8, 2005, the Nevada Supreme Court issued an Order affirming the District
18 Court's decision and Remittitur issued on July 15, 2005. Thus, the Second Petition is
19 successive and constitutes an abuse of the writ.

20 **D. The State Affirmatively Pleads Laches**

21 Certain limitations exist on how long a defendant may wait to assert a post-conviction
22 request for relief. Consideration of the equitable doctrine of laches is necessary in determining
23 whether a defendant has shown 'manifest injustice' that would permit a modification of a
24 sentence. Hart, 116 Nev. at 563-64, 1 P.3d at 972. In Hart, the Nevada Supreme Court stated:
25 "Application of the doctrine to an individual case may require consideration of several factors,
26 including: (1) whether there was an inexcusable delay in seeking relief; (2) whether an implied
27 waiver has arisen from the defendant's knowing acquiescence in existing conditions; and (3)

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1 whether circumstances exist that prejudice the State. See Buckholt v. District Court, 94 Nev.
2 631, 633, 584 P.2d 672, 673–74 (1978).” Id.

3 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
4 exceeding five years [elapses] between the filing of a judgment of conviction, an order
5 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
6 conviction and the filing of a petition challenging the validity of a judgment of conviction...”
7 The Nevada Supreme Court has observed, “[P]etitions that are filed many years after
8 conviction are an unreasonable burden on the criminal justice system. The necessity for a
9 workable system dictates that there must exist a time when a criminal conviction is final.”
10 Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the
11 statute requires the State plead laches. NRS 34.800(2).

12 Here, the State affirmatively pleads laches. This Second Petition was filed on
13 November 1, 2022, twenty-one (21) years after the Judgment of Conviction was filed on May
14 9, 2001; and nineteen (19) years after the Nevada Supreme Court filed its order affirming the
15 Judgment of Conviction on April 8, 2003. Because these time periods exceed five (5) years,
16 the State is entitled to a rebuttable presumption of prejudice under NRS 34.800(2). Petitioner
17 failed to demonstrate evidence to rebut prejudice to the State. Thus, this Petition must be
18 dismissed pursuant to the doctrine of laches.

19 **II. PETITIONER FAILS TO ESTABLISH GOOD CAUSE AND PREJUDICE**
20 **TO OVERCOME THE PROCEDURAL BARS**

21 Petitioner’s failure to prove good cause or prejudice requires the dismissal of his Second
22 Petition. To overcome the procedural bars, a petitioner must demonstrate: (1) good cause for
23 delay in filing his petition or for bringing new claims or repeating claims in a successive
24 petition; and (2) undue or actual prejudice. NRS 34.726(1); NRS 34.800(1); NRS 34.810(3).
25 To avoid procedural default under NRS 34.726 and NRS 34.810, a defendant has the burden
26 of pleading and proving specific facts that demonstrate good cause for his failure to present
27 his claim in earlier proceedings or comply with the statutory requirements. See Hogan v.
28 Warden, 109 Nev. at 959-60, 860 P.2d at 715-16; Phelps, 104 Nev. at 659, 764 P.2d at 1305.

1 “To establish good cause, Petitioners must show that an impediment external to the
2 defense prevented their compliance with the applicable procedural rule. A qualifying
3 impediment might be shown where the factual or legal basis for a claim was not reasonably
4 available at the time of default.” Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)
5 (emphasis added). The Court continued, “Petitioners cannot attempt to manufacture good
6 cause[.]” Id. at 621, 81 P.3d at 526. In order to establish prejudice, the Petitioner must show
7 “not merely that the errors of [the proceedings] created possibility of prejudice, but that they
8 worked to his actual and substantial disadvantage, in affecting the state proceedings with error
9 of constitutional dimensions.” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716
10 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To
11 find good cause there must be a “substantial reason; one that affords a legal excuse.” Hathaway
12 v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235,
13 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in the filing of the petition must not be
14 the fault of the petitioner. NRS 34.726(1)(a).

15 Further, a petitioner raising good cause to excuse procedural bars must do so within a
16 *reasonable* time after the alleged good cause arises. See Pellegrini, 117 Nev. at 869–70, 34
17 P.3d at 525–26 (holding that the time bar in NRS 34.726 applies to successive petitions); see
18 generally Hathaway, 119 Nev. at 252–53, 71 P.3d at 506–07 (stating that a claim reasonably
19 available to the petitioner during the statutory time period did not constitute good cause to
20 excuse a delay in filing).

21 A reasonable period is presumably one-year from when the claim became available.
22 See Rippo v. State, 132 Nev. 95, 101, 368 P.3d 729, 734 (2016) (“[A] petition ... has been
23 filed within a reasonable time after the ... claim became available so long as it is filed within
24 one year after entry of the district court’s order disposing of the prior petition or, if a timely
25 appeal was taken from the district court’s order, within one year after this court issues its
26 remittitur.”); Pellegrini v. State, 117 Nev. 860, 874–75, 34 P.3d 519, 529 (2001) (“The State
27 concedes, and we agree, that for purposes of determining the timeliness of these successive
28 petitions pursuant to NRS 34.726, assuming the laches bar does not apply, it is both reasonable

1 and fair to allow petitioners one year from the effective date of the amendment to file any
2 successive habeas petitions”). A claim is reasonably available if the facts giving rise to the
3 claim were discoverable using reasonable diligence. McClesky v. Zant, 499 U.S. 467, 493,
4 111 S.Ct. 1454, 1470 (1991). A claim that is itself procedurally barred cannot constitute good
5 cause. Riker, 121 Nev. at 235, 112 P.3d at 1077; see also Edwards v. Carpenter, 529 U.S. 446,
6 453 120 S.Ct. 1587, 1592 (2000).

7 To demonstrate prejudice to overcome the procedural bars, a defendant must show “not
8 merely that the errors of [the proceeding] created possibility of prejudice, but that they worked
9 to his actual and substantial disadvantage, in affecting the state proceedings with error of
10 constitutional dimensions.” Hogan v Warden, 109 Nev. at 960, 860 P.2d at 716 (internal
11 quotation omitted), Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545.

12 **A. Petitioner’s Brady Claim Fails to Provide Good Cause And Prejudice**
13 **Because It Is Meritless And Untimely**

14 Petitioner claims a violation under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194
15 (1963) provides him good cause to overcome the procedural bars. Second Petition, at 9-12,
16 41-48. Petitioner claims a latent fingerprint report, showing that a stolen purse recovered from
17 1933 Western Avenue had fingerprints that did not match his, was not disclosed to defense
18 Second Petition, at 41-48.

19 To qualify as good cause, Petitioner must demonstrate that the State affirmatively
20 withheld information favorable from the defense. State v. Bennett, 119 Nev. 589, 600, 81 P.3d
21 1, 8 (2003). The defense bears the burden of proving that the State withheld information and
22 it must prove specific facts that show as much. State v. Bennett, 119 Nev. 589, 600, 81 P.3d
23 1, 8 (2003).

24 Here, Petitioner cannot use this Brady claim as good cause and prejudice because his
25 Brady claim is meritless. See Section III, *infra*. As shown below, Petitioner fails to show that
26 the State affirmatively withheld favorable information from him. See Section III, *infra*.
27 Furthermore, Petitioner’s cannot use his Brady claim to prove good cause and prejudice
28 because it is untimely. The State does not concede that the fingerprint print report was withheld

1 from Petitioner until 2017. However, even assuming that Petitioner did not receive it from the
2 State until 2017, Petitioner only had until 2018 to raise this Brady claim to the Court.
3 Petitioner's failure to do so precludes him from using this claim as good cause and prejudice
4 to file a procedurally barred habeas petition.

5 **B. Petitioner's Claim Of Actual Innocence Fails To Establish Good Cause And**
6 **Prejudice Because It Is Meritless And Barred By The Law Of The Case**

7 Petitioner claims he has good cause to overcome the procedural bars because he is
8 actually innocent as shown by a previously unavailable report excluding Petitioner as a
9 contributor of DNA found under Hamilton's fingernails. Second Petition, at 12, 48-51.
10 Petitioner's claim of actual innocence based on the new DNA evidence is negated by the
11 Nevada Supreme Court's holding that "none of this new evidence from Hamilton's crime
12 scenes affects the evidence supporting the guilty verdict, where at trial no physical evidence
13 of DNA tied Seka to the crime scenes and the State's case was completely circumstantial."
14 Seka, 13 Nev. at 316, 490 P.3d at 1280. As shown below, Petitioner fails to establish good
15 cause and prejudice because his claim of actual innocence is meritless and barred by the law
16 of the case. See Section IV, *infra*.

17 **C. Petitioner Cannot Establish Prejudice To Overcome The Procedural Bars**
18 **Due To The Overwhelming Evidence Supporting Both Murder Convictions**

19 Petitioner claims that the DNA evidence and the Brady material establish his innocence
20 of the Hamilton murder and robbery because the evidence at trial was weak and entirely
21 circumstantial. Second Petition, at 13. Petitioner's claim fails due to the overwhelming
22 evidence presented against him at trial. The Nevada Supreme Court stated:

23 Moreover, the physical and circumstantial evidence overwhelmingly supported
24 a guilty verdict as to both murders. Limanni was killed by a .32 caliber weapon,
25 and Hamilton was killed by a .357 caliber weapon—and both types of
26 ammunition were found at Cinergi, where Seka worked and lived. Hamilton was
27 killed next door to Cinergi, and the bullet fragments suggest Limanni was killed
28 at Cinergi, a supposition corroborated by Seka's own confession to Cramer. Both
Limanni's and Hamilton's bodies were dumped off a road in the desert. Limanni's
body was transported in the company van Seka preferred to drive before Limanni
disappeared, and Hamilton's body was transported in the Toyota truck that Seka

1 was driving after Limanni disappeared—a truck that had been cleaned shortly
2 before officers responded to Hamilton's murder scene. Hamilton had a note with
3 Seka's name and business number in his pocket, and his body was covered in
4 wood taken from Cinergi that contained Seka's fingerprints. Beer bottles found
5 in the garbage the day after Hamilton's body was discovered had both Hamilton's
6 and Seka's fingerprints, suggesting the two had been drinking at Cinergi just
7 prior to the altercation at 1929 Western. Limanni's belongings were hidden at
8 Cinergi, which Seka had access to after Limanni disappeared. Limanni made
9 plans with Harrison for the day he went missing, and Seka was the last person
10 to see Limanni alive. Specifically, Harrison testified that when Limanni left her
11 home the night before he disappeared, the couple discussed calling each other
12 and going to lunch the next day. But when Harrison was unable to reach Limanni
13 the following morning and went to Cinergi searching for Limanni, she found a
14 large amount of cash (notably, Limanni had just withdrawn his money from his
15 bank accounts), all of Limanni's clothing, Limanni's dog (whom Limanni took
16 everywhere), a bullet on the floor, and Seka—but not Limanni. Seka—whom
17 Limanni had picked up at the airport the prior day—told Harrison that Limanni
18 had left early that morning. And when Limanni failed to return, Seka
19 discouraged Harrison from filing a missing person report. All of this evidence
20 points to Seka as the killer.

21 Further, Seka's statements were contradicted by other evidence, undermining his
22 truthfulness and, by extension, further implicating him in the crimes. For
23 example, Seka claimed that Hamilton had worked at Cinergi in mid-October, but
24 other evidence established Hamilton moved to Las Vegas in late October or early
25 November. When officers searching Hamilton's murder scene asked Seka about
26 Limanni, Seka told them that he believed Limanni was in the Reno area with his
27 girlfriend, even though Seka knew this was untrue from his conversations with
28 Harrison. Officers noticed a bullet on a desk in Cinergi when they first arrived,
yet it mysteriously went missing after Seka arrived at the scene. Thereafter, Seka
suggested to the police that the bullet's disappearance might be due to the
building owner removing it, yet the owner confirmed to the police when
questioned that he had not been inside the building when the bullet went missing.
And when Harrison noticed Seka's upset demeanor the morning Limanni
disappeared, Seka blamed his mood on his girlfriend, even though his girlfriend
later testified nothing had happened between them that would have upset Seka.

Finally, there was substantial evidence of Seka's guilty conscience. Officers
discovered someone had attempted to hide Limanni's personal papers in
Cinergi's ceiling, and Seka had access to Cinergi after Limanni went missing.
Circumstances suggested Seka removed the bullet on the desk that initially
caught the officer's attention. A .32 caliber bullet was found in the toilet at
Cinergi, as if Seka, the person living and working at Cinergi, had attempted to
dispose of incriminating evidence down the toilet. The dumpster behind the
business had been emptied shortly before officers arrived to investigate

1 Hamilton's murder scene, and an officer observed that it was nearly empty that
2 morning, yet by afternoon after Seka arrived at the location, that same dumpster
3 was filled with Limanni's personal belongings and papers, some of them burned,
4 even though officers were at that time only searching for clues as to Hamilton's
5 death and were unaware of Limanni's disappearance. After Seka learned he was
6 a suspect in Hamilton's murder, Seka attempted to leave the scene in the decaled
7 van that held evidence of Limanni's murder. Seka told officers he would return
8 to Cinergi after dinner, but instead Seka fled the state. Seka also told Harrison
9 he was fleeing to avoid prosecution. And Seka made incriminating statements to
10 his longtime friend, Cramer, and eventually confessed Limanni's murder to
11 Cramer. All of this evidence ties Seka to Limanni's death and ultimately ties him
12 to Hamilton's death as well.

13 Seka, 13 Nev. at 316-318, 490 P.3d at 1280-1281.

14 In summary, Petitioner fails to establish good cause and prejudice to overcome the
15 procedural bars and this Petition must be denied.

16 **III. GROUND ONE MUST BE DENIED BECAUSE PETITIONER FAILS TO**
17 **ESTABLISH A BRADY VIOLATION**

18 Petitioner claims a Brady violation and alleges that the State failed to provide a latent
19 fingerprint report. Second Petition, at 42. Petitioner claims a Brady violation because a latent
20 fingerprint report, showing that a stolen purse recovered from 1933 Western Avenue had
21 fingerprints that did not match Seka's, was not disclosed to Petitioner. Second Petition, at 41-
22 48. Petitioner's Brady claim must be denied because (1) Petitioner fails to establish that the
23 State withheld the report; (2) Petitioner fails to establish that report was favorable to him; and
24 (3) Petitioner fails to establish that the report was material.

25 It is well-settled that Brady and its progeny require a prosecutor to disclose evidence
26 favorable to the defense when that evidence is material either to guilt or to punishment. See
27 Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25 (2000); Jimenez v. State, 112 Nev. 610, 618-
28 19, 918 P.2d 687 (1996). "[T]here are three components to a Brady violation: (1) the evidence
at issue is favorable to the accused; (2) the evidence was withheld by the state either
intentionally or inadvertently; and (3) prejudice ensued, i.e., the evidence was material."
Mazzan, 116 Nev. at 67. "Where the state fails to provide evidence which the defense did not
request or requested generally, it is constitutional error if the omitted evidence creates a

1 reasonable doubt which did not otherwise exist. In other words, evidence is material if there is
2 a reasonable probability that the result would have been different if the evidence had been
3 disclosed.” Id. at 66 (internal citations omitted). “In Nevada, after a specific request for
4 evidence, a Brady violation is material if there is a reasonable possibility that the omitted
5 evidence would have affected the outcome. Id. (original emphasis) (citing Jimenez, 112 Nev.
6 at 618-19, 918 P.2d at 692; Roberts v. State, 110 Nev. 1121, 1132, 881 P.2d 1, 8 (1994).

7 “The mere possibility that an item of undisclosed information might have helped the
8 defense, or might have affected the outcome of the trial, does not establish ‘materiality’ in the
9 constitutional sense.” United States v. Agurs, 427 U.S. 97, 108 96 S. Ct. 2392, 2399-400
10 (1976). Favorable evidence is material, and constitutional error results, “if there is a reasonable
11 probability that the result of the proceeding would have been different.” Kyles, 514 U.S. at
12 433-34, 115 S. Ct. at 1565 (citing United States v. Bagley, 473 U.S. 667, 682 105 S. Ct. 3375,
13 3383 (1985)). A reasonable probability is shown when the nondisclosure undermines
14 confidence in the outcome of the trial. Kyles, 514 U.S. at 434, 115 S. Ct. 1565. Appellant is
15 unable to demonstrate prejudice and thus his claim fails.

16 Further, in Evans v. State, 117 Nev. 609, 625-27, 28 P.3d 498, 510-11 (2001), overruled
17 on other grounds by Lisle v. State, 131 Nev. 356, 366 n.5, 351 P.3d 725, 732 n.5 (2015), the
18 defendant, on appeal, argued that the State had the obligation to continue investigating
19 alternate suspects of the crime, and speculated the State had evidence one of the victims had
20 been an informant previously, which would have demonstrated others had motive to kill her.
21 Id. at 626, 28 P.3d at 510-11. The Court found that the defendant had not demonstrated that
22 such an investigation would have led to exculpatory information. Id. at 626, 28 P.3d at 510.
23 To undermine confidence in a trial’s outcome, a defendant would have to allege the
24 nondisclosure of specific information that not only linked alternate suspects to the crime, but
25 also indicate the defendant was not involved. Id. at 626, 28 P.3d at 510. Further, the Court
26 found that the victim’s mere acting as an informant, without at least some evidence that she
27 had received actual threats against her, would not implicate the State’s affirmative duty to

28 ///

1 disclose potentially exculpatory information to the defense because such information must be
2 material. Id. at 627, 28 P.3d at 511.

3 **A. Petitioner Fails To Show That The State Withheld The Fingerprint Report**

4 Petitioner claims the fingerprint report from 1999 was not turned over to the defense;
5 and “defense did not see it until November 2017, after the district court granted Seka’s DNA
6 petition.” Second Petition, at 43. Petitioner’s claim does not prove that the State withheld the
7 report from him until November 2017 because Petitioner fails to provide sufficient supporting
8 evidence.

9 During trial, both the State and Petitioner’s counsel stated that Petitioner’s counsel
10 looked at the State’s and LVMPD’s case files. On February 14, 2001, trial counsel for the State
11 informed the Court:

12 For that record, I have never believed that the open file policies instituted by our
13 office is the most effective means to make sure that needed information gets into
14 the hands of the Defense.

15 I've got my own policy, and my own policy which I implement in every case,
16 and did in this case, was to make my file available to the Defense at any time.
17 As we get close to a firm trial date - - and the Court well knows that usually
18 several trial dates are set in a homicide case, and finally you get one where you
19 know it's pretty much going to go.

20 And as you get close to that date, it has always been my policy, and I did it in
21 this case, told Defense counsel: Please, come to my office, go over my file page
22 by page to make sure that there's nothing that I've got here that you haven't got.
23 That was done within the last two to three weeks.

24 After that, Mr. Christiansen told me that he wanted to go to homicide and take
25 a look at the homicide detective’s file just to make double sure that I had
26 everything the homicide detective had, and that Mr. Christiansen had everything
27 that I had.

28 We did that and we spent a couple of hours with the homicide detective one
afternoon. Mr. Christensen pulled out several pages of reports. I think they were
all reports of forensic examination, one by Terry Johnson, one by Mr. Welch.

Jury Trial Transcript (hereinafter “JTT”) February 14, 2001, Volume I, at 7-8.

1 On February 22, 2001, while cross-examining LVMPD homicide Detective Thomas
2 Thowsen, Petitioner's counsel stated that he went to Detective Thowsen's office three (3) or
3 four (4) weeks prior:

4
5 Q: I went through your file with you and Mr. Kane and identified things that I
6 didn't know if I had or think I had and you were kind enough to even go yourself
and make copies of those?

7 A: That's correct.

8 JTT, February 22, 2001, Vol I, at 34.

9 Petitioner's Exhibit 12-15 (declarations from Petitioner, a former investigator, and
10 employees from Rocky Mountain Innocence Center who worked on Seka's case) fail to show
11 that the State withheld the report from defense. The declarations merely show that they did not
12 read and/or remember reading the report when they worked on Petitioner's file. As additional
13 information, Petitioner has made a different representation when he claimed in his Answering
14 Brief to the Nevada Supreme Court that he did not receive the report until 2018. See Attached
15 Exhibit 1 (Respondent John Seka's Answering Brief), at 12. Thus, Petitioner fails to
16 sufficiently support his claim that the State withheld the report from defense.

17 **B. Petitioner Fails To Show That The Fingerprint Report Was Favorable And**
18 **Material.**

19 Petitioner claims that the fingerprint report was favorable and material:

20 The fingerprint report was favorable. The police had originally alleged that Seka
21 had stolen the purse. But the latent fingerprint report showed that Seka was not
22 the contributor to the fingerprints found on the purse. It is clear evidence
showing that he did not steal the purse. That is obviously favorable.

23 The fingerprint report is also material. The fingerprint report exonerates Seka of
24 stealing the purse. The report shows that Seka, as well as Hamilton and Limanni,
25 were excluded as the source of the fingerprints connected to the purse.

26 Just as important, a comparison of the deformed lead bullet found in Gorzoch's
27 car and two bullets found in the Hamilton case established a likely connection
28 between the two crimes. The class characteristics found on the bullets were
consistent, potentially linking them to the same gun. If Seka did not steal the
purse, then he very likely did not commit the Hamilton murder due to this

1 ballistics connection. This evidence standing alone would raise a reasonable
2 doubt in any reasonable juror's mind as to whether Seka committed the Hamilton
murder.

3 Second Petition, at 44.

4 Petitioner argues that the report undermines the State's theory that he was guilty of
5 murdering Hamilton because Petitioner had control over 1933 Western. Second Petition, 45
6 (citing JTT 2/23/2001 Vol 1, at 51). Petitioner concludes that the existence of the purse inside
7 1933 Western provides concrete physical evidence that someone else had access to 1933
8 Western. Second Petition, at 46.

9 Petitioner's argument that the report, showing that a purse was found in 1933 Western
10 Avenue with an unknown person's fingerprints, was favorable and material fail for several
11 reasons. First, Petitioner's claim that the existence of a purse would have shown the jury that
12 "someone else had access to 1933 Western" fails because evidence presented at trial showed
13 that several people had access to 1933 Western.

14 For instance, Michael Cerda testified that when he last saw Limanni, there was a
15 "shapely, blonde-headed nice-looking gal" exiting 1933 Western. JTT 2/13/2001, Vol 2, at 61.
16 Jennifer Harrison also testified that she dated Limanni and would visit him at 1933 Western;
17 that there was an employee, "a Mexican guy," aside from Limanni and Petitioner. JTT
18 2/14/2001, Vol 1, at 49, 72. Harrison further testified that when she was looking for Limani
19 on the first day that he was missing, she went to Cinergi and found Petitioner passed out on
20 the floor while an unknown woman was sleeping on the couch. JTT 2/14/2001, Vol 1, at 65.
21 Christine Caterino further testified that when she visited Petitioner in September 1998 and
22 stayed at Cinergi, "there were people coming and going from the store." JTT 2/22/2001, Vol
23 2, at 40. Thus, Petitioner's argument that the report would have shown that "someone else had
24 access to 1933 Western" fails.

25 Second, Petitioner argues that the State's case relied almost entirely on the purported
26 connections between evidence related to the Hamilton murder and evidence found in or
27 connected to 1933 Western. Second Petition, at 45. Petitioner's claim for materiality of the
28 report fails because the State did not charge Petitioner with any crime related to the stolen

1 purse and did not use any evidence related to the purse to connect Petitioner to Hamilton's or
2 Limanni's murder.

3 Third, the report does not negate the overwhelming evidence that Petitioner killed
4 Hamilton and Limanni. The State is not required to show that Petitioner's fingerprints were on
5 every piece of evidence recovered by the police. The jury's verdict reflects as much. At trial,
6 the LVMPD latent print examiner Fred Boyd testified that a beer bottle and wooden boards
7 found near Hamilton's body had fingerprints that did not belong to Petitioner or the victims,
8 yet they found Petitioner guilty of both murders. JTT, 2/21/2001, Vol 2, at 15, 17-23.

9 Finally, Petitioner's Brady claim fails because he cannot establish that the outcome of
10 his case would have been different if the report was presented to the jury due to the
11 overwhelming evidence supporting the guilty verdicts for both murders. See Section II (C),
12 *supra*. In summary, Petitioner fails to establish all three (3) elements of his Brady claim, and
13 Ground One must be denied.

14 **IV. GROUND TWO MUST BE DENIED BECAUSE PETITIONER'S CLAIM OF**
15 **ACTUAL INNOCENCE DOES NOT ENTITLE HIM TO RELIEF**

16 Petitioner claims his "conviction and sentence are invalid because new evidence
17 including exonerating DNA evidence, establishes he is actually innocent of first-degree
18 murder, second degree murder and robbery." Second Petition, at 48. Petitioner argues he is
19 actually innocent because the new DNA result excludes him as a contributor to the "DNA
20 profile found on Hamilton's right and left fingernails." Second Petition, at 50.

21 Actual innocence means factual innocence not mere legal insufficiency. Bousley v.
22 United States, 523 U.S. 614, 623, 118 S.Ct. 1604, 1611 (1998); Sawyer v. Whitley, 505 U.S.
23 333, 338-39, 112 S.Ct. 2514, 2518-19 (1992). To establish actual innocence of a crime, a
24 petitioner "must show that it is more likely than not that no reasonable juror would have
25 convicted him absent a constitutional violation." Calderon v. Thompson, 523 U.S. 538, 560,
26 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup v. Delo, 513 U.S. 298, 316,
27 115 S. Ct. 851, 861 (1995)). Actual innocence is a stringent standard designed to be applied
28 only in the most extraordinary situations. Pellegrini, 117 Nev. at 876, 34 P.3d at 530.

1 “Without any new evidence of innocence, even the existence of a concededly
2 meritorious constitutional violation is not itself sufficient to establish a miscarriage of justice
3 that would allow a habeas court to reach the merits of the barred claim.” Schlup, 513 U.S. at
4 316, 115 S. Ct. at 861. The Eighth Circuit Court of Appeals has “rejected free-standing claims
5 of actual innocence as a basis for habeas review stating, ‘[c]laims of actual innocence based
6 on newly discovered evidence have never been held to state a ground for federal habeas relief
7 absent an independent constitutional violation occurring in the underlying state criminal
8 proceeding.’” Meadows v. Delo, 99 F.3d 280, 283 (8th Cir. 1996) (citing Herrera v. Collins,
9 506 U.S. 390, 400, 113 S. Ct. 853, 860 (1993)). Furthermore, the newly discovered evidence
10 suggesting the defendant’s innocence must be “so strong that a court cannot have confidence
11 in the outcome of the trial.” Schlup, 513 U.S. at 315, 115 S. Ct. at 861. Once a defendant has
12 made a showing of actual innocence, he may then use the claim as a “gateway” to present his
13 constitutional challenges to the court and require the court to decide them on the merits. Id.

14 **A. Freestanding Actual Innocence Claims Are Not Cognizable Even In Post-**
15 **Conviction Proceedings**

16 Nevada law does not recognize freestanding claims of actual innocence in a Petition for
17 Writ of Habeas Corpus, but rather only provides for claims of actual innocence where a
18 defendant is attempting to overcome a procedural bar caused by an untimely or successive
19 petition. See Mitchell v. State, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006); See also Clem
20 v. State, 119 Nev. 615, 621, 81 P.3d 521, 525-26 (2003). This is consistent with the Nevada
21 Supreme Court’s adoption of the standard established in Schlup v. Delo. See 513 U.S. 238,
22 315, 115 S. Ct. 851, 861 (1995) (quoting Herrera v. Collins, 506 U.S. 390, 404, 113 S. Ct. 853,
23 862 (1993)) (“Schlup’s claim of innocence is thus not itself a constitutional claim, but instead
24 a gateway through which a habeas petitioner must pass to have his otherwise barred
25 constitutional claim considered on the merits.”).

26 In contrast, a freestanding claim of actual innocence is a claim wherein a petitioner
27 alleges actual innocence alone, rather than actual innocence supported by a claim of
28 constitutional deficiency, warrants relief. See Herrera, 506 U.S. 390, 113 S. Ct. 853 (1993).

1 The Herrera Court acknowledged that claims of actual innocence based on newly discovered
2 evidence have never been held as a ground for habeas relief absent an independent
3 constitutional violation in the underlying criminal proceeding. Id. The Court noted such claims
4 were traditionally addressed in the context of requests for executive clemency, which power
5 exists in every state and at the federal level. Id. at 414-15, 113 S. Ct. at 867-68. However, the
6 Court assumed, *arguendo*, that a federal freestanding claim of actual innocence may exist
7 where a petitioner was sentenced to death and state law precluded any relief. Herrera, 506
8 U.S. at 417, 113 S. Ct. at 869; Schlup, 513 U.S. at 317, 115 S. Ct. at 862. The United States
9 Supreme Court has never found a freestanding claim of actual innocence to be available in a
10 non-capital case. See, e.g., Herrera, 506 U.S. at 404-405, 416-417; House v. Bell, 547 U.S.
11 518, 554, 126 S. Ct. 2064, 2086 (2006); see also Carriger v. Stewart, 132 F.3d 463, 476 (9th
12 Cir. 1997); Jackson v. Calderon, 211 F.3d 1148, 1165 (9th Cir. 2000).

13 Petitioner fails to cite any Nevada authority which would allow him to raise a
14 freestanding claim of actual innocence and improperly suggests such a claim before this Court.
15 However, Petitioner fails to recognize that this assertion, itself, is not an independent,
16 cognizable ground for habeas relief. See Schlup, 513 U.S. at 327, 115 S.Ct. at 867. Instead,
17 such an assertion may only constitute good cause to overcome other procedural bars to
18 Petitioner's claim. Id. However, as shown below, Petitioner's claim for actual innocence lacks
19 merit. Therefore, Petitioner cannot meet the "stringent standard" for demonstrating actual
20 innocence sufficient to overcome Petitioner's various procedural bars.

21 **B. Ground Two Is Meritless And Barred By The Law Of The Case**

22 The doctrine of *res judicata* precludes a party from re-litigating an issue which has been
23 finally determined by a court of competent jurisdiction. Exec. Mgmt. v. Tigor Titles Ins. Co.,
24 114 Nev. 823, 834, 963 P.2d 465, 473 (1998) (citing Univ. of Nev. v. Tarkanian, 110 Nev.
25 581, 598, 879 P.2d 1180, 1191 (1994)); see also Sealton v. United States, 332 U.S. 575, 578,
26 68 S. Ct. 237, 239 (1948) (recognizing the doctrine's availability in criminal proceedings).
27 "The doctrine is intended to prevent multiple litigation causing vexation and expense to the
28 parties and wasted judicial resources." Id.

1 Moreover, “the law of a first appeal is law of the case on all subsequent appeals in
2 which the facts are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798
3 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of
4 the law of the case cannot be avoided by a more detailed and precisely focused argument
5 subsequently made after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799.
6 Under the law of the case doctrine, issues previously decided on direct appeal may not be
7 reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001)
8 (citing McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore,
9 this Court cannot overrule the Nevada Supreme Court. Nev. Const. Art. VI § 6. See Mason v.
10 State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine’s applicability in the
11 criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011).

12 Petitioner presents the same DNA result that was among those considered by the
13 Nevada Supreme Court in 2021:

14
15 In 2017, Seka requested a DNA test of evidence collected at Hamilton's remote
16 desert crime scene and the surrounding area. Seka argued that had items
17 collected by detectives yielded exculpatory evidence at trial, he would not have
18 been convicted, particularly in light of the evidence implicating Cinergi
19 investors and undermining Cramer's testimony of Seka's confession. The district
20 court granted Seka's request, and the following items were tested for DNA in
21 late 2018 and early 2019:

22 (1) Two cigarette butts found near Hamilton's body. Testing in 1999 failed to
23 find any testable DNA. Testing in 2018 failed to obtain DNA from one cigarette
24 butt, but a partial profile from the second cigarette butt did not match either
25 Hamilton or Seka, and both were excluded as contributors.

26 (2) *Hamilton's fingernail clippings. Testing in 1998 excluded Seka as a*
27 *contributor to the DNA from the clippings on one hand. The 2018 DNA testing*
28 *likewise excluded Seka as a contributor to the DNA from the clippings on both*
 hands but found possible DNA from another person, although it was such a small
 amount of DNA that it could have been transferred from something as benign as
 a handshake or DNA may not have actually existed.

 (3) Hairs found underneath Hamilton's fingernails. In 1998, the DNA profile
 included Hamilton and excluded Seka. The 2018 testing likewise found only
 Hamilton's DNA on the hairs.

1 (4) The Skoal tobacco container found near Hamilton's body. The 2019 testing
2 showed two contributors, but Hamilton and Seka were excluded. The forensic
3 scientist explained that an old technique used to find latent fingerprints,
4 "huffing," may have been used on this item and may have contaminated the
5 DNA profile. Moreover, because at the time of the original trial the State did not
6 have the capability to test for "touch DNA," the scientists may not have worn
7 gloves while examining the evidence, or crime scene analysts may have used the
8 same gloves and same fingerprint dusting brush while processing evidence,
9 thereby adding to or transferring DNA.

10 (5) A beer bottle found off the road in the desert in the vicinity of Hamilton's
11 body. The 2019 DNA testing excluded Hamilton and Seka but included a female
12 contributor. As with the Skoal tobacco container, the forensic scientist testified
13 that huffing and other outdated procedures may have contributed unknown DNA
14 onto the item.

15 (6) The baseball hat found at 1929 Western. The 2019 DNA testing showed three
16 contributors, including Hamilton, but the results were inconclusive as to Seka.
17 The forensic scientist explained the cap was kept in an unsealed bag along with
18 a toothbrush also found at 1929 Western. Critically, he further testified that it
19 was impossible to know how many times the bag had been opened or closed
20 during the jury trial or whether the hat had been contaminated, such as by jurors
21 holding it or talking over it.

22 Based on these DNA results, Seka moved for a new trial, arguing the new results
23 both exculpated Seka and implicated an unknown person in the crimes. The
24 district court found that "[t]he multiple unknown DNA profiles are favorable
25 evidence" and granted the motion. Arguing the new DNA evidence does not
26 warrant a new trial, the State appeals.

27 Seka, 13 Nev. at 316-318, 490 P.3d at 1280-1281 (emphasis added).

28 The Nevada Supreme Court discussion of the DNA results negates Petitioner's
contention that they show actual innocence:

First, as to the hairs found underneath Hamilton's fingernails, updated DNA testing showed only that those were Hamilton's hairs, mirroring the DNA results at the time of trial, and is cumulative here. As to the DNA collected from Hamilton's fingernail clippings, the bullet and lack of stippling evidence shows Hamilton was shot in the back from a distance, seemingly as he fled from the killer. There is no evidence of a struggle, reducing the evidentiary value of any newly discovered DNA under his fingernails. Moreover, the fingernail clippings

1 *provided so little DNA that it is possible another profile might not actually exist,*
2 *further reducing the evidence's already dwindling value.*

3 The beer bottle, cigarette butt, and Skoal tobacco container were spread along
4 the shoulder of a major road at increasing distances of up to 120 feet from
5 Hamilton's body and may well have been nothing more than trash tossed by
6 drivers or pedestrians in the desert area. The State did not argue at trial that Seka
7 dropped those items, and to the extent DNA testing yielded unknown DNA
8 profiles, the new DNA evidence shows only that an unidentified person touched
9 those items at some unknown time. Thus, any link to the killer is speculative at
10 best. Moreover, testing at the time of trial used outdated techniques and
11 procedures that may have contaminated any DNA on those items, further calling
12 into question their evidentiary value. And the jury was already aware that the
13 cigarette butts found near Hamilton were different than those that Seka smoked,
14 making the new DNA test results on that evidence cumulative.

15 Finally, the DNA on the hat has no probative value here. Although that testing
16 produced other profiles, it was inconclusive as to Seka, and, moreover, the hat
17 was not properly sealed and may have been contaminated before and during trial,
18 including by the jury, making the presence of additional DNA profiles of no
19 relevance under these circumstances.

20 Thus, at most this new DNA evidence showed only that another person may
21 have come in contact with some of those items. It does not materially support
22 Seka's defense, as it is cumulative of the evidence already adduced at trial
23 excluding Seka as a contributor to DNA profiles or fingerprint evidence. The
24 State did not rely upon any of these items at trial to argue Seka's guilt, further
25 reducing the evidentiary value of the new DNA evidence, and, moreover,
26 nothing supports that the killer actually touched any of the evidence tested in
27 2018 and 2019. Nor did any of the new DNA evidence implicate another killer
28 or exonerate Seka under the totality of all of the evidence adduced in this case.

21 Importantly, none of this new evidence from Hamilton's crime scenes affects the
22 evidence supporting the guilty verdict, where at trial no physical evidence of
23 DNA tied Seka to the crime scenes and the State's case was completely
24 circumstantial. It is clear from the circumstantial evidence that Hamilton was
25 killed next door to Seka's business and residence on Western Avenue, and his
26 body was transported and dumped in a remote desert area. The .357 bullet
27 casings found at Cinergi were consistent with the caliber of gun that was used to
28 shoot Hamilton next door, and Hamilton's blood was found at 1929 Western and
in the truck Seka was driving the morning after Hamilton's body was discovered.
Moreover, the truck's tire impressions were similar to the tire tracks found near
Hamilton's body—tracks that drove off and back on the road consistent with the
body being quickly dumped. Although crime scene analysts routinely gather
items found around a body in hopes of implicating a killer, under these particular

1 circumstances—where the body was driven to a remote area and dumped off the
2 side of the road—the random trash items in the desert with unknown DNA
3 contributors do not undermine the other evidence against Seka.

4 Seka, 13 Nev. at 315-316, 490 P.3d at 1280-1281 (emphasis added).

5 Petitioner fails to establish actual innocence because he supports his claim with DNA
6 evidence that the Supreme Court found to be of little value. Additionally, Petitioner cannot
7 establish actual innocence due to the overwhelming evidence supporting his murder
8 convictions. See Section II (C), *supra*. Ground Two must be denied.

9 **V. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

10 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

- 11 1. The judge or justice, upon review of the return, answer and all
12 supporting documents which are filed, shall determine whether
13 an evidentiary hearing is required. A petitioner must not be
14 discharged or committed to the custody of a person other than the
15 respondent *unless an evidentiary hearing is held*.
- 16 2. If the judge or justice determines that the petitioner is not
entitled to relief and an evidentiary hearing is not required, he
shall dismiss the petition without a hearing.
- 17 3. If the judge or justice determines that an evidentiary hearing
is required, he shall grant the writ and shall set a date for the
hearing.

18 The Nevada Supreme Court has held that if a petition can be resolved without
19 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
20 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
21 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
22 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
23 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
24 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction
25 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
26 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
27 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

28 It is improper to hold an evidentiary hearing simply to make a complete record. See
State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The

1 district court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted
2 ‘to make as complete a record as possible.’ This is an incorrect basis for an evidentiary
3 hearing.”). Further, the United States Supreme Court has held that an evidentiary hearing is
4 not required simply because counsel’s actions are challenged as being unreasonable strategic
5 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
6 post hoc rationalization for counsel’s decision making that contradicts the available evidence
7 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis
8 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain
9 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (*citing*
10 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the
11 *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466
12 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

13 Here, Petitioner requests an evidentiary hearing. There is no need for an evidentiary
14 hearing because Petitioner is not entitled to any relief. Petitioner is not entitled to relief because
15 this Second Petition is procedurally barred; Petitioner fails to establish good cause and
16 prejudice to overcome the procedural bars; and Petitioner’s claims are meritless. No need
17 exists to expand the record, as all claims can be disposed of based on the existing record. Thus,
18 Petitioner’s request for an evidentiary hearing should be denied.

19 CONCLUSION

20 For the foregoing reasons, this Court should dismiss and/or deny Petitioner’s Petition
21 for Writ of Habeas Corpus (Post-Conviction).

22 DATED this 28th day of March, 2023.

23 Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the foregoing, was made this 28th day of March 2023, by
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IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

JOHN JOSEPH SEKA,

Respondent.

CASE NO.: 80925

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**On Appeal from Decision and Order of the Eighth Judicial District Court,
Clark County, Nevada, the Honorable Judge Kathleen Delaney, Granting
Respondent's Motion for New Trial**

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IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

JOHN JOSEPH SEKA,

Respondent.

CASE NO.: 80925

District Court Case No.: 99C159915

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies and makes the following representations to enable the judges of this Court to evaluate possible disqualification or recusal under NRAP 26.1(a):

There are no persons, entities, or pseudonyms required to be disclosed.

The following attorneys have appeared for John Seka in this proceeding or in the proceedings below:

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STATEMENT OF THE ISSUE¹

1. Whether the district court properly exercised its discretion in awarding Seka a new trial when results of new DNA testing not only excluded him from all the probative physical evidence in the case, but also implicated an unknown individual.

¹ Mr. Seka believes that the State accurately sets forth the Jurisdictional Statement and Routing Statement. As such, under NRAP 28 (b) those sections will not be duplicated here.

STATEMENT OF THE CASE

Mr. Seka agrees with the State's Statement of the Case but supplements it as follows:

An arrest warrant was issued for Seka on March 15, 1999. 10 AA 002432.² Seka's preliminary hearing was held on June 28, 1999. The State admitted that their evidence connecting Seka to the murders and robberies of Peter Limanni ("Limanni") and Eric Hamilton ("Hamilton") was "extremely circumstantial". RA³ 00114.

On February 2, 2001, Seka filed a Motion to Dismiss the Charge of Murder and Robbery of Lamani [sic], or in the Alternative, to Sever the Charges of Murder and Robbery of Lamani [sic] and Hamilton into Two Separate Trials. RA 00131-00145. The State opposed⁴ and Seka's Motion was denied.

On February 15, 2018, after the district court granted Seka's petition for DNA testing, it ordered DNA testing of Hamilton's fingernails, hair identified under Hamilton's fingernails, and cigarette butts collected near Hamilton's body. RA 00154-00158.

² The arrest warrant emphasized that Seka "was involved in a *series of crimes*." 9 AA 002150 (emphasis added).

³ Reference to RA is the Respondent's Appendix.

⁴ In its opposition, the State described the two murders as being "inextricably intertwined." RA 146-153.

On December 14, 2018, the court held an evidentiary hearing on the probative value of the remaining items of evidence. 8 AA 001665-814. On January 24, 2019, the court ordered DNA testing of additional evidence including Hamilton's baseball cap that was left at the murder scene and a Skoal container and two beer bottles that police collected near Hamilton's body. 8 AA 001816-21.

STATEMENT OF THE FACTS

Cinergi and Limanni's Business Dealings

In September 1998, Seka moved from Philadelphia to Las Vegas to work for Limanni. 5 AA 001188-89. Limanni operated a HVAC business called Cinergi at 1933 Western Avenue in Las Vegas ("1933"). 2 AA 000365-66. Limanni and Seka worked at Cinergi and lived at the business. 2 AA 000452-53. Because they were transitioning Cinergi to a cigar shop, Limanni and Seka purchased lumber for a humidor. 8 AA 001970; 001977-79. Justin Nguyen, who worked at Cinergi for several months, stated that Limanni treated Seka "like his own brother" and that he never observed Limanni call Seka names or mistreat him. 9 AA 002006. Takeo Kato ("Kato") and Kazutoshi Toe ("Toe") were two Japanese investors who financially backed Cinergi and lived at the business for a short time. 8 AA 001963-64; 9 AA 002009-24, 002026-43. They described Seka and Limanni as "having a good friendship," like brothers. 8 AA 001963-66; 9 AA 002009-24, 002026-43.

Kato and Toe provided Limanni with approximately one million dollars⁵ in capital and four vans to operate Cinergi. 9 AA 002009-24, 002026-43. Kato was also on the lease for 1933. *Id.* During the transition, Limanni unsuccessfully attempted to obtain more money from Kato and Toe. 8 AA 001970. However, Limanni did receive capital from Amir Mohammed ("Mohammed") and another investor who resided in Las Vegas. 9 AA 002059-60, 002067-69.

The investors all had access to 1933 and to the vans and Toyota truck associated with the business. 8 AA 001968-69; 9 AA 002059-60. In addition, Limanni's girlfriend, Jennifer Harrison ("Harrison") and numerous others who attended the frequent parties Limanni hosted, had access to the business and the business vehicles. 8 AA 001968-69; 9 AA 002082; 4 AA 000889-90. The vehicles' keys were easily accessible inside the business. 4 AA 000956; 5 AA 001080.

In September 1998, Limanni began removing large sums of money from his bank accounts and was overdrawn. 5 AA 001105-06. On September 22, 1998, Limanni signed a lease for an office space in Lake Tahoe and paid a deposit by check. 2 AA 000485-86; 9 AA 002063. Limanni's check bounced and he returned to Lake Tahoe on October 5, 1998, with another check. 9 AA 002063. Limanni paid

⁵ Toe indicated that he and Kato had invested one million dollars with Limanni. 9 AA 002009-24. Kato indicated that he had invested three hundred thousand dollars. 9 AA 002026-43

for three months of the lease, intending to move into the space on October 15, 1998. 9 AA 002063. Limanni left one of Cinergi's vans, tools and other equipment in Lake Tahoe, purportedly attempting to hide them from his investors. 2 AA 000485-86; 9 AA 002026-43.

Kato and Toe visited Cinergi in late summer or fall 1998. 8 AA 001968. They were angry because they believed that Limanni was diverting business funds for personal use. 8 AA 001966-67. As a result, Kato attempted to cancel the 1933 lease and told Limanni he wanted his investment returned. 2 AA 000395; 8 AA 001967. Kato and Toe confronted Limanni to recover the business vehicles, but Limanni refused and the two left. 9 AA 002020. On October 26, 1998, before Limanni disappeared, Kato repossessed one of the business vans. 2 AA 000362; 9 AA 02146. Unable to receive a return on his large investment, Kato was forced to start bankruptcy proceedings. 3 AA 000741.

Mohammed abruptly moved out of the state shortly after Hamilton's body was discovered and police began investigating the crime scene at 1929 Western Avenue ("1929").⁶ 9 AA 002047; AA 002059-60. Marilyn Mignone, Mohammed's former

⁶ Investigator Jim Thomas attempted to locate Mohammed but found no record of him in the United States. 9 AA 002159. He described Mohammed as a "ghost" and believed Mohammed presented a fictitious identity to Limanni and Seka. 9 AA 002161. Mohammed even used a social security number that belonged to another person. 9 AA 002166. Mohammed was a Syrian national and Investigator Ed Heddy believed he may have returned to Syria. 9 AA 002069.

business associate, characterized Mohammed as a dangerous person and indicated that the FBI was investigating him around the time of the murders. 9 AA 002157.

Limanni Disappears

On November 2, 1998, Limanni closed his bank accounts. 5 AA 001105-06. On November 6, 1998, the property manager, Michael Cerda ("Cerda"), saw Limanni around 10:30 a.m. outside Cinergi. 2 AA 000367-68. Limanni asked Cerda if he could pay rent late because, although he had between \$2,000.00 and \$3,000.00 in cash with him, he needed the money for a cigar show he was attending. 2 AA 000369-70. Cerda reminded him a late fee would be assessed. 2 AA 000369. Limanni agreed and left. 2 AA 000369-70. He was not seen again.⁷ *Id.* Limanni's sister filed a missing person report on December 2, 1998. 5 AA 001133-35.

Seka called several friends in Philadelphia, informing them that he was worried because Limanni was missing. 5 AA 001203-04. Seka pawned various items from the business to keep the business afloat but was unsuccessful. 6 AA 001312.

⁷ Harrison testified she spoke with Seka on November 5 and he was upset. 2 AA 000460-63. The prosecution used this information to demonstrate Seka's "state of mind" and imply that Seka killed Hamilton and Limanni that day. *Id.* However, Seka's phone records show that this conversation did not take place and Harrison perjured herself by testifying to it. 5 AA 1141-43. Further, Cerda saw Limanni on November 6 and Hamilton was in jail until November 12. 2 AA 000369-70; 5 AA 001088-91. Harrison also gave police the incorrect phone number for Limanni. 10 AA 002335. The prosecution thus used the wrong phone records to prove Limanni did not use his phone during November and December, 1998. Police admitted the error but never obtained the correct phone records for Limanni. 5 AA 001139-43.

Hamilton is Found

On November 16, 1998, a construction worker found a body in a remote area with several pieces of lumber on top of the corpse.⁸ 3 AA 000517-18. The man had a ring on his finger and a note in his pants pocket with a name -- Jack-- and a telephone number. 3 AA 000521. Later, police traced the telephone number to the 1933 landline. 3 AA 000522. Crime scene analysts also collected two empty beer bottles, two cigarette butts,⁹ and a Skoal container near the body. 5 AA 001049-50; 4 AA 000817-18; 3 AA 000626.

The State determined that the man, who was later identified as Hamilton, died from three gunshot wounds to his leg, chest and abdomen. 2 AA 000423-24. The coroner also noted a minor laceration just above the right wrist that was possibly consistent with someone removing Hamilton's bracelet. 2 AA 000424. The coroner estimated Hamilton died within twenty-four hours of being found. 2 AA 000429.

Hamilton was a drifter with a history of drug abuse and mental illness who used multiple names and social security numbers. 5 AA 001092-93. He moved to

⁸ Three boards contained fingerprints from Seka and Limanni. 10 AA 002446-56. Another two boards contained latent prints that *did not match Seka or Limanni. Id.* These unidentified latent prints were never compared to the latent prints identified on the beer bottle found near Hamilton's body or to any of the alternative suspects. 5 AA 001051-52.

⁹ The cigarette filters did not match the type Seka smoked at the time. 5 AA 001117-18.

Las Vegas shortly before his death and worked sporadically at Cinergi doing construction. 3 AA 000708, 000710-11. When questioned, Seka realized that he knew Hamilton by the name "Seymour." 2 AA 000346-47, 000360; 5 AA 001053. According to Seka, Hamilton would come to Cinergi looking for work. 8 AA 001989-91. Seka gave Hamilton the Cinergi phone number so Hamilton could call instead of dropping by. 9 AA 002140.

Hamilton's sister testified that Hamilton had approximately \$3,000 dollars when he moved to Las Vegas. 3 AA 000706. However, Hamilton had been in jail on a trespassing charge from November 6 until November 12, 1998, four days before his body was found, and three days before he was thought to have been killed. 5 AA 001088-91. When booked into the jail, (and released on November 12, 1998) he had no money with him. *Id.*

1929 Crime Scene

On November 17, 1998, the day after Hamilton's body was found, a neighboring business owner called Cerda and police about an alleged break-in at 1929.¹⁰ 2 AA 000437-38. Upon arrival, police noticed broken glass and blood in 1929. 4 AA 000820-21. In the parking lot in front of 1929, police found a piece of

¹⁰ 1929 Western was next door to Cinergi and had been home to an illegal boiler room operation. 2 AA 000384.

molding from the broken window with what appeared to be a bullet hole. 3 AA 000546. Finally, a lead projectile (assumed to be from a bullet) was found on the sidewalk outside of 1929 next to droplets of blood. *Id.*; 3 AA 000587.

All indications were that Hamilton was murdered in 1929. 3 AA 000523, 000546-47, 000550. Police found blood on the entryway carpet and on the broken glass that was later matched to Hamilton. 3 AA 000546-47; 4 AA 000821. There were bloody drag marks across the carpet, one of which led to the broken window. 3 AA 000546-47; 9 AA 002242. Police recovered latent fingerprints from the point-of-entry window, the glass pane on the interior of the front door, and from a glass fragment inside the point-of-entry.¹¹ 9 AA 002249. A black baseball cap that Hamilton always wore, his gold bracelet, and a rolled-up jacket with blood and bullet holes were also found in 1929. 9 AA 002248, 002242; 4 AA 000821; 2 AA 000345. The bullet holes were consistent with Hamilton's wounds. 3 AA 000523-24; 9 AA 002242. Police also found three jacketed bullets and three bullet fragments in 1929. 3 AA 000523. The bullet fragments were "class consistent" to the bullets used to kill Hamilton. 5 AA 001009-10.

¹¹ Nothing in the record indicates that these latent prints, purportedly belonging to the perpetrator, were ever compared to Seka's fingerprints. Nor were they compared to other latent prints recovered from the physical evidence or to the alternative suspects.

While Police were investigating 1929, Seka arrived in Cinergi's Toyota truck. 4 AA 000824. The police informed Seka about the 1929 break-in and asked him if they could search 1933 in case anyone inside needed medical attention. *Id.*; 4 AA 000826-27. Seka signed a consent to search card, allowing police to "search for items directly or indirectly related to the investigation of MURDER W/DW." 4 AA 000827; 10 AA 002255. Seka and Cerda accompanied the police into 1933. 10 AA 002264-66. After noticing a bullet and some knives in 1933, police searched Seka and handcuffed him as they continued to search 1933. 4 AA 000827-28. Cerda stayed with Seka while the officers searched the business. 10 AA 002264-66. Cerda informed officers that he had the only key to 1929 and that the business had been vacant for approximately a month and a half. 10 AA 002263.

Seka was then taken to the Las Vegas Metro Police Department where he voluntarily submitted to a taped interview. 5 AA 001071; 8-9 AA 001981-2003. During the interview, Seka was fully cooperative. 9 AA 002001. Seka consented to police fingerprinting him and taking a buccal swab. 10 AA 002255; 5 AA 001078-79. Police advised Seka that he was not under arrest and took him back to 1933. 5 AA 001078. However, Seka could not enter 1933 because it was still being processed. 5 AA 001079.

Seka told police that he had a dinner appointment and needed a vehicle. *Id.* Police would not let Seka take the Toyota truck because they were impounding it to

process as evidence. 5 AA 001079. Seka gave police the Toyota key and asked if he could retrieve the keys to one of two remaining vans. 5 AA 001079-80. Police gave Seka keys to an unmarked van without license plates. 5 AA 001080-81; 001104-05. Police reconsidered and suggested that Seka drive the van with the large business decals. 5 AA 001081. Before giving him the keys, police asked Seka if they could search the van and he consented. *Id.* After discovering what appeared to be blood, police impounded the vehicle. 5 AA 001081-82. Police then searched the unmarked van and found no apparent "evidentiary connection to any of the cases," and gave Seka the keys, telling him he was free to leave. 5 AA 001082.

When police searched the impounded vehicles, they discovered drops of blood in the van and in the bed of the Toyota truck. 5 AA 001081-82; 2 AA 000404; 3 AA 000620, 000674-76. The blood in the van matched Limanni. 3 AA 000614, 000617. The blood in the truck matched Hamilton. 3 AA 000624. Police also lifted footprints in the rear cargo area of the van. 10 AA 002274. Nothing in the record indicates these footprints were compared to Seka's.¹²

1933 Western Avenue

Police thoroughly searched 1933 where Cinergi was located and where Limanni and Seka worked and lived before Limanni disappeared. 2 AA 000452-

¹² When defense counsel asked whether the footprints were ever compared to Seka's, crime scene analyst Randall McPhail responded, "I don't know." 4 AA 000982.

53; 9 AA 002242-44. Among the clothes, papers and other items scattered around 1933, police found several items they deemed significant. 4 AA 000827-28; 9 AA 002242-44.

First, police found Limanni's wallet in the ceiling above his desk. 3 AA 000526-27. Police also found a purse containing \$36.06 in the ceiling which had been reported missing on November 6, 1998 by Lydia Gorzoch ("Gorzoch"). 8 AA 002057; 10 AA 002276. Gorzoch's purse was stolen out of her vehicle after someone fired a .357 bullet through the window, the same caliber as those found in 1933 and at the 1929 crime scene. 10 AA 002284, 002286-87; 9 AA 002079. Gorzoch was later contacted and denied knowing either Limanni or Seka. 10 AA 002280. When the prosecution asked about the purse at trial, Detective James Buczek stated it was "not important." 3 AA 000527. However, *before* trial, fingerprints were identified on the purse which did not belong to Seka. 10 AA 002282. That information was not provided to Seka until 2018. *Id.*

On November 23, 1998, while police were still investigating Hamilton's homicide and while Limanni was still missing, LVMPD released the "purse with wallet, personal items and ID . . . [and] \$36.06 in U.S. Currency" to Gorzoch and, as a result, it was never available for DNA testing. 10 AA 002289.

Second, police found several beer bottles in the dumpster behind Cinergi and in two trash cans in the business. 4 AA 000938. Fingerprints identified on the beer

bottles from the trash can in the south-central office matched both Hamilton and Seka. 4 AA 000938; 5 AA 001028-29. Because Hamilton worked sporadically at Cinergi, the presence of his fingerprints on the bottles was not significant. 8 AA 001989-91; 3 AA 000705, 000708-11.

Third, police found several small stains in the 1933 office and living spaces that tested positive for presumptive blood. 9 AA 002074; 3 AA 000650. Seka's blood was identified on the front right pocket area of a pair of his jeans, a drop was identified on a wall being remodeled, and on the sink counter. 3 AA 000617-18, 000625-26; 10 AA 002270. However, his blood was not found anywhere in 1929, the actual crime scene. 3 AA 000615-27. Further, no blood belonging to Hamilton or Limanni was found in the 1933 offices.¹³ *Id.*

Fourth, bullet cartridges and empty shell casings of different calibers, were found in 1933. 3 AA 000526; 10 AA 002271; 4 AA 000913. Harrison had seen bullets in the business well before the murders occurred. 9 AA 002307. In their search, police found a .357 cartridge case in the false ceiling in the northwest office, another near the center of the south wall in that office, and a third on the light fixture in front of the double doors leading into the humidor. 4 AA 000912-13. Police also discovered a single .357 bullet fragment in the wall of 1933 that had been shot

¹³ It did not appear that 1933 had been cleaned. 4 AA 000911.

through the couch.¹⁴ 4 AA 000913, 000981. The bullet fragment had no blood on it. 4 AA 000981. All the .357 cartridges had the same characteristic markings, suggesting they were all shot from the same firearm although the State could not identify which type of firearm. 5 AA 001000-01. Police also found .32 caliber bullets in the toilet bowl and in the northeast office. 4 AA 000913; 000929-30. A .24 caliber cartridge was found in the false ceiling above the chair in the northeast office. 4 AA 000913.

Finally, officers searched the dumpster located behind 1933; however, what was found there varies depending on the report. 4 AA 000913-14; 8 AA 002052-53; 9 AA 002367. Detective Thowsen reported that when the initial officers looked in the dumpster it was empty, but when they checked later, it contained several items of clothing and checks purportedly belonging to Limanni. 4 AA 000847, 000851-52; 9 AA 002052-53. Officer Nogues reported there were miscellaneous papers and trash at the bottom of the dumpster when he arrived on the scene. 10 AA 002367. Later, Officer Nogues noted several pieces of clothing, including a tennis shoe, along

¹⁴ The State's expert witness, Torrey Johnson, characterized this bullet fragment as "class consistent" to those found in Limanni's body. 5 AA 001009-10. Johnson testified that more than ten different types of ammunition and various types of firearms could have been associated with the bullet fragment. *Id.* While the State suggested that this bullet is proof that Limanni was killed in 1933, nothing indicates how or when that bullet was shot into the wall. *See* 4 AA 000913.

with six inches of paper and other "debris" in the dumpster, none of which was there before. 10 AA 002368.

Police implied that Seka somehow put the items in the dumpster attempting to destroy evidence. 10 AA 002371, 002372-73. However, between the police's first and second examination of the dumpster, Seka was either with Cerda or police. 10 AA 002266. Furthermore, numerous officers responded to the scene and remained there for between eight and nine hours. 5 AA 001068; *see also* 9 AA 002241-45. Police were at the scene "constantly, continually" throughout the day investigating. 3 AA 000539.

Seka Leaves Las Vegas

Police did not ask Seka to return to 1933 after his dinner appointment on November 16, so he went to a friend's home where he had been staying after Limanni disappeared and the business closed. 5 AA 001082, 0001125-26; 10 AA 002252. Seka had no money or employment after Limanni disappeared, so in December of 1998 he returned to his home on the East Coast. 5 AA 001194-95; 10 AA 002329-30; 8 AA 001984. Before leaving Nevada, Seka informed police that his family lived on the East Coast and provided them with several addresses and

phone numbers where he could be reached. 8 AA 001984; 5 AA 001128, 001178.

Police never attempted to contact Seka.¹⁵

Limanni is Found

On December 23, 1998, Limanni's body was found partially buried off a service road in the California desert near the Nevada border. 3 AA 000508-09; 4 AA 000752, 000755. The body was badly decomposed, but police noted several distinctive tattoos and a fingerprint was matched to Limanni. 4 AA 000755, 000757-58. The body showed varying degrees of decomposition and mummification consistent with a body that had been outdoors partially buried for several weeks. 3 AA 000694-95. The coroner found eight gunshot wounds in the head and neck area and two additional gunshot wounds in the heart. 3 AA 000695, 000697.

Cramer¹⁶

When Seka returned to Philadelphia, he reconnected with his old friend, Thomas Cramer ("Cramer"). Cramer suffered from severe drug addiction, and frequently became physically and emotionally abusive.¹⁷ 5 AA 001175. During

¹⁵ Harrison also testified Seka told her in November 1998 that he was going "underground" in Arizona. 2 AA 000469-70. However, Seka had provided police with contact information in Philadelphia where he was ultimately arrested in March of 1999. 8 AA 001984; 5 AA 001128, 001178.

¹⁶ Cramer's name is spelled both "Cramer" and "Creamer." For the sake of clarity, he will be referred to "Cramer" throughout this brief.

¹⁷ Cramer testified that Paxil made him feel really violent. 4 AA 000788.

these abusive episodes, his girlfriend, Margaret Daly ("Daly"), would contact Seka for assistance in calming Cramer. 5 AA 001176-77, 001181.

On January 23, 1999, Daly frantically contacted Seka from the residence she shared with Cramer and Cramer's grandmother to request assistance controlling Cramer. *Id.* When Seka arrived, Cramer became incensed, and at one point, pushed Seka down the stairs. 5 AA 001181-82. Cramer also physically attacked Daly who finally called the police. 5 AA 001183. Police arrived and involuntarily committed Cramer to a mental institution for ten days because of his erratic and violent behavior. 5 AA 001173-74, 001181-83; 10 AA 002382. Daly subsequently filed for a restraining order against him. 5 AA 001174.

After being released from the mental institution, Cramer claimed he pushed Seka down the stairs because Seka said, "Do you want me to do to you what I did to Pete Limanni?" 4 AA 000776-77. However, in 2017, Daly (who changed her name to McConnell) signed a declaration stating she was present during the altercation and that Seka never confessed to Cramer. 10 AA 002425-27. McConnell suggests that Cramer fabricated the confession because he believed Seka was attempting to steal McConnell's affection and was responsible for committing him to the mental institution. 10 AA 002426.

2001 Trial

Based in large part on Cramer's statement, the State arrested, charged and tried Seka for the Hamilton and Limanni murders and robberies. *See supra* Statement of the Case. The State's case against Seka was wholly circumstantial, but nonetheless, Seka was convicted and sentenced on all charges, including two life sentences without the possibility of parole. *Id.* Seka continued to maintain his innocence and challenge his convictions through the courts. *Id.*

Post-Conviction DNA Testing

On June 19, 2017, Seka filed a Post-Conviction Petition Requesting Genetic Marker Analysis of Evidence Within the Possession or Custody of the State of Nevada. 7 AA 001586-624. On February 15, 2018, the court ordered DNA testing of Hamilton's fingernail clippings, hair identified under Hamilton's fingernails, and cigarette butts collected near Hamilton's body. RA 00154-00158. On January 24, 2019, the court ordered DNA testing of additional physical evidence including Hamilton's baseball cap that was left at the murder scene and a Skoal container and two beer bottles police collected from the area where Hamilton's body was discovered. 8 AA 001816-21. The background and results of the DNA testing on those items is as follows:

A. Hamilton's Fingernails: At the autopsy, fingernails were collected from Hamilton's left and right hands. Detective Thowsen requested DNA testing

and David Welch (“Welch”), a criminalist with the LVMPD, performed PCR-RFLP testing on the left-hand clippings. 3 AA 000620; 10 AA 002437. Welch testified that he was unable to determine if the blood found on Hamilton's fingernails belonged to a male or female but that he could exclude Seka as a contributor. 3 AA 000655-56. Welch only tested the blood identified under Hamilton’s fingernails, but could not test the epithelial cells potentially available under the fingernails. 10 AA 002437-41. The 2018 STR DNA testing, which included both blood and epithelial cells, concluded that assuming Hamilton was a contributor, a second foreign contributor was detected on Hamilton’s fingernails from both his left and right hands.¹⁸ 10 AA 002443-44. Seka was excluded as the other contributor. *Id.*

B. Hair: At autopsy, hairs with apparent blood were collected from under Hamilton’s fingernails. 10 AA 002437. Welch tested the apparent blood identified on the hairs, but not the hairs themselves. 10 AA 002437-41. In 1998, Seka was excluded as a possible contributor to the blood identified on the hair. *Id.* The 2018 DNA testing showed that the hair belonged to Hamilton. 10 AA 002443-44. Seka was excluded as a possible source of the hair. *Id.*

¹⁸ Hamilton was also the contributor of the hair underneath his fingernails. 10 AA 002443. Seka was also excluded as a contributor of that hair. *Id.*

C. Marlboro cigarette butt:¹⁹ Police collected this item near Hamilton's body, 2.1 miles south of State Route 146 on Las Vegas Blvd. 9 AA 002084. Officer Vincent Roberts collected the cigarette butt, Detective Thowsen requested it be tested for DNA, and Welch attempted to conduct PCR-RFLP DNA testing on it in 1998. 10 AA 002437-41. Welch was unable to obtain any results. 3 AA 000664. The 2018 DNA testing produced a full DNA profile and excluded both Hamilton and Seka as contributors. 10 AA 002443-44. Because the LVMPD crime lab believed that the DNA was from the "putative perpetrator," the DNA profile was eligible to be uploaded to the Local DNA Index System and the National DNA Index System (CODIS) for comparison.²⁰

C. Skoal Container: Police also collected this item near Hamilton's body. In 1999, the container was examined for latent fingerprints, to no avail, and it was not DNA tested. 10 AA 002446-48. The 2019 DNA testing identified two DNA profiles and excluded Hamilton and Seka as possible contributors. 10 AA 002482-83.

¹⁹ Two cigarette butts were collected and tested. The other cigarette butt, Lab Item 1, did not produce a DNA profile. 10 AA 002443.

²⁰ National DNA Index System (NDIS) Operational Procedures Manual, <https://www.fbi.gov/file-repository/ndis-operational-procedures-manual.pdf/view> (last visited October 17, 2020).

D. Beck's beer bottle:²¹ Police also collected this item near Hamilton's body. In 1999, it was examined for latent prints. 10 AA 002446-47. Seka, Limanni and Hamilton were excluded as the source of the latent prints, but no DNA testing was conducted at the time. *Id.* The 2019 STR DNA testing identified a female profile on the bottle. 10 AA 002482-83. Both Hamilton and Seka were excluded as possible contributors. *Id.* The DNA profile was eligible to be uploaded to the Local DNA Index System and the National DNA Index System (CODIS) for comparison because the LVMPD crime lab believed that the DNA was from the "putative perpetrator,"²² *Id.*

E. Hamilton's baseball cap: Police collected this item belonging to Hamilton in 1929 where Hamilton was likely killed but it was not DNA tested before trial. The 2019 DNA testing identified three profiles on the cap, one belonging to Hamilton and two unknown profiles. *Id.* No further conclusions could be drawn from the DNA mixture. *Id.*

As outlined above, fingerprint analysis was conducted on several items of evidence. 10 AA 002446-48. Latent fingerprints were identified and examined on

²¹ A second beer bottle was collected, and a DNA profile was obtained. However, although that profile was consistent with at least one contributor, it is unsuitable for interpretation and comparison.

²² National DNA Index System (NDIS) Operational Procedures Manual, <https://www.fbi.gov/file-repository/ndis-operational-procedures-manual.pdf/view> (last visited October 17, 2020).

Miller beer bottles found inside and outside of 1933, inside the Toyota truck, on the assorted wood covering Hamilton's body, on the beer bottle recovered near Hamilton's body and on Ms. Gorzoch's purse collected from the ceiling of 1933. 10 AA 002446-48, 002282. Seka's fingerprints were identified on the Miller beer bottles collected from inside 1933 and the dumpster just outside 1933. 10 AA 002446-48. Seka and Limanni's fingerprints were identified on the lumber that was taken from 1933 and used to cover Hamilton's body; however, additional unknown fingerprints, not belonging to Seka or Limanni, were also identified on the lumber. *Id.* The unknown fingerprints identified on the beer bottle and Ms. Gorzoch's purse did not belong to Seka, Limanni or Hamilton. 10 AA 002446-48, 002282. Fingerprints were also identified and collected from 1929 "north vertical metal frame edge to the west front point-of-entry window, the interior front west door on the glass pane, and from a glass fragment inside the point-of-entry on the office floor." 10 AA 002446-48; 9 AA 002249. Unfortunately, the unidentified prints found on important physical evidence -- the three separate sets of prints around the point of entry to the 1929 crime scene, the prints on the lumber found covering Hamilton's body, the beer bottle found near Hamilton's body, and prints identified on Ms. Gorzoch's purse -- were never compared to each other and were never compared to the alternative suspects fingerprints. 10 AA 002282.

Based upon the exculpatory results of the post-conviction DNA testing, the district court granted Seka's Motion for a New Trial on May 11, 2020. 11 AA 002517-19.

SUMMARY OF THE ARGUMENT

In the underlying criminal conviction, the State's case against Seka was wholly circumstantial -- no physical evidence linked Seka to either homicide. In 2018-19, Seka requested DNA testing of evidence from the crime scene and the scene where Hamilton's body was discarded, testing that was not available at the time of trial. That DNA testing produced evidence that not only excludes Seka, but also includes an unknown individual. As a result, Seka filed a new trial motion which the district court granted.

First, the district court properly exercised its discretion granting Seka's new trial motion. Absent the State showing that the district court acted arbitrarily or capriciously, or that its interpretation of the law was clearly erroneous, the district's court decision should be affirmed. Further, the State cannot raise issues that it did not raise at the district court to meet its burden on appeal.

However, if this Court considers all the State's arguments, the district court's decision should still stand. First, the new DNA evidence meets all of the required elements for a new trial -- specifically that it is newly discovered, material to the defense; non-cumulative; and as such as to render a different result probable upon

retrial.²³ Second, because the State has consistently alleged that the crimes for which Seka was convicted were part of the same incident, the new DNA evidence supports a new trial on all Seka's convictions. Third, the new DNA evidence is favorable to Seka as it not only excludes him as the perpetrator but also identifies an unknown contributor. Finally, this is not a sufficiency of the evidence appeal so applying that standard, which the State advances, is inappropriate because the grant of a new trial was based upon new DNA evidence.

Accordingly, Seka requests this Court to find that the district court did not abuse its decision and in so doing, affirm the district's court grant of his Motion for a New Trial.

ARGUMENT

I. THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION IN GRANTING SEKA'S NEW TRIAL MOTION.

In reviewing a lower court's decision on a new trial motion, this Court is tasked with determining whether the court abused its discretion. *Flowers v. State*, 136 Nev. 1, 18, 456 P.3d 1037, 1052 (2020) (citing *Funches v. State*, 113 Nev. 916, 923, 944 P.2d 775, 779 (1997)). Reversal is appropriate "only for clear legal error or for a decision that no reasonable judge could have made." *Gonzalez v. State*, 2017

²³ The State concedes that the new DNA evidence could not have been discovered and produced for trial even with the exercise of reasonable diligence; it is not an attempt to contradict, impeach, or discredit a former witness; and it is the best evidence the case admits.

WL 2950017 (Nev. Ct. App. 2017); *see also Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014) (stating an abuse of discretion occurs only “when no reasonable judge could reach a similar conclusion under the same circumstances”). Even if this Court disagrees with the district court's decision, reversal is only permitted if the district court “manifestly abused or arbitrarily or capriciously exercised its discretion.” *City of Las Vegas v. Eighth Judicial Dist. Court (Seaton)*, 131 Nev. 1264, *1, 2015 WL 4511922 (citing *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 929, 267 P.3d 777, 780 (2011)). This Court has defined an arbitrary or capricious exercise of discretion as “one founded on prejudice or preference rather than on reason or contrary to the evidence or established rules of law.” *City of Henderson v. Amado*, 133 Nev. 257, 259, 396 P.2d 798, 800 (2017)(citing *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011)). This Court has defined a manifest abuse of discretion as “a clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.” *Id.*

Here, nothing in the record or in the State’s opening brief, suggests the district court manifestly abused its discretion. The district court’s decision was neither arbitrary nor capricious and was not clearly erroneous. Specifically, the record shows no prejudice or preference and the decision is not contrary to established law. And, while the State may disagree with the district court’s decision, nowhere in its

opening brief has the State indicated how the district court's decision specifically meets this high bar for reversal. Thus, on the standard of review alone, the district court's decision granting Seka's Motion for New Trial should stand.

II. THE STATE ONLY DIRECTLY ARGUED TWO ISSUES AT THE DISTRICT COURT AND THUS ANY OTHER ISSUES URGED IN THE STATE'S OPENING BRIEF SHOULD BE DEEMED WAIVED.

Well-established law provides that “[a] point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.” *Old Aztec Mine v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). For example, in *State v. Lopez*, this Court affirmed a favorable ruling on a defendant's motion to suppress after the State attempted to raise a new argument on appeal. 457 P.3d 245, *1, 2020 WL 754335. Specifically, at the district court, the State argued that precedent should be overruled and on appeal, argued that even if the precedent was not overruled, it would still support their position. *Id.* This Court summarily rejected the State's new argument holding the State had waived it by not raising it below. *Id.*

In his district court briefing, Seka outlined why the new DNA evidence, when considered with the other evidence, warrants a new trial. The State, however, failed to explicitly address any of Seka's arguments in its responsive briefing, ignoring the required elements for a new trial. Instead, the State only argued two specific issues. First, the State claimed the DNA evidence was “not favorable” to Seka under NRS

176.09187. 8 AA 001625-40. Second, the State argued Seka's motion was "procedurally barred" under the two-year statute of limitations in NRS 176.515. *Id.*

In its opening brief, the State continues to maintain the new DNA evidence is "not favorable" but abandons its statute of limitations argument. However, the State raises new issues, none of which were directly argued below and none of which should be considered here. Specifically, in its opening brief, the State urges four new issues. First, the State argues the DNA testing results are not newly discovered evidence. Second, the State claims the DNA testing results are not material to Seka's defense and are cumulative. Third, the State alleges, without support, that because the DNA evidence is from the Hamilton crime scene and dump site, the court abused its discretion by ordering a new trial on the Limanni homicide. Finally, the State mistakenly argues that a "sufficiency of the evidence" standard should apply to Seka's new trial motion.

The State did not urge any of these arguments in the district court, and therefore they should not be considered on appeal. However, if this Court were to consider them, the State still has not shown that the district court acted arbitrarily, capriciously or in direct contradiction of the law. As shown below, this Court should find that the district court properly exercised its discretion in granting Seka's new trial motion for the following reasons: (A) The new DNA evidence meets the required elements for a new trial; (B) The new DNA evidence supports a new trial

on all Seka's convictions; (C) The new DNA evidence is favorable to Seka's defense; and (D) The sufficiency of the evidence standard is inapplicable to a new trial motion based upon newly discovered DNA evidence.

**A. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION
IN FINDING THE NEW DNA EVIDENCE MEETS THE
REQUIREMENTS FOR THE GRANT OF A NEW TRIAL.**

For more than twenty years, Seka has maintained his innocence. The prosecution's case against Seka was wholly circumstantial and no physical evidence linked Seka to either homicide. Now, DNA evidence from the Hamilton crime scene and dump site not only excludes Seka, but also includes an unknown individual. If the actual physical evidence exonerating Seka and implicating someone else is presented to a jury, the result of Seka's original trial will not stand. Thus, the district court did not abuse its discretion in granting Seka a new trial.

"The court may grant a new trial to a defendant . . . on the ground of newly discovered evidence." NRS 176.515(1). The evidence must be:

(1) newly discovered, (2) material to the defense; (3) such that even with the exercise of reasonable diligence it could not have been discovered and produced for trial; (4) non-cumulative; (5) such as to render a different result probable upon retrial; (6) not only an attempt to contradict, impeach, or discredit a former witness, unless the witness is so important that a different result would be reasonably probable (7) and the best evidence the case admits.

Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284-85 (1991) (quoting *McLemore v. State*, 94 Nev. 237, 577 P.2d 871 (1978)).

As demonstrated below, the new DNA evidence meets the elements required for a new trial. Importantly, the State does not argue that, even with the exercise of reasonable diligence, the new DNA evidence could have been discovered and produced at trial. The State does not claim that the new DNA evidence is an attempt to impeach or discredit a witness. The State also concedes the new DNA evidence is the best evidence the case admits. However, the State challenges, albeit without legal authority, the other required elements for the granting of a new trial. The State's arguments are erroneous, at the very least, do not demonstrate the district court abused its discretion. First, the DNA testing results are newly discovered evidence; second, the new DNA evidence is not merely cumulative; and third, the new DNA evidence is both material to the defense and such as to render a different result probable upon retrial.

1. The Results of the DNA Testing are Newly Discovered Evidence.

The type of DNA testing used on the evidence in 2018-19 was not available when the evidence was collected in 1998 or when it was presented at trial in 2001. This advanced scientific testing makes the results of the 2018-19 DNA testing newly discovered evidence despite the State's contentions otherwise.

When the evidence in this case was collected, the only available DNA testing at the LVMPD Crime Lab was Polymerase Chain Reaction ("PCR") testing called Restriction Fragment Length Polymorphism ("PCR-RFLP"). 3 AA 000631-32. At

the time of trial, newer PCR testing was used in the field, but it was not conducted on any of the evidence in this case. 3 AA 000631-32. Welch testified at trial that the PCR-RFLP testing was only a test to eliminate, not a test to identify. *Id.*; 3 AA 000661-62. In other words, Welch testified that if he could produce a profile at all, he could exclude the victims or Seka as contributors, but he could not include any other individual. Using this PCR-RFLP testing, Welch testified that no DNA results were obtained from the cigarette butts found near Hamilton's body. 3 AA 000664. Welch further testified that using PCR-RFLP he was unable to determine if the blood found on Hamilton's left-hand fingernails belonged to a male or female but that he could exclude Seka as the contributor. 3 AA 000655-56. None of the other pieces of evidence collected in 1998 were DNA tested at the time of trial. Considering the PCR-RFLP testing method used at the time, DNA profiles likely would not have been obtained from the beer bottle, cap or Skoal container using this outdated PCR-RFLP testing method, and if they had, they simply would have been able to exclude Seka, not include the actual perpetrator.

However, in 2018-2019, DNA testing was conducted on the remaining key pieces of evidence. 8 AA 001816-21. Short Tandem Repeats (“STR”) DNA testing using a twenty-one Combined DNA Index System (“CODIS”) loci was used and the results were deeply probative – not only did the results fully exclude Seka but also identified at least one unknown profile on each piece of evidence. *Id.*

First, an unknown contributor was identified on the fingernails from Hamilton's left and right hands during the STR DNA testing. 10 AA 002443-44. Although at trial Seka was excluded as a contributor of the *blood* identified under Hamilton's left-hand nails, the PCR DNA testing was unable to identify epithelial cells belonging to the perpetrator. 10 AA 002437-41. The right-hand fingernails were not DNA tested before trial. The 2018 STR DNA testing fully excluded Seka as a contributor of the blood and epithelial DNA from Hamilton's fingernails and identified a second DNA profile in addition to Hamilton's. 10 AA 002443-44.

Second, one of the cigarette butts produced a full DNA profile which belonged to neither Seka nor Hamilton. *Id.* Third, both the Skoal container and the beer bottle found near Hamilton's body produced full DNA profiles, neither of which belonged to Seka or Hamilton. 10 AA 002482-83.

Finally, Hamilton's cap, which he always wore and was removed from his head and left at the crime scene, produced two profiles in addition to Hamilton's, but no further inferences could be drawn because of the inconclusive mixture. *Id.*

The new DNA testing results were reported eighteen years after Seka's conviction using a testing method that was not available at the time of Seka's trial. Seka was excluded as a contributor to *all* the physical evidence, but perhaps more importantly, the physical evidence included an unknown contributor which can now be compared to alternative suspects. This DNA evidence can only be described as

newly discovered, and the district court properly determined that a jury should be allowed to consider at Seka's new trial.

2. The District Court Properly Determined the New DNA Evidence Is Not Cumulative.

To support a new trial motion, new evidence must not be merely cumulative of evidence that was known at the time of trial. *Sanborn*, 812 P.2d at 1284. The State mistakenly contends that the mere mention of the physical evidence at Seka's original trial is sufficient to make the new DNA evidence cumulative. While cumulative is not expressly defined in Nevada law, this Court has held that evidence is cumulative if it was "significantly referred to during trial." *Porter v. State*, 92 Nev. 142, 150, 576 P.2d 275, 280 (1978). Additionally, this Court has characterized evidence as cumulative if it is "in addition to or corroborative of what has been given at the trial." *Gray v. Harrison*, 1 Nev. 502, 509 (1865).

For example, in *O'Briant v. State*, 72 Nev. 100, 295 P.2d 396 (1956), defendant was charged with arson for setting fire to his own business. At trial, defendant claimed the fire was accidental when flammable materials kept in the business spontaneously combusted. *Id.* at 397. On a new trial motion, defendant's presented expert testimony that polishing cloths, similar to those stored at the business, were "subject to spontaneous combustion." *Id.* at 398. In determining the expert testimony was cumulative, this Court held that defendant's theory was presented to the jury and was rejected because it did not explain two other

independent fires or defendant's presence in the building moments before the fires began. *O'Briant v. State*, 295 P.2d at 398-399. In other words, this Court held that the jury was "well aware" of defendant's theory of how a fire started and evidence simply adding to defendant's specific theory, and not refuting other determinative evidence, was cumulative. *Id.* at 398. *See also Lapena v. State*, 429 P.3d 292, 2018 WL 5095822 (Nev. 2018) (finding DNA evidence confirming medical examiner's trial testimony was cumulative).

Alternatively, in *Hennie v. State*, 11 Nev. 1285, 1286, 968 P.2d 761, 761-762 (1998), defendant claimed his two roommates framed him for burglary. Both roommates testified against him and he was convicted. *Id.* at 763. At sentencing, defendant learned that both witnesses had been involved in a prior murder conspiracy and one had testified untruthfully about his indebtedness. *Id.* As a result, defendant moved for a new trial. *Id.* This Court held the evidence was not cumulative because "the newly discovered evidence, which the jury never heard, severely undermine[d] the credibility of the State's two key witnesses upon whose testimony [defendant] was largely convicted." *Id.* at 764. Thus, this Court held defendant deserved a new trial. *Id.* at 765.

Here, the new DNA evidence is not cumulative as the State's case was not based upon physical evidence connecting Seka to the crimes, but rather on circumstantial evidence. No similar evidence was or could have been offered at trial.

Most of the evidence that was DNA tested in 2018-2019 could not be tested at the time of trial and therefore could not exculpate Seka at that time. Further, the evidence that was tested at the time of trial provided no probative results. Specifically, the State's criminologist testified that no DNA results were obtained from the cigarette butts found near Hamilton's body. Although he excluded Seka from the blood under the fingernails on Hamilton's left-hand, he could not positively identify the contributor or produce a DNA profile for any epithelial cells. 3 AA 000655-56; 10 AA 002437-41. His testimony added nothing to the State's circumstantial theory that Seka was the perpetrator or to Seka's defense that he was wholly innocent. Thus, unlike in *O'Briant*, the new DNA evidence is not cumulative. The 2018 testing identified a DNA profile from one of the cigarette butts found near Hamilton's body – both Hamilton and Seka were excluded. 10 AA 002443-44. Further, the recent DNA testing identified two profiles under Hamilton's fingernails. *Id.* Hamilton is presumed to be one of the contributors, but Seka is fully excluded from the fingernails on both of Hamilton's hands. *Id.* He is also excluded as a contributor on the beer bottle and the Skoal container found at the dumpsite. AA 002482-83. This new DNA evidence is of a totally different caliber than the evidence produced at trial, it was not available at the time of trial, and it is not corroborative of any other evidence presented in this fully circumstantial case. Simply put, the district court did not abuse its discretion in finding the new DNA evidence is not cumulative.

3. The New DNA Evidence is Material to the Defense and Such as to Render a Different Result Probable upon Retrial.

Materiality of evidence is synonymous with the probability of a different result upon retrial, so these two elements supporting Seka's new trial motion will be discussed together. *Sanborn*, 812 P.2d at 1284-85. Viewed strictly, material evidence is evidence that "goes to the essence of [the defendant's] guilt or innocence." *State v. Crockett*, 84 Nev. 516, 444 P.2d 896, 897 (1968). In short, evidence is "material" if the evidence leads to the conclusion that "there is a reasonable probability that . . . the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (1985); *see also Steese v. State*, 114 Nev. 479, 960 P.2d 321 (1998); *Crockett*, 444 P.2d at 897. In determining whether the evidence "renders a different result reasonably probable," the court should consider whether the new evidence undermines the dispositive evidence, which "incorporate[s] assessing whether the new evidence materially strengthen[s] the defense theory." *Lapena v. State*, 429 P.3d 292, 2018 WL 5095822 (Nev. 2018). Importantly, "credibility is not the test of the motion for new trial, instead the trial judge must review the circumstances in their entire light, then decide whether the new evidence will probably change the result of the trial." *Crockett*, 444 P.2d at 897-898.

For example, in *Crockett*, the court granted a new trial when a previously unavailable witness revealed that he, and not the defendant, was the individual seen

leaving the crime scene. *Crockett*, 444 P.2d at 896. In affirming, this Court reasoned “the guilt or innocence of [the defendant] might well turn on that evidence.” *Id.* at 897. Furthermore, this Court explained “identifying the real killer as someone other than the defendant is not only material to [the] defense but establishes a real possibility of a different result on retrial.” *Id.* at 896.²⁴

Similarly, other state courts have granted new trials based upon new DNA evidence. For example, in *Aguirre-Jarquín v. State*, defendant was charged with murder after his DNA was found on the murder weapon and the victims’ blood was found on his clothing. 202 So. 3d 785, 791-792 (Fla. 2016). Defendant admitted he touched the murder weapon but explained that he entered the victims’ home innocently and discovered they had been killed and tried to revive them. *Id.* at 788. Nonetheless, he was convicted of both murders. *Id.* Post-conviction DNA testing showed eight bloodstains found at critical locations around the house belonged to someone else. *Id.* at 791. The court held the new DNA evidence, along with an alleged confession from the actual perpetrator, conflicted with the evidence presented at trial and gave “rise to a reasonable doubt as to his culpability.” The court remanded the case for a new trial. *Id.* at 795.

²⁴ Nevada appellate courts have only been faced with a Motion for New Trial in one DNA testing case. *See Lapena*, 429 P.3d 292. As noted above, the *Lapena* court denied a Motion for a New Trial because the DNA was cumulative and therefore did not “suggest that a different result was reasonably probable.” *Id.* at *2.

Similarly, in *State v. Parmar*, two eyewitnesses identified defendant as the sole perpetrator of a robbery and murder. 808 N.W.2d 623, 626-27 (Neb. 2012). Post-conviction DNA testing excluded defendant as the contributor of physical evidence at the scene and, although no actual perpetrator was identified, the court granted a new trial emphasizing that DNA evidence, even in light of contradictory eyewitness testimony, was highly probative. *Id.* at 631-632 (citing *State v. White*, 740 N.W.2d 801 (Neb. 2007)). The court specifically held where “DNA [evidence] create[s] a reasonable doubt about [defendant’s] guilt and [is] probative of a factual situation different from the ... State’s []witnesses” a new trial is warranted. *Id.* at 634. The court stressed that even if the DNA evidence “cannot prove the witnesses’ testimonies were false” it is sufficient if it “makes their version of the facts less probable” because defendant need not “show that the DNA testing results undoubtedly would have produced an acquittal at trial” but only that a reasonable probability exists. *Id.*; see also *Arrington v. State*, 983 A.2d 1071 (Md. 2009); *State v. Peterson*, 836 A.2d 821 (N.J. Sup. 2003); *People v. Waters*, 764 N.E.2d 1194 (Ill. App. Ct. 2002) (all holding that new DNA evidence warranted the grant of defendant’s new trial motion).

Here, as in *Crockett* and *Parmar*, the new DNA evidence is material because Seka’s guilt or innocence turns on it. Although the DNA has not been matched to the real perpetrator, it conclusively excludes Seka from the crime scene and from the

dump site of one of the victims. Importantly, it also identifies the contributor of the DNA, telling the story of a different perpetrator than Seka. In what otherwise is a fundamentally circumstantial case, this evidence, as outlined below, can show Seka's guilt or innocence and "establishes the real possibility of a different result on retrial."

First, Seka is excluded from the DNA under Hamilton's fingernails²⁵ and another individual's profile was identified. 10 AA 002443-44. This evidence alone calls into question the prosecution's theory that Seka is responsible for Hamilton's death. The actual perpetrator removed Hamilton's jacket from his body and left it at the crime scene before dragging Hamilton's body from the business to the parking lot. *Id.* Hamilton was likely dragged by his wrists and hands because his gold bracelet was broken and left at the crime scene. *Id.* The perpetrator's DNA could have been transferred to Hamilton's hands and fingernails at any time during this process or when the perpetrator disposed of Hamilton's body.²⁶ The police saw this

²⁵ DNA testing of fingernails has led to a number of exonerations. Sample cases include Daniel Anderson (Illinois), Michael Blair (Texas), Malcolm Bryant (Maryland), Chad Heins (Florida), Jose Caro (Puerto Rico), Nevest Coleman (Illinois), Larry Davis (Washington), Robert Dewey (Colorado), Tyrone Hicks (New York), Harold Hill (Illinois), Paul House (Tennessee), Paul Jenkins (Montana), Anthony Johnson (Louisiana), Evin King (Ohio) and Curtis McCarty (Oklahoma). All cases are detailed in the National Registry of Exonerations at <http://www.law.umich.edu/special/exoneration/Pages/about.aspx> (last visited October 14, 2020).

²⁶ Locard's exchange principle states that whenever perpetrators enter or leave a crime scene, they will leave something behind and take something with them.

evidentiary potential and tested the blood found under Hamilton's fingernails before Seka's trial. 3 AA 000655-56. However, the PCR-RFLP DNA testing that was used at the time was limited and was only able to be used for exclusionary purposes and could not identify epithelial cells. 3 AA 000631-32. While Seka was excluded as a possible contributor of the blood under Hamilton's left-hand fingernails, both the left and right hand fingernails have now produced two DNA profiles, one that does not belong to Seka or Hamilton. This physical evidence now goes beyond merely an exclusion from the victim source blood identified – it allows the State to determine who the actual perpetrator is. It also gives a jury the opportunity to understand not only that Seka is excluded from those fingernails but that someone else, in addition to Hamilton, is included. If this evidence had been available at the time of Seka's trial, investigators could have made reasonable efforts to identify the actual perpetrator. This DNA evidence would, at the very least, create reasonable doubt and thus lead to a probable different result at retrial.

Second, Seka is excluded from the evidence that was DNA tested in 2018-19 collected where Hamilton's body was discarded. Police collected two cigarette butts,

Examples include DNA, latent prints, and hair. *Anal. Chem.* 2019, 91, 1, 637–654 (2018) <https://doi.org/10.1021/acs.analchem.8b04704> (last visited October 22, 2020); Science Direct, Exchange Principle, <https://www.sciencedirect.com/topics/computer-science/exchange-principle> (last visited October 22, 2020).

two beer bottles, and a Skoal container. 5 AA 001049-50; 4 AA 000817-18; 3 AA 000626. Although there was a freeway within sight, the actual location of his body was on the side of a road that was not well-travelled. 3 AA 00517-18. Although the State argues the collection of items where Hamilton's body was discarded was done out of an "abundance of caution," police not only deemed the items important enough to collect, they attempted to get latent prints from the Skoal container and beer bottles and attempted to DNA test the cigarette butts. 10 AA 002437-41; At the time, the DNA testing results of the cigarette butts were inconclusive. 3 AA 000664. A latent fingerprint was identified on one of the beer bottles, but was dissimilar to Seka's, Limanni's and Hamilton's fingerprints and was not tested for DNA. 10 AA 002446-47. No latent prints were identified on the Skoal container. 10 AA 002446-48. Now, Seka is excluded as a contributor to the DNA on all of those items. 10 AA 002443-44, 002482-83. The DNA evidence on the items found near Hamilton's body are as probative now as they would have been at the time of trial – and Seka should have the opportunity to tell a jury that he could not have been the person who deposited those items around Hamilton's body, items that police collected *and* tested at the time of the crime. Additionally, now that a full profile exists, investigators may be able to identify the person who left their DNA and fingerprints on this evidence.

In sum, the new DNA evidence is undeniably material to Seka's defense, and as such, a different result is probable upon retrial. The district court did not abuse its discretion in finding that Seka meets not only this element, but all other elements necessary for the award of a new trial.

B. The New DNA Testing Results Support Seka's Motion for a New Trial for *All* of the Charges for Which He was Convicted, Not Just for Hamilton's Murder.

While the new DNA results support Seka's new trial for Hamilton's murder, they also, by extension, support a new trial for Limanni's murder and the two robberies for which he was also convicted. The State has always claimed Seka killed Hamilton and Limanni in one incident. Now, the State seeks to change its theory and separate the two murders. However, because new DNA evidence supports a new trial on Hamilton's murder, it also supports a new trial on all other charges despite the State's contrary assertion.

Although Nevada courts have never decided this issue, the New York Supreme Court directly addressed it in *People v. Wise*, 194 Misc. 2d 481, 752 N.Y.S.2d 837 (2002). In *Wise*, five defendants confessed to and were convicted of raping one woman and robbing one man during a night of "wilding" in Central Park. *Id.* at 483. When the actual perpetrator of the rape confessed and the rape kit DNA matched him, defendants moved for a new trial on all charges. *Id.* at 488. In considering whether the new DNA evidence warranted a new trial on all charges,

the court reasoned “[t]he crimes the defendants were charged with were . . . all . . . part of a single incident” *People v. Wise*, 194 Misc. 2d at 495. The court emphasized that the People had relied upon the “single incident” theory both in their case investigation and prosecution. *Id.* Indeed, in its closing argument, the People encouraged the jurors to consider the “overall pattern of behavior” and the defendants’ “joint purpose.” *Id.* The court found “there was no significant evidence at trial establishing the defendants’ involvement in the other crimes of which they stand convicted that would not have been substantially and fatally weakened by the newly discovered evidence in this matter.” *Id.* at 496. The court further held “[a]ssessing the newly discovered evidence is required solely in light of the proof introduced at the earlier trials, we conclude that there is a probability that the new evidence, had it been available to the juries, would have resulted in verdicts more favorable to the defendants, not only on the charges arising from the attack on the female . . . , but on the other charges as well.” *Id.* at 496. Ultimately, the *Wise* court found the newly discovered evidence was “so intertwined with all the crimes charged against the defendants . . . that the newly discovered evidence would create a probability that had such evidence been received at trial, the verdict would have been more favorable to the defendants as to *all* the convictions.” *Id.* (emphasis added).

Accordingly, defendants' motion for a new trial, based was granted for all the convictions. *People v. Wise*, 194 Misc. 2d at 498.²⁷

Here too, the crimes for which Seka was convicted are "intertwined." The State connected them from the time it first sought to arrest Seka through post-conviction appeals. For example, the arrest warrant states,

It appears that Seka ...was involved in a *series of crimes* in order to obtain money which included the theft of the purse . . . , the pawning of construction equipment believed to belong to Peter Limanni, and the murder and apparent robbery of Eric Hamilton in which Hamilton was shot to death with a .38/357 handgun and transported to Las Vegas Boulevard near Lake Mead in the 1998 brown Toyota pickup truck..."

9 AA 02146 (emphasis added). Further, when Seka's trial counsel sought to sever the two cases, the State objected arguing the Hamilton's murder and robbery and the

²⁷ The *Wise* decision is not unique. For example, Ronald Cotton was convicted of two rapes. When DNA testing cleared Cotton of one of the rapes, the State dismissed all charges against Cotton because the two rapes were similar and occurred on the same night. *See* <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3124> (last visited October 14, 2020). Similarly, Steven Phillips was implicated in a eleven incidents where at least 60 women were sexually assaulted. Phillips was convicted in one case and pled guilty in five others. However, when DNA testing exonerated him in one case, charges were dismissed in all of his convictions. *See* <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3533> (last visited October 14, 2020). Finally, Richard Alexander was arrested for four sexual assaults and was convicted of two of them. Later DNA testing excluded him in one of the sexual assaults. However, because of the similarity between the two assaults, the prosecutor vacated both his convictions. *See* <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=2990> (last visited October 14, 2020).

Limanni's murder and robbery were "inextricably intertwined." The court agreed with the State and refused to sever the two cases.

In closing arguments at trial, the State explicitly discussed the "series of events" that led to the deaths of Hamilton and Limanni. 6 AA 001354. The State continually connected the crimes, postulating that Hamilton was an innocent bystander when Limanni was killed, and perhaps Hamilton helped dispose of Limanni's body and then became a "loose end" that needed to be "cleaned up." 6 AA 001358.

On direct appeal, the State continued to emphasize the connection between the two murders. This Court adopted the State's theory of a "common scheme or plan" stating:

In the present case, we conclude that the district court did not err in finding that there was sufficient evidence to support a conclusion that the murders of Limanni and Hamilton were conducted and concealed by Seka in roughly the same manner as part of a *common scheme or plan* for financial gain. Both individuals disappeared in November of 1998. Both bodies were transported in Cinergi vehicles and were discovered partially concealed by dirt or wood in shallow graves. An intensive amount of forensic evidence was introduced at trial, including bullets, fingerprint evidence, and DNA evidence indicating that both men were murdered at the businesses owned by Limanni at 1929 and 1933 Western Avenue. Also, both victims died as a result of gunshot wounds. Lastly, witnesses testified that both victims had large amounts of cash in their possession shortly before they were missing, and no such cash was found on their bodies or amongst their personal possessions.

6 AA 001468.

The State connected the two murders and robberies before, during and after trial. In so doing, the State must now accept that the new DNA evidence calls their entire theory of the case into question. Much like the court in *Wise*, the district court properly found Seka is entitled to a new trial on all charges because the new DNA evidence not only proves he did not kill Hamilton, but it also casts reasonable doubt on the entire “series of crimes” for which the State contends Seka is responsible.

C. THE NEWLY DISCOVERED DNA EVIDENCE IS FAVORABLE AND THUS, THE DISTRICT COURT’S ORDER GRANTING HIM A NEW TRIAL SHOULD BE AFFIRMED.

The new DNA evidence exculpates Seka and inculpates someone else in the murders of Limanni and Hamilton -- therefore it is favorable. The State’s arguments to the contrary are meritless. Further, the State mischaracterizes the facts surrounding the collection and original testing of the evidence and changes its pre-trial and trial positions on the importance of the evidence.

Under NRS 176.09187, a defendant may move for a new trial where the DNA testing results are “favorable.” “Favorable” is not defined in the statute but appears to be synonymous with the material standard discussed above. *See supra* section A.3. Further, in criminal cases, the absence of physical evidence can be favorable to a defendant, just as the presence of inculpatory physical evidence can assist

prosecutors seeking conviction.²⁸ Here, the new DNA evidence is favorable to Seka's defense, and Seka should be given the opportunity to present it to a jury.

i. Hamilton's Fingernails

At the time of trial, Seka was not fully excluded as a contributor to the DNA samples under Hamilton's fingernails. The State's assertion otherwise is inaccurate. To clarify, at the time of trial, Welch performed PCR-RFLP testing on Hamilton's left-hand fingernails. Welch subsequently excluded Seka as a contributor of the *blood* identified under Hamilton's left-hand fingernails. 3 AA 000655-56; 10 AA 002437-41. In 2018, through more advanced STR DNA testing, Seka was excluded as a contributor of the blood *and* epithelial DNA from both Hamilton's left and right-hand fingernails. 10 AA 002443-44. However, not only was Seka excluded, but assuming Hamilton was a contributor, a second foreign contributor was identified. *Id.* Seka's exclusion from the biological material under both sets of Hamilton's fingernails was not presented to Seka's jury in 2001. Even more compelling, Seka's 2001 jury did not learn that a foreign contributor was detected. Had the jury understood not only Seka's exclusion, but also the identification of another foreign contributor, their decision on Seka's guilt may have been different.

²⁸ In 151 of the 367 DNA exonerations to date, the DNA evidence excluded defendant but did not identify the actual perpetrator. <https://www.innocenceproject.org/exonerate/> (last visited October 18, 2020). In those exonerations, the absence of defendant's DNA was sufficient for the court to order a new trial, vacate the conviction or fully exonerate the defendant. *Id.*

ii. Hair Under Hamilton's Fingernails

The State is confused when it asserts that “[h]airs found under [Mr.] Hamilton’s nails were also tested” at the time of trial. Welch did test the blood on the hairs but not the hairs themselves. 10 AA 002437-41. And although Seka was excluded from the blood on the hairs, Welch was unable to come to any conclusion on the hairs themselves. *Id.* The possibility that this untested hair belonged to Seka loomed over Seka’s case. In 2018, STR DNA testing conclusively showed this hair did not belong to Seka. 10 AA 002443-44. The exclusion of Seka on both the hair and the blood on the hair was not presented to Seka’s jury in 2001 and may have led the jury to a different conclusion in the wholly circumstantial case against him.

iii. Cigarette Butts, Skoal Container, and Beer Bottle Found Near Hamilton’s Body

Hamilton’s body was found in a remote area, 2.1 miles south of State Route 146. 3 AA 000517-18. The value of the evidence found around his body cannot be underestimated. Indeed, the police and prosecution recognized its importance during the investigation and trial. Not only did police collect these items, but crime lab technicians processed them, and the prosecution presented the findings, or lack thereof, at trial. For the State to now claim that the evidence is irrelevant “trash” and that Seka’s position that these items are related to the crime is “laughable” is wholly contrary to their position at trial.

In 2001, Welch attempted but was unable to obtain any DNA results from the cigarette butt. 3 AA 000664. The 2018 STR DNA testing produced a full DNA profile excluding Hamilton and Seka. 10 AA 002443-44. In 2001, the Skoal container was examined for fingerprints but none were identified. 10 AA 002446-48. The 2019 STR DNA testing identified two DNA profiles excluding both Hamilton and Seka. 10 AA 002482-83. In 1999, the beer bottle was examined for latent prints and Seka's, Limanni's, and Hamilton's fingerprints were excluded. 10 AA 002446-47. The 2019 STR DNA testing excluded Hamilton and Seka as possible contributors. 10 AA 002482-83.

Police did not "merely" collect these items of evidence – police believed them to be relevant and had the items analyzed to the extent of their scientific abilities at the time. The recent STR DNA testing conclusively excludes Seka as a contributor. Therefore, this Court should find that the district court did not abuse its discretion when it granted Seka's new trial motion so a jury can properly consider the evidence.

iv. Hamilton's Baseball Cap

DNA testing was not conducted on Hamilton's cap in 2001. The 2019 STR DNA testing identified three profiles on the cap: one belonging to Hamilton, and two unknown profiles. 10 AA 002482-83. Hamilton's cap was left at the murder scene and a jury should be allowed to consider whether the two unknown profiles could belong to the actual perpetrators.

Whether considered individually or in combination, each piece of physical evidence is favorable to Seka and meets the standard under NRS 176.09187 and thus the district court did not abuse its discretion in granting Seka's new trial motion.

v. The Physical Evidence Recently Submitted to STR DNA Testing Was Relevant in 1999 and Is Relevant Now.

Despite the State's contrary arguments, Seka has no obligation to show definitively how the new DNA evidence found under Hamilton's fingernails, on the beer bottle, Skoal container, and cigarette butt found next to Hamilton's body, and on Hamilton's cap ("the physical evidence") got there. Rather, Seka need only show the physical evidence is material to the determination of his guilt or innocence in Hamilton and Limanni's murders. Seka has repeatedly shown the relevance of the exculpatory DNA results and now it is a jury's job to consider the physical evidence and its impact on what was a wholly circumstantial case.

Further, in claiming that the physical evidence that has now been tested and shows Seka had no connection to Limanni's and Hamilton's murders is not relevant, the State is conveniently changing their theory regarding the physical evidence. In *House v. Bell*, the United States Supreme Court rejected an argument similar to the State's argument here. 547 U.S. 518 (2006). In *House*, the State alleged semen evidence found on the murder victim was consistent with defendant. *Id.* at 518. Post-conviction DNA testing established the evidence belonged to the victim's husband's

-- the State then claimed the evidence was immaterial as it did not definitively show defendant did not commit the murder. *House v. Bell*, 547 U.S. 518 (2006). The Supreme Court disagreed and found the new evidence “of central importance.” *Id.* at 540. The Court stated that “[p]articularly in a case like this where the [state’s evidence] was... circumstantial... a jury would have given this evidence great weight.” *Id.* at 540-41.

In 1999, police collected the physical evidence, processed it for fingerprints, and tested it with the best DNA testing available at the time. The police and prosecution saw the evidentiary value of the physical evidence and when the best scientific technology available at the time produced no usable results, they went forward with their wholly circumstantial case against Seka. Now, that the same evidence the State once considered material exonerates Seka, the State calls the evidence “trash.” The State’s position is disingenuous and contrary to the decision in *House*. Accordingly, this Court should reject it and affirm the district court’s decision to grant Seka the new trial he deserves.

**D. THIS IS NOT A “SUFFICIENCY OF THE EVIDENCE”
APPEAL AND THE STATE’S ARGUMENT TO THE
CONTRARY IS MISGUIDED.**

The State argues that because a jury convicted Seka *without* the new DNA evidence, the district court abused its discretion in ordering a new trial. First, the State’s argument completely discounts the purpose of NRS 176.0918, which allows

a defendant to request post-conviction DNA testing and to request a new trial if the DNA evidence is favorable. In cases like Seka's, where DNA evidence both exculpates the defendant and inculcates the real perpetrator was not available at the time of trial, NRS 176.0918 anticipates that the court will consider the new DNA evidence and will consider the trial evidence in light of the new DNA evidence. It does not direct the court to conduct a sufficiency of the evidence analysis without considering the new DNA evidence and if it did, as the State argues, NRS 176.0918 would be meaningless. Second, the State's sufficiency of the evidence argument asks this Court to supplant the jury function -- to weigh all the evidence, to judge the credibility of witnesses in light of the new evidence, and to essentially determine Seka's guilt or innocence. If the State is convinced of Seka's guilt despite the exonerating DNA evidence, the place to argue the new DNA evidence is insufficient to overcome the State's circumstantial case is at trial, not on this appeal.

However, the court is not required to look at the new DNA evidence in a vacuum. Rather, the court should review "the circumstances in their entire light" before deciding whether "the new evidence will probably change the result of the trial." *Crockett*, 444 P.2d at 897-898. In doing so, the court should determine whether the new DNA evidence makes the State's "version of facts less probable." *Parmar*, 808 N.W.2d at 634. As outlined below, Seka asserts it does, and the district court, in a proper exercise of discretion, agreed.

First, police believed Hamilton was murdered in 1929, a space Seka could not access. 3 AA 000523, 000546-47, 000550. The business in 1929 was abandoned shortly before the murders and Cerda, the property manager, had the only key. 10 AA 002263. Police did not find Limanni's blood or Seka's blood in 1929 – or any other physical evidence that ties Seka to the scene.

Further, 1933 showed no signs of a crime. 4 AA 00913, 000981. The police did not find any victim-source blood, any signs of a struggle or break-in, or any bullet riddled clothing. *Id.* Indeed, despite Limanni being shot ten times, no blood or other evidence of such brutality was found in 1929 or 1933. Instead the police discovered a single bullet fragment buried in the wall of 1933. *Id.* The bullet fragment had no blood on it. *Id.* 3 AA 000615-27. The State's expert, Torrey Johnson, characterized the bullet as "class consistent" to those found in Limanni's body, but testified that more than ten different types of ammunition and numerous different types of firearms could have been associated with that bullet fragment. 5 AA 001009. Moreover, the other bullet cartridges found in 1933 included calibers other than those used in the murders, and Harrison testified that she saw at least one bullet in the business well before the murders occurred. 9 AA 002307. Finally, although the police discovered some of Seka's blood in 1933, it was his home and workplace. The State's assertion that Seka's blood found on the right pocket of a pair of his own jeans, on the wall and on a sink counter of his home somehow

implicates Seka in two brutal murders is untenable, particularly when all other physical evidence excludes him and includes someone else. 3 AA 000617-18, 000625-26; 10 AA 002270. In short, while the State suggested that this bullet fragment in the wall is proof that 1933 was the scene of Limanni's death, nothing supports this idea. *See* 4 AA 000913.

The police also found a beer bottle in 1933 with Hamilton's fingerprints. 4 AA 000938; 5 AA 001028-29. However, numerous beer bottles were found and collected from trash cans in 1933 and in the dumpster behind 1929 and 1933. *Id.* It was impossible to determine when Hamilton left that beer bottle in 1933, but his presence at that location was no surprise. Hamilton occasionally worked for Limanni and Seka. 3 AA 000708, 000710-11. Hamilton's employment at the business also explains why Seka's phone number was found in Hamilton's pocket. *Id.*

Moreover, physical evidence found at the dump site implicates another perpetrator – the unknown fingerprints on the lumber that covered Hamilton's body. 5 AA 001051-52. Although three boards contained Seka and Limanni's fingerprints, another two boards found at the dump site contained latent prints that did not match Seka or Limanni. *Id.* These unidentified latent prints were never compared to the latent prints identified on the beer bottle found near Hamilton's body, the three sets of fingerprints identified near the point of entry to the 1929 crime scene or the unknown fingerprints identified on Gorzoch's purse. *Id.* Nor were any of these

unknown fingerprints compared to the alternative suspects with motive to kill Limanni. Now, additional physical evidence points to a different perpetrator – evidence that cannot be ignored in the way that the unknown fingerprints on the lumber, at the 1929 crime scene and on Gorzoch’s purse was at the time of trial.²⁹

Importantly, many individuals besides Limanni, Harrison, Hamilton and Seka had access to 1933. 8 AA 001968-69; 9 AA 002082; 4 AA 000889-90.³⁰ Specifically, Kato, Toe and Mohammed had access. *Id.* These investors financed Limanni’s business and lost hundreds of thousands of dollars after Limanni mismanaged their funds. AA 001966-67. These individuals financing Limanni’s business, Kato and Toe leased the business vehicles for Limanni, and Kato was the guarantor on the business note. 9 AA 002009-24, 002026-43. These investors were angry and at least one witness, a witness that can be considered new, claims that Mohammed was capable of homicidal violence and that her investigation indicates Mohammed was the actual perpetrator. 9 AA 002157.³¹

²⁹ The report proving that Seka did not touch Ms. Gorzoch’s purse was not provided to Seka at the time of trial and, indeed, was not produced until 2018. 10 AA 002282.

³⁰ Numerous other people patronized the business as Limanni hosted frequent parties at that location. 9 AA 002082; 4 AA 000889-90.

³¹ Police did not collect DNA from the alternative suspects – Harrison, Kato, Toe or Mohammed so no comparisons could be made. Should Seka be retried, hopefully the prosecution or police will attempt to identify the unknown profiles on the evidence.

Anyone who had access to 1933 also had access to the five vehicles associated with the business. 2 AA 000488. While Limanni and Seka drove the work vehicles interchangeably, Harrison also drove the Toyota truck. *Id.* The vehicle keys were easily accessed from the business. 4 AA 000956. During the investigation, the police were even able to retrieve the vehicle keys. 5 AA 001080. On October 26, 1998, before Limanni disappeared, Kato repossessed one of the vans. 2 AA 000362; 9 AA 02146. He did not have his own keys; he simply obtained the keys from inside the business. *Id.* Although the State inferred that the blood in one of the vans and the Toyota truck showed that Hamilton and/or Limanni were transported in those vehicles, that blood does not allow the State to infer that Seka transported the bodies, particularly when so many others had access to those vehicles.

Regarding motive, it is no more certain than the use of the vehicles. The State contended that Seka's motive for killing the two men was robbery. However, everything Hamilton had of value – his bracelet, ring, jacket and cap -- remained in 1929 or with his body, except his money which was gone before he went to jail on November 5, negating any claim of robbery. 3 AA 000521; 5 AA 001088-91; 9 AA 002242, 002248; 4 AA 000821; 2 AA 000345. Further, Seka never possessed any of Limanni's valuables or money, except for those items he pawned from the business after Limanni disappeared. 6 AA 001312. In fact, Seka was forced to return to his home in Pennsylvania because he had no money and no place to stay once the

business closed which suggests he had no motive to kill Limanni. 5 AA 001194-95; 10 AA 002329-30; 8 AA 001984. Importantly, before leaving Las Vegas, Seka gave police his contact addresses and phone numbers in Pennsylvania. 8 AA 001984; 5 AA 001128, 001178.

The State further contended Seka's motive for killing Limanni was that Limanni treated him poorly. However, in a post-conviction declaration, Justin Nguyen avers that the relationship between Limanni and Seka was good. 9 AA 002006. Nguyen was an employee at Cinergi, working closely with Limanni and Seka for several months. *Id.* Nguyen states that Limanni treated Seka "like his own brother" and he never observed Limanni call Seka names or mistreat him. *Id.* Kato and Toe agreed with Nguyen's assessment. 8 AA 001963-66; 9 AA 002009-24, 002026-43.

Finally, the only direct evidence the State used to support their theory of Seka's involvement in Limanni's murder was Cramer's testimony, a mentally unstable man who was angry at Seka for committing him to a mental institution after they had a violent altercation. Cramer created a story that Seka confessed during that altercation only after he was released from the mental institution and law enforcement approached him. 4 AA 000776-77. Most notably, Cramer's girlfriend stated in a sworn declaration that Cramer was lying. 10 AA 002425-27. She states

that she was present during the altercation between Seka and Cramer and that no such confession occurred. 10 AA 002425-27.

In short, with absolutely nothing tying Seka to Limanni's murder and all other evidence showing he could not have been involved in Hamilton's murder, the State's circumstantial case is destroyed, and the district court did not abuse its discretion in ordering a new trial.

CONCLUSION

As discussed above, the district court properly exercised its discretion in awarding Seka a new trial when the results of new DNA testing not only excluded him from all the probative physical evidence in the case, but also implicated an unknown individual. This Court should therefore affirm the district court's order granting Seka's Motion for New Trial.

DATED this 4th day of November, 2020.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using Microsoft Word in 14 point Times New Roman type style.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains **13, 901 words**.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)1, which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 4th day of November, 2020.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(a)(b) and 25(1)(d), I, the undersigned, hereby certify that I electronically filed the foregoing **RESPONDENT'S JOHN SEKA'S ANSWERING BRIEF** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on the 4th day of November, 2020.

I further certify that all participants in this case are registered with the Supreme Court of Nevada's E-filing system, and that service has been accomplished to the following individuals through the Court's E-filing System or by first class United States mail, postage prepaid, at Las Vegas, Nevada as follows:

Via Electronic Filing System:

Alexander Chen
Steven Wolfson
Aaron Ford

/s/ S. Concepcion

An Employee of Clark Hill PLLC