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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on November 1, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

JONATHAN M. KIRSHBAUM
Assistant Federal Public Defender

TALEEN PANDUKHT
Chief Deputy District Attorney

BY /s/ E. Davis
Employee, District Attorney's Office

TP/Dallin Albright/ed

ORIGINAL

1 INFO
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

Jun 30 8 49 AM '99

Christy A. King
CLERK

9 I.A. 7/13/99
10 9:00 A.M.
11 K. Kennedy

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13 Plaintiff,

14 -vs-

15 JOHN JOSEPH SEKA,
16 #1424324
17 Defendant,

Case No. C 159915
Dept. No. XIV
Docket T

INFORMATION

18 STATE OF NEVADA }
19 COUNTY OF CLARK } ss:

20 STEWART L. BELL, District Attorney within and for the County of Clark, State of
21 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

22 That JOHN JOSEPH SEKA, the Defendant(s) above named, having committed the crime
23 of MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030,
24 193.165) and ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380,
25 193.165), on or between November 5, and December 23, 1998, within the County of Clark, State
26 of Nevada, contrary to the form, force and effect of statutes in such cases made and provided,
27 and against the peace and dignity of the State of Nevada,

28 COUNT I - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

did, on or between November 10, 1998, and November 16, 1998, then and there wilfully,
feloniously, without authority of law, and with premeditation and deliberation and/or during the
perpetration or attempted perpetration of robbery, and with malice aforethought, kill ERIC

1 HAMILTON, a human being, by shooting at and into the head and/or body of the ERIC
2 HAMILTON, with a deadly weapon, to-wit: a firearm.

3 COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

4 did, on or between November 5, 1998, and December 23, 1998, then and there wilfully,
5 feloniously, without authority of law, and with premeditation and deliberation and/or during the
6 perpetration or attempted perpetration of robbery, and with malice aforethought, kill PETER
7 LIMANNI, a human being, by shooting at and into the head and/or body of the said PETER
8 LIMANNI, with a deadly weapon, to-wit: a firearm.

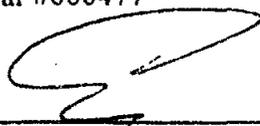
9 COUNT III - ROBBERY WITH USE OF A DEADLY WEAPON

10 did, on or between November 10, 1998, and November 16, 1998, then and there wilfully,
11 unlawfully, and feloniously take personal property, to-wit: lawful money of the United States
12 and/or personal property, from the person of ERIC HAMILTON, or in his presence, by means
13 of force or violence, or fear of injury to, and without the consent and against the will of the said
14 ERIC HAMILTON, said Defendant using a deadly weapon, to-wit: a firearm, during the
15 commission of said crime.

16 COUNT IV - ROBBERY WITH USE OF A DEADLY WEAPON

17 did, on or about November 5, 1998, and December 23, 1998, then and there wilfully,
18 unlawfully, and feloniously take personal property, to-wit: lawful money of the United States
19 and/or personal property, from the person of PETER LIMANNI, or in his presence, by means
20 of force or violence, or fear of injury to, and without the consent and against the will of the said
21 PETER LIMANNI, said Defendant using a deadly weapon, to-wit: a firearm, during the
22 commission of said crime.

23 STEWART L. BELL
24 DISTRICT ATTORNEY
Nevada Bar #000477

25
26 BY 
27 EDWARD R.J. KANE
Deputy District Attorney
28 Nevada Bar #001438

1 Names of witnesses known to the District Attorney's Office at the time of filing this
2 information are as follows:

3	<u>NAME</u>	<u>ADDRESS</u>
4	Thowson, Tom	LVMPD P#1467
5	Buczek, Jim	LVMPD P#3702
6	Hefner, Ken	LVMPD P#2185
7	Nogus, R.	LVMPD P#5622
8	Kroll, R.	LVMPD P#4850
9	Ruffino, D.	LVMPD P#1502
10	Reed, G.	LVMPD P#3731
11	LeMaster, D.	LVMPD P#4243
12	Roberts, V.	LVMPD P#5714
13	Cabrales, A.	LVMPD P#2045
14	McPhail, R.	LVMPD P#3326
15	Wolf, Ken	San Bernardino Co. Sheriff's Dept. #W-1957
16	Trenkle, Steven M.D.	San Bernardino Co. Coroner's Office
17	Green, Sheldon M.D.	Clark County Medical Examiner
18	Stanish, Michael	8204 Bright Dr., Las Vegas, NV 89117
19	Cerda, Michael	3521 N Bronco St., Las Vegas, NV 89108
20	Harrison, Jennifer	2701 N Rainbow #2089, Las Vegas, NV 89108
21	Kato, Takeo	1528 Franklin St. #7, Santa Monica CA 90404
22	Bell, Carl	2058 W 103rd Place, Los Angeles, CA 90047

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DA#99F03542X/msr
LVMPD EV#9811160443
MWDW; ROBB WW - F
(TK 5)

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VJRU

FILED IN OPEN COURT
DISTRICT COURT MAR 02 2001
SHIRLEY B. PARRAGUIRRE, CLERK
CLARK COUNTY, NEVADA
BY Judy Norman
JUDY NORMAN DEPUTY

STATE OF NEVADA,

Plaintiff(s),

vs

JOHN JOSEPH SEKA,

Defendant(s).

Case No. C159915
Dept No. XIV

**VERDICT(S) SUBMITTED TO JURY,
BUT RETURNED UNSIGNED**

Attached hereto are the verdict forms which were submitted to the jury in the above-entitled action, but returned unsigned.

DATED: This 2ND day of MARCH, 2001.

SHIRLEY B. PARRAGUIRRE, Clerk of the Court

By: Judy Norman
JUDY NORMAN, Deputy Clerk

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DISTRICT COURT
CLARK COUNTY, NEVADA

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7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 JOHN JOSEPH SEKA

11

12 Defendant.

Case No. C159915
Dept. No. XIV

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VERDICT

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We, the Jury in the above entitled case, having found the Defendant, JOHN JOSEPH SEKA, Guilty of COUNT ONE - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

___ A definite term of 100 years imprisonment, with eligibility for parole beginning when a minimum of 40 years has served,

___ Life in Nevada State Prison With the Possibility of Parole, with eligibility for parole beginning when a minimum of 40 years has served.

___ Life in Nevada State Prison Without the Possibility of Parole.

___ Death.

DATED at Las Vegas, Nevada, this ____ day of March, 2001

FOREPERSON

1 VER

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DISTRICT COURT
CLARK COUNTY, NEVADA

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7 THE STATE OF NEVADA,

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Plaintiff,

9

-vs-

Case No. C159915
Dept. No. XIV

10

JOHN JOSEPH SEKA

11

12

Defendant.

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VERDICT

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18

We, the Jury in the above entitled case, having found the Defendant, JOHN JOSEPH SEKA, Guilty of - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON and having found that the mitigating circumstance or circumstances outweigh any aggravating circumstance or circumstances impose a sentence of,

19

___ A definite term of 100 years imprisonment, with eligibility for parole beginning when a minimum of 40 years has served,

20

21

___ Life in Nevada State Prison With the Possibility of Parole, with eligibility for parole beginning when a minimum of 40 years has served.,

22

23

___ Life in Nevada State Prison Without the Possibility of Parole.

24

25

DATED at Las Vegas, Nevada, this ___ day of March, 2001.

26

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FOREPERSON

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1 VER

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DISTRICT COURT
CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,

9

Plaintiff,

10

-vs-

Case No. C159915
Dept. No. XIV

11

JOHN JOSEPH SEKA

12

13

Defendant.

14

SPECIAL
VERDICT

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20

We, the Jury in the above entitled case, having found the Defendant, JOHN JOSEPH SEKA, Guilty of COUNT ONE - MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, designate that the mitigating circumstance or circumstances which have been checked below have been established.

21

The Defendant has no significant history of prior criminal activity.

22

The murder was committed while the Defendant was under the influence of extreme mental or emotional disturbance.

23

24

The victim was a participant in the Defendant's criminal conduct or consented to the act.

25

26

The Defendant was an accomplice in a murder committed by another person and his participation in the murder was relatively minor.

27

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The Defendant acted under duress or under the domination of another person.

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 The youth of the Defendant at the time of the crime.

Any other mitigating circumstances.

DATED at Las Vegas, Nevada, this 2 day of March, 2001.

Antonia Clark
FOREPERSON

1 VER

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DISTRICT COURT
CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JOHN JOSEPH SEKA

12

13 Defendant.

14

Case No. C159915
Dept. No. XIV

15

SPECIAL
VERDICT

16

17 We, the Jury in the above entitled case, having found the Defendant, JOHN JOSEPH
18 SEKA, Guilty of COUNT ONE - MURDER OF THE FIRST DEGREE WITH USE OF A
19 DEADLY WEAPON, designate that the aggravating circumstance or circumstances which have
20 been checked below have been established beyond a reasonable doubt.

21

The murder was committed by a person who was previously convicted of a felony
22 involving the use or threat of violence to the person of another.

23

The murder was committed while the person is engaged in the commission of or
24 an attempt to commit any robbery.

25

The murder was committed by a person, for himself or another, to receive money
26 or any other thing of monetary value.

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The murder was committed by a person who has, in this case, been convicted of more than one offense of murder in the first or second degree.

DATED at Las Vegas, Nevada, this 2 day of March, 2001.

Antonina Clark
FOREPERSON

134

ORIGINAL

FILED IN OPEN COURT
MAR 13 2001 19

1 STIP
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 435-4711
8 Attorney for Plaintiff

SHIRLEY B. PARRAGUIRRE, CLERK
BY Linda Skinner
LINDA SKINNER, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff

10 vs

11 JOHN JOSEPH SEKA,
12 Defendant

Case No. C159915
Dept. No. XIV

STIPULATION AND AGREEMENT TO WAIVE
SENTENCING BY THREE-JUDGE PANEL

16 IT IS HEREBY STIPULATED, by and between the parties hereto, as evidenced by their
17 signatures affixed below, that, the penalty phase of the Defendant's trial having ended with a
18 deadlocked jury, the defendant hereby waives sentencing by a three-judge panel, and consents,
19 pursuant to NRS §175.552(2) that the sentence on the Defendant's conviction for Murder of the
20 First Degree with Use of a Deadly Weapon (Count 1), may be imposed by the trial judge.

21 IT IS FURTHER STIPULATED, pursuant to NRS §174.065(2), that the sentence for
22 Count 1 shall be life imprisonment without the possibility of parole, with an equal and
23 consecutive term for the use of a deadly weapon.

24 IT IS FURTHER STIPULATED that each party shall retain the unrestricted right to argue
25 at sentencing, including without limitation, whether the other counts should run concurrent with
26 or consecutive to Count 1.

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MAR 13 2001

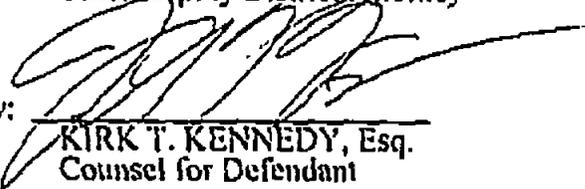
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IT IS FURTHER STIPULATED that no party waives any of its appeal rights by entering into this stipulation.

DATED this 13 day of March, 2001.

By: 
EDWARD R.J. KANE
Chief Deputy District Attorney

By: 
TIM FATTIG
Deputy District Attorney

By: 
KIRK T. KENNEDY, Esq.
Counsel for Defendant

By: 
PETER S. CHRISTIANSEN, Esq.
Counsel for Defendant

By: 
JOHN JOSEPH SEKA
Defendant

ORIGINAL

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FILED

MAY 15 11 10: 37

John Joseph Seka
Clerk

1 NOA
2 PETER S. CHRISTIANSEN, ESQ.
3 Nevada Bar No. 005254
4 KAJIOKA CHRISTIANSEN & TOTI
5 810 South Casino Center Blvd.
6 Las Vegas, Nevada 89101
7 (702) 366-1528

8 Attorney for Defendant
9 JOHN JOSEPH SEKA

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 vs.

15 JOHN JOSEPH SEKA,
16 #1525324,

17 Defendant.

CASE NO.: C 159915
DEPT NO.: XIV
DCKT NO.: T

18 NOTICE OF APPEAL

19 TO: THE HONORABLE DONALD M. MOSLEY, JUDGE OF THE EIGHTH JUDICIAL
20 DISTRICT COURT, COUNTY OF CLARK, STATE OF NEVADA:

21 TO: DISTRICT ATTORNEY FOR THE COUNTY OF CLARK, STATE OF NEVADA:

22 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that JOHN JOSEPH
23 SEKA, the Defendant in the above-entitled action, intends to appeal, and that Defendant, JOHN
24 JOSEPH SEKA, does hereby appeal to the Supreme Court of the State of Nevada, from judgment
25 and sentencing of the above-entitled Court finding the Defendant guilty of violating offenses, to
26 wit: FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON, SECOND DEGREE
27 MURDER WITH USE OF A DEADLY WEAPON, and ROBBERY, and from the judgment and
28 sentencing of the above-entitled Court made and entered on May 9, 2001 under which it was
ORDERED, ADJUDGED AND DECREED that as to Count I - FIRST DEGREE MURDER,
the Defendant shall be sentenced to life without the possibility of parole plus an equal and
consecutive term of life without the possibility of parole for USE OF A DEADLY WEAPON, and

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MAY 15 2001

COUNTY CLERK

RA 0013 53

1 pay \$2,825.00 restitution. As to Count II - SECOND DEGREE MURDER the Defendant shall
2 be sentenced to life with the possibility of parole plus and equal and consecutive term of life with
3 the possibility of parole for USE OF A DEADLY WEAPON, and pay \$2,500.00 restitution,
4 Count II to run consecutive to Count I. As to Count III - ROBBERY the Defendant shall be
5 sentenced to a maximum term of one hundred fifty-six (156) months with a minimum parole
6 eligibility of thirty-five (35) months, Count III to run consecutive to Count II. As to Count IV -
7 ROBBERY the Defendant shall be sentenced to a maximum term of one hundred fifty-six (156)
8 months with a minimum parole eligibility of thirty-five (35) months, Count IV to run consecutive
9 to Count III. Credit for time served is seven hundred twenty (720) days.

10 This appeal is taken from the whole of the judgment and every part thereof.

11 This appeal is taken from questions of both law and fact.

12 DATED this 14 day of May, 2001.

13 KAJIOKA CHRISTIANSEN & TOTI

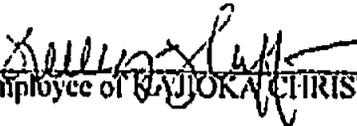
14
15 By 
16 PETER S. CHRISTIANSEN, ESQ.
17 Nevada Bar No. 005254
18 810 South Casino Center Blvd.
19 Las Vegas, Nevada 89101
20 Attorney for Defendant
21 JOHN JOSEPH SEKA
22
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 14 day of May, 2001, I mailed a true and correct copy of the foregoing Notice of Appeal, in an envelope, postage fully paid, addressed as follows:

John Joseph Seka
ID# 1525324
330 South Casino Center Blvd.
Las Vegas, Nevada 89101

DISTRICT ATTORNEY
200 South Third Street
Las Vegas, Nevada 89115


An employee of RAJJOKA CHRISTIANSEN & TOTT

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 37907

District Court Case No. C159915

FILED

MAY 14 2003

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

REMITTITUR

TO: Shirley Parraguirre, Clark County Clerk

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

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

DATE: May 6, 2003

Janette M. Bloom, Clerk of Court

By: J. Richards
Chief Deputy Clerk

cc: Hon. Donald M. Mosley, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Kajioka, Christiansen & Toti

RECEIPT FOR REMITTITUR

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

REMITTITUR issued in the above-entitled cause, on 5-9-03

RECEIVED
MAY 14 2003
CLERK OF SUPREME COURT
By _____
DEPUTY CLERK

DEPUTY Monita Caldwell
County Clerk

RECEIVED
MAY - 9 2003
COUNTY CLERK

RA 0016
03-06252

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 37907

District Court Case No. C159915

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 8th day of April, 2003.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 6th day of May, 2003.

Janette M. Bloom, Supreme Court Clerk

By: _____

J. Richards
Chief Deputy Clerk

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CASE NO. C159915

FILED

DEPT. NO. XIV

FEB 9 2 09 PM '05

Christy A. Rayman
CLERK

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

John Seka,
Petitioner

vs.

NOTICE OF APPEAL

State of Nevada,
Respondent

NOTICE IS HEREBY GIVEN that, John Seka

Petitioner, in the above entitled action, hereby appeals to the

Nevada Supreme Court from the District Court's Order denying Petition

For writ of Habeas Corpus, entered in this action

on the 31st day of January, 2005.

DATED THIS 7th day of February, 2005.

John Seka #69025
John Seka

IN PRO-PER
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

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FEB 09 2005
COUNTY CLERK

RA 0018

95

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 44690

District Court Case No. C159915

FILED

REMITTITUR

JUL 22 2005

TO: Shirley Parraguirre, Clark County Clerk

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

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

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

DATE: July 12, 2005

Janette M. Bloom, Clerk of Court

By: J. Richarde
Chief Deputy Clerk

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

RECEIPT FOR REMITTITUR

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

REMITTITUR issued in the above-entitled cause, on

7-15-05

DEPUTY

Heneta Calderon
County Clerk

RECEIVED

JUL 15 2005

COUNTY CLERK

RECEIVED
JUL 22 2005
CLERK OF SUPREME COURT
By _____
DEPUTY CLERK

RA 0019
05-12-797

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Supreme Court No. 44690

District Court Case No. C159915

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED."

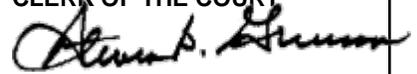
Judgment, as quoted above, entered this 8th day of June, 2005.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 12th day of July, 2005.

Janette M. Bloom, Supreme Court Clerk

By:

J. Richards
Chief Deputy Clerk



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NOASC
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
200 Lewis Street
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
v.)
)
JOHN JOSEPH SEKA,)
#1525324,)
)
Defendant.)

Case No. 99c159915
Dept. No. XXV

NOTICE OF APPEAL

- TO: JOHN JOSEPH SEKA, Defendant; and
- TO: PAOLA M. ARMENI & JENNIFER SPRINGER, Counsels for Defendant; and
- TO: KATHLEEN DELANEY, District Judge, Eighth Judicial District Court, Dept. No. XXV.

NOTICE IS HEREBY GIVEN THAT THE STATE OF NEVADA, Plaintiff in the above entitled matter, appeals to the Supreme Court of Nevada, pursuant to NRS 177.015(2) from the order the district court filed March 24, 2020, granting Defendant's Motion for a New Trial.

Dated this 27th day of March, 2020.

STEVEN B. WOLFSON,
Clark County District Attorney

BY /s/ Alexander Chen
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539

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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 27th day of March, 2020, by electronic transmission to:

PAOLA M. ARMENI, ESQ.
Email: parmeni@clarkhill.com

JENNIFER SPRINGER, ESQ.
Email: jspringer@rminnocence.org

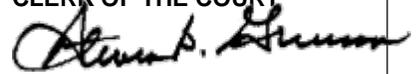
ALEXANDER CHEN
Chief Deputy District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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11
12 **EIGHTH JUDICIAL DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 JOHN JOSEPH SEKA,
15
16 Petitioner,

17 vs.

18 STATE OF NEVADA,
19
20 Respondent,

CASE NO. 99C159915
DEPT. XXV

HEARING REQUESTED

21 **MOTION FOR RELEASE PENDING APPEAL AND RETRIAL PURSUANT TO NRS**
22 **178.488 and 178.484**

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25
26
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28
Petitioner John Seka ("Mr. Seka") submits the following Motion for Release Pending
Appeal and Retrial.

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...
...

1 This Motion is based on the following points and authorities, the pleadings and papers on
2 file in this case, the exhibits attached hereto and any argument the Court may entertain.

3 Dated this 15th day of June, 2020.

4 Clark Hill PLC



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18 INTRODUCTION

19 Mr. Seka is an innocent man who has been in prison for the last 19 years for a crime he
20 did not commit. The DNA evidence now supports his innocence claim and, as a result, the court
21 has ordered a new trial. However, the State has filed a notice of appeal and Mr. Seka will
22 continue to be wrongfully imprisoned during the pendency of the appeal. With the worldwide
23 pandemic and inability for him to properly quarantine his already unjust imprisonment is
24 compounded. As a result, he should be released pending the appeal and the State's decision on
25 whether to retry.

26 STATEMENT OF THE CASE

27 On March 1, 2001, Mr. Seka was convicted of 1st Degree Murder with use of a Deadly
28 Weapon, 2nd Degree Murder with use of a Deadly Weapon and two counts of Robbery with use
of a Deadly Weapon. The case presented to the jury was wholly circumstantial. No relevant
physical evidence placed Mr. Seka at the scene of the crime. No physical evidence connected
Mr. Seka to Mr. Hamilton's or Mr. Limanni's death. No relevant physical evidence placed Mr.
Seka at the sites where the bodies were discovered. All physical evidence that was available and

1 tested at the time of trial was inconclusive, pointed to someone other than Mr. Seka, or was taken
2 from his residence.

3 On June 19, 2017, Mr. Seka filed his Post-Conviction Petition Requesting Genetic
4 Marker Analysis of Evidence Within the Possession or Custody of the State of Nevada (NRS
5 176.0918). On August 15, 2017, the State filed a Response to Defendant's Petition Requesting
6 Genetic Marker Analysis. On September 5, 2017, Mr. Seka filed Defendant's Reply to State's
7 Opposition of Defendant's Petition for Post-Conviction Genetic Marker Analysis Testing NRS
8 176.0918. On September 19, 2017, this Court granted Mr. Seka's Petition and ordered
9 preservation of the physical evidence and an inventory of the evidence to be produced. On
10 February 15, 2018, this Court ordered post-conviction DNA testing of Mr. Hamilton's fingernail
11 clippings, hair identified under Mr. Hamilton's fingernails, and cigarette butts located near Mr.
12 Hamilton's body. On December 14, 2018, the Court held an evidentiary hearing on the probative
13 value of the remaining items of evidence Mr. Seka requested be DNA tested. On January 24,
14 2019, the Court ordered post-conviction DNA testing of additional physical evidence including
15 Mr. Hamilton's baseball hat that was left at the murder scene, and a Skoal tobacco container and
16 two beer bottles that police collected from the area where Mr. Hamilton's body was discovered.

17 Absolutely none of the DNA evidence collected from the victim's body, homicide scene
18 or the dump site implicated Mr. Seka. Instead, Mr. Seka was excluded as a contributor and other
19 unknown profiles were identified on the evidence. Specifically:

- 20 1. Mr. Seka was excluded as the source of the DNA identified under Mr. Hamilton's
21 fingernail clippings. Importantly, assuming Mr. Hamilton was a contributor, a second
22 foreign contributor was detected on his fingernail clippings from both his left and right
23 hands.
- 24 2. Mr. Seka was excluded as the source of the hair that was identified under Mr. Hamilton's
25 fingernails. DNA testing showed that the hair belonged to Mr. Hamilton.
- 26 3. Mr. Seka was excluded as a contributor to the Marlboro cigarette butt the police found
27 near Mr. Hamilton's body. DNA testing identified a full DNA profile of an unknown
28

1 individual that was later uploaded to the local DNA Index System and the national DNA
2 Index System (CODIS) for comparison purposes.

3 4. Mr. Seka was excluded as a contributor on the Skoal container that police collected near
4 Mr. Hamilton's body. DNA testing identified two unknown DNA profiles.

5 5. Mr. Seka was excluded from the Beck's beer bottles. DNA testing identified a female
6 profile on the evidence. The DNA profile was uploaded to the Local DNA Index System
7 and the National DNA Index System (CODIS) for comparison purposes.

8 On November 19, 2019, Mr. Seka filed a Motion for a New Trial based on newly discovered
9 DNA evidence pursuant to Nev. Rev. Stat. § 176.0918(1)(a-b) and Nev. Rev. Stat. § 176.515(1).
10 On January 30, 2020, the State filed State's Response to Defendant's Motion for a New Trial. On
11 March 4, 2020, Mr. Seka filed his Reply in Support of Mr. Seka's Motion for a New Trial. The
12 Court held a hearing on March 11, 2020. On March 24, 2020, the Court granted Mr. Seka's
13 Motion in Defendant John Seka's Order Granting Motion for a New Trial. The Court
14 emphasized "multiple unknown DNA profiles are favorable evidence to Mr. Seka." Further, the
15 Court held that "Mr. Seka has established a basis for new trial as the evidence is newly
16 discovered, material to his defense, that even with the exercise of reasonable diligence it could
17 not have been discovered or produced for trial, is non-cumulative, *renders a different result*
18 *probable upon retrial*, and is not only an attempt to discredit a witness and this evidence is the
19 best evidence that case admits" (emphasis added). Accordingly, the Court entered an order
20 granting Defendant John Seka's Motion for a New Trial.

21 On March 27, 2020, the State filed its Notice of Appeal.

22 While Mr. Seka's Motion for a New Trial was pending, a pandemic threatening public
23 health and safety was spreading across the globe.¹ As of June 12, 2020, in the United States
24 2,112,799 individuals have been diagnosed with COVID-19, and 116,744 individuals have died
25

26
27 ¹ The World Health Organization has officially classified the spread of Covid-19 as a global
28 pandemic. *See* World Health Organization, Director-General Opening Remarks (March 11,
2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

1 from the virus.² As of that same date, there have been over 7,589,838 global diagnoses and
2 423,646 related deaths.³ The number is growing exponentially. There is no known cure and the
3 development of a vaccine is likely at least 12 months away.⁴

4 COVID-19 is highly contagious. The virus spreads through respiratory droplets or by
5 touching a surface or object that has the virus on it.⁵ The “virus appears to spread both through
6 large droplets and droplets smaller than five micrometers—termed aerosols—containing the
7 virus that infected people might release especially while coughing, but also while merely
8 exhaling.”⁶ A recent study showed that the virus could survive for up to three hours in the air,
9 four hours on copper, twenty-four hours on cardboard, and two to three days on plastic and
10 stainless steel.⁷ Contagious individuals may exhibit no symptoms, making any screening tools
11 dependent on identifying symptomatic behavior ineffective.⁸ Accordingly, experts urge “social
12 distancing”- isolating oneself from other people as much as possible.⁹ Social distancing is
13 virtually impossible while incarcerated -- Mr. Seka is imprisoned at the High Desert State Prison.
14 Other federally recommended precautions include frequent handwashing, alcohol-based hand
15

16 _____
17 ² <https://www.worldometers.info/coronavirus/country/us/> (last visited June 12, 2020).

18 ³ *Coronavirus COVID-19 Global Cases*, Johns Hopkins Univ. & Med. (updated May 27, 2020),
19 <https://coronavirus.jhu.edu/map.html> (last visited May 29 2020).

20 ⁴ Saralyn Cruickshank, “Experts Discuss Covid-19 and Ways to Prevent Spread of Disease,”
21 John Hopkins Mag. (Mar. 17, 2020), [https://hub.jhu.edu/2020/03/17/coronavirus-virology-](https://hub.jhu.edu/2020/03/17/coronavirus-virology-vaccine-social-distancing-update)
22 [vaccine-social-distancing-update](https://hub.jhu.edu/2020/03/17/coronavirus-virology-vaccine-social-distancing-update)

23 ⁵ Centers for Disease Control, Coronavirus Factsheet (Mar. 3, 2020),
24 <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>.

25 ⁶ Apoorva Mandavilli, *Infected but Feeling Fine: The Unwitting Coronavirus Spreaders*, N.Y.
26 Times (Mar. 31, 2020), [https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-](https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html)
27 [transmission.html](https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html) (last visited Apr. 16, 2020).

28 ⁷ Marilyn Marchione, *Novel Coronavirus Can Live on Some Surfaces for Up to 3 Days, New Tests Show*, Time (Mar. 11, 2020), [https://time.com/5801278/coronavirus-stays-on-surfaces-](https://time.com/5801278/coronavirus-stays-on-surfaces-days-tests/)
days-tests/, (last visited Apr. 3, 2020).

⁸ Chelsea Ritschel, *Coronavirus: Are People Who Are Asymptomatic Still Capable of Spreading COVID-19?*, Independent (Mar. 15, 2020), [https://www.independent.co.uk/life-style/health-and-](https://www.independent.co.uk/life-style/health-and-families/coronavirus-symptoms-asymptomatic-covid-19-spread-virus-a9403311.html)
families/coronavirus-symptoms-asymptomatic-covid-19-spread-virus-a9403311.html (last visited Apr. 16, 2020).

⁹ Centers for Disease Control, Coronavirus Factsheet (Mar. 3, 2020),
<https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf> (last visited Apr. 16, 2020).

1 sanitizers, and frequent cleaning and disinfecting of any surfaces touched by any person.¹⁰ It is
2 virtually impossible to engage in these basic preventative measures in any prison, including the
3 High Desert State Prison.

4 As of June 12, 2020, there were 10,678 confirmed COVID-19 cases and 462 deaths in
5 Clark County, Nevada.¹¹ On March 12, 2020, Governor Sisolak issued a Declaration of
6 Emergency in response to the COVID-19 pandemic.¹² On March 17, 2020, Governor Sisolak
7 announced “COVID-19 Risk Mitigation Initiatives” instructing Nevadans to social distance by 6
8 feet, closing all non-essential services and restricting social gatherings.¹³ People who have
9 control over their bodies are self-isolating to prevent contracting or spreading the deadly virus.

10 The Nevada Department of Corrections has never confronted a global health pandemic
11 like COVID-19. Because of the nature of detention facilities and the number of inmates housed
12 at High Desert State Prison, the prison is unequipped to prevent the transmission of COVID-19
13 among those incarcerated and staff and to isolate and treat those who are infected. During
14 pandemics, detention centers become “ticking time bombs” as “[m]any people crowded together,
15 often suffering from diseases that weaken their immune systems, form a potential breeding
16 ground and reservoir for diseases.”¹⁴

17 On March 26, 2020, an employee of High Desert State Prison tested positive for COVID-
18 19.¹⁵ At this unique moment and in this unique case, Mr. Seka’s release enhances the safety of

19
20 ¹⁰ Centers for Disease Control, Steps to Prevent Illness: https://www.cdc.gov/coronavirus/2019-ncov/about/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fabout%2Fprevention-treatment.html. (last visited Apr. 16, 2020).

21 ¹¹ <https://www.worldometers.info/coronavirus/country/us/> (last visited June 12, 2020).

22 ¹² Declaration of Emergency (March 12, 2020), <https://nvhealthresponse.nv.gov/wp-content/uploads/2020/03/Declaration-of-Emergency-re-COVID.pdf>. (last visited Apr. 16, 2020).

23 ¹³ Governor Sisolak Announces COVID-19 Risk Mitigation Initiatives (Mar. 17, 2020) <https://nvhealthresponse.nv.gov/wp-content/uploads/2020/03/COVID-19-mitigation-press-release.pdf>. (last visited Apr. 16 2020).

24 ¹⁴ See Saint Louis University, “Ticking Time Bomb,” *Prisons Unprepared For Flu Pandemic*, ScienceDaily (2006), <https://www.sciencedaily.com/releases/2006/09/060915012301.htm>.

25 ¹⁵ Employee at prison northwest of Las Vegas tests positive for coronavirus, 3 News Las Vegas (Mar. 26, 2020) <https://news3lv.com/news/local/employee-at-prison-northwest-of-las-vegas-tests-positive-for-coronavirus>. (last visited Apr. 16, 2020). Since then, a second employee has
26 been diagnosed with Covid-19. UCLA School of Law Covid-19 Behind Bars Data
27 Project, <https://docs.google.com/spreadsheets/d/1X6uJkXXS->
28

1 others incarcerated and is necessary to protect Mr. Seka's own health and safety. Mr. Seka must
2 be able to exercise self-protective measures in a sanitary, disinfected space, and maintain social
3 distance from other community members to reduce his risk of exposure and help flatten the
4 curve. Mr. Seka is at extreme risk of contracting COVID-19 while incarcerated in a prison
5 facility that already has a confirmed COVID-19 case.

6 **ARGUMENT**

7 **I. Mr. Seka Should be Released During the Pendency of Appeal and Retrial in the**
8 **Interest of Justice and to Protect His Health and Safety.**

9 Mr. Seka was granted a new trial based partially on this Court's determination that the new
10 DNA evidence "renders a different result probable upon retrial." Although Mr. Seka was found
11 guilty in 2001 based upon circumstantial evidence, the State's theory of guilt has become
12 exponentially more unreasonable based upon the DNA evidence. Though the State has filed a
13 notice of appeal, Mr. Seka's case is currently in a pre-trial posture and thus Mr. Seka should be
14 presumed innocent until proven guilty. Thus, Mr. Seka should be released during the pendency
15 of the appeal and retrial because it is in the interest of justice as conviction upon retrial is
16 unlikely and he has been incarcerated for twenty years for a crime he did not commit.
17 Additionally, the United States and the rest of the world are facing a deadly pandemic and he
18 should be released for his own health and safety and for the health and safety of incarcerated
19 individuals at High Desert State Prison who are otherwise limited in their ability to social
20 distance. Mr. Seka qualifies for release Per NRS 178.488 and NRS 178.484 and should be
21 released during the pendency of appeal and retrial.

22 This Court has the authority to release Mr. Seka during the pendency of the State's appeal
23 and should in the interest of justice and to protect Mr. Seka's health and safety. Specifically,
24 "[p]ending appeal or certiorari to the appellate court of competent jurisdiction pursuant to the

25 _____ (continued)

26 [O6eePLxw2e4JeRtM41uPZ2eRcOA_HkPVtk/edit#gid=1641553906&range=B8:E8](https://www.oregon.gov/OSD/Records/RecordsRequest.aspx?requestid=1641553906&range=B8:E8) (last
27 visited April 20, 2020). Moreover, as of April 19, 2020, there have been 382 confirmed cases of
28 Covid-19 in prison staff and 4878 confirmed cases in the inmate population nationally. *Id.*
Strikingly, as of the same date there have been 14 prison staff deaths and 98 inmate deaths
nationally. *Id.*

1 rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution,
2 bail may be allowed by the district court or any judge thereof, by the Court of Appeals or any
3 judge thereof or by the Supreme Court or a justice thereof.” NRS 178.488 (3). This authority to
4 grant bail extends even to defendants who have been convicted of first-degree murder. *Bergna v.*
5 *State*, 120 Nev. 869, 120 P3d 549 (2004). Further, a person charged with first-degree murder
6 “may be admitted to bail unless the proof is evident or the presumption great by any competent
7 court or magistrate authorized by law to do so in the exercise of discretion, giving due weight to
8 the evidence and to the nature and circumstances of the offense.” NRS 178.484 (4). Here, Mr.
9 Seka’s conviction no longer stands because this Court granted his Motion for a New Trial.
10 Further, it is unclear whether Mr. Seka will be retried on the original charges.¹⁶ Thus, bail is
11 wholly appropriate under these unique circumstances.

12 On March 3, 2020, this Court granted Mr. Seka’s Motion for a New Trial on the basis of
13 newly discovered DNA evidence. None of the DNA evidence tested from the murder victim,
14 crime scene or the location where the victim’s body was dumped implicated Mr. Seka. Instead,
15 Mr. Seka was excluded as a potential contributor and other unknown DNA profiles were
16 identified on these important items of evidence. The Court specifically noted “Mr. Seka has
17 established a basis for new trial as the evidence is newly discovered, material to his defense, that

18 ¹⁶ Generally, when the State is presented with new, material DNA evidence in an older
19 conviction, particularly one that was formerly based wholly on circumstantial evidence, the State
20 does not retry. *See generally* National Registry of Exonerations,
21 <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={B8342AE7-6520-4A32-8A06-4B326208BAF8}&FilterField1=DNA&FilterValue1=8%5FDNA> (last visited April
22 22, 2020); The Innocence Project, <https://www.innocenceproject.org/all-cases/> (last visited April
23 22, 2020).. Indeed, in Nevada, the State chose not to retry Cathy Woods after DNA excluded her
24 as the actual perpetrator even though she had confessed to the crime. *See* National Registry of
25 Exonerations Cathy Woods,
26 <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4656> (last visited
27 April 22, 2020); Even when the new, material evidence is not DNA, the case is often not retried.
28 *See* National Registry of Exonerations Kristin Lobato,
<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5254> (last visited
April 22, 2020); Roberto Miranda
<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3477>; Jay Cee
Manning and Jack Ray Broam,
<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3405> and
<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3054>.

1 even with the exercise of reasonable diligence it could not have been discovered or produced for
2 trial, is non-cumulative, renders a different result probable upon retrial, and is not only an
3 attempt to discredit a witness and this evidence is the best evidence that case admits.”¹⁷ This
4 Court already exercised its discretion and gave “due weight to the evidence and to the nature and
5 circumstances of the offense” and already determined “a different result [is] probable upon
6 retrial.” NRS 178.484; *Id.* This alone should convince this Court to grant Mr. Seka bail while the
7 State appeals.

8 When granting release on bail, “the bail must be set at an amount which in the judgment of
9 the magistrate will reasonably ensure the appearance of the defendant and the safety of other
10 persons and the community, having regard to:

- 11 1. The nature and circumstance of the offense charged;
- 12 2. The financial ability of the defendant to give bail;
- 13 3. The character of the defendant; and
- 14 4. The factors listed in NRS 178.4853.

15 “In deciding whether there is good cause to release a person without bail, the court at a minimum
16 shall consider the following factors concerning the person:

- 17 1. The length of residence in the community;
- 18 2. The status and history of employment;
- 19 3. Relationships with the person’s spouse and children, parents or other family
20 members and with close friends;
- 21 4. Reputation, character and mental condition;
- 22 5. Prior criminal record, including, without limitation, any record of appearing or
23 failing to appear after release on bail or without bail;
- 24 6. The identity of responsible members of the community who would vouch for the
25 reliability of the person;
- 26
- 27

28 ¹⁷ Exhibit 1 – a true and correct copy of Order Granting Motion For New Trial.

- 1 7. The nature of the offense with which the person is charged, the apparent probability
- 2 of conviction and the likely sentence, insofar as these factors relate to the risk of not
- 3 appearing;
- 4 8. The nature and seriousness of the danger to the alleged victim, any other person or
- 5 the community that would be posed by the person's release;
- 6 9. The likelihood of more criminal activity by the person after release; and
- 7 10. Any other factors concerning the person's ties to the community or bearing on the
- 8 risk that the person may willfully fail to appear.

9 The review and consideration of the above factors in anticipation of releasing a defendant
10 on bail are generally applied in a very different set of circumstances than those currently
11 surrounding Mr. Seka's case. At present, Mr. Seka does not stand convicted. Instead, he has been
12 granted a new trial on the basis of newly discovered DNA evidence and this Court found that the
13 newly discovered DNA evidence "renders a different result probable."¹⁸ As a result, the factors
14 should be considered under the specific and unique character of Mr. Seka's case.

15 First, Mr. Seka's length of residence in the community and his status and history of
16 employment do not apply because Mr. Seka has been in the custody of the Nevada Department
17 of Corrections for the last twenty years for a crime he has adamantly maintained he did not
18 commit. If released, Mr. Seka will reside at the home of his friend, Amy Thomson.¹⁹ The home
19 is located in Henderson, Nevada. Additionally, the court if it deemed fit could place the added
20 condition of electronic monitoring. Mr. Seka would also immediately seek employment
21 opportunities.

22 Second, Mr. Seka has a strong relationship with his sister, Marianne Harkins and adult
23 daughter, Kylie Seka who both reside on the East coast. His family members will help him
24 reintegrate into society and provide emotional support during his transition. "The family, friends,
25 and loved ones that have been here for him over the years will continue to be by his side when he

26 ¹⁸ Exhibit 1.

27 ¹⁹ Counsel for Mr. Seka has confirmed that he can reside at Ms. Thomson's residence. Counsel
28 also has the home address; however, is not including it in this public record for privacy reasons.
Counsel will provide to both the Court and District Attorney upon request.

1 is back home with us.” *See* Exhibit 2 – Letter from Kylie Seka.

2 If bail is granted, I plan to help Jack reintegrate into society by continuing to offer
3 similar financial and emotional support to the best of my ability. I will do so
4 because Jack has always been intelligent, kind, hopeful and resilient and I believe
he will go on to do great things when he regains his freedom.

5 *See* Exhibit 3 – Letter from Marianne Harkins.

6 Third, Mr. Seka has been a model inmate during his twenty years of
7 incarceration. He has no criminal charges during that time and has only three
8 write-ups, none of which are violent in nature. Additionally, he has no prior
9 history of failing to appear in court. Although Mr. Seka has a criminal history
from the 1980’s and mid 1990’s, when he was in his 20’s, he has not been
10 charged with any criminal conduct in the last twenty years. Mr. Seka is fifty-one
years old and has behaved well both in custody and previously while on
supervised release and probation.

11 Fourth, although the nature of the alleged offense is serious, the newly discovered
12 evidence renders the probability of conviction unlikely. Post-conviction DNA testing excluded
13 Mr. Seka from evidence collected from the murder victim, crime scene and dump site and
14 produced new DNA evidence including profiles of unknown individuals on the evidence
15 collected. The new DNA evidence would likely change the outcome upon retrial, if indeed the
16 State makes the decision to retry Mr. Seka under the circumstances, and his further incarceration
17 through the pendency of appeal and retrial is an unnecessary burden to his health and liberty, his
18 family, and the Nevada Department of Corrections in the midst of a global pandemic. Releasing
19 Mr. Seka on bail will not impact his appearance at future hearings or trial. Mr. Seka is deeply
20 motivated to clear his name through this appeal and retrial and will appear at all required hearing
21 dates.

22 Finally, there is no danger to anyone in the community by Mr. Seka’s release. Mr. Seka
23 has maintained his innocence in this case for over twenty years, but even if that were not the
24 case, with the passage of twenty years there is no threat to anyone involved in this case. Mr. Seka
25 has not engaged in any criminal activity and has been a model inmate during his incarceration,
26 Mr. Seka merely wishes to await the pendency of this appeal and his retrial in a safe location to
27 avoid contracting COVID-19 and to limit any more time served for a crime he did not commit.
28

1 A. *The Conditions in the High Desert State Prison in the Midst of an Unprecedented*
2 *Pandemic Violates Mr. Seka's Due Process Rights.*

3 The Due Process Clause imposes obligations on the government to meet the basic needs of
4 those incarcerated, who rely on the government for food, clothing, and necessary medical care. A
5 pretrial detainee has a Fourteenth Amendment due process right to adequate medical care.²⁰
6 That right is violated when officials are deliberate indifferent to a detainee's medical care.²¹ The
7 High Desert State Prison is acting in deliberate indifference to the known risk of COVID-19
8 exposure by continuing to house inmates, including those who have an elevated risk of death
9 should they contract COVID-19, in shared cells. *See Helling v. McKinney*, 509 U.S. 25; *Estelle v.*
10 *Gambel*, 429 U.S. 97; *DeGuido v. Pung*, 920 F.2d 525. While under normal circumstances it may
11 be acceptable to house two inmates to a cell, during a COVID-19 epidemic double bunking is
12 tantamount to unconstitutional overcrowding. With High Desert State Prison having over 4,100
13 beds and likely a nearly equal number of inmates, the prison is overpopulated for the purposes of
14 this state and federal emergency. By housing two inmates to a small cell, the prison is exposing
15 inmates to an increased risk of exposure to COVID-19 and potential hospitalization, intubation,
16 sepsis, septic shock, organ failure, permanent loss of lung function, and death.²² It is established
17 that the likelihood of infection increases "with sustained contact during face-to-face
18 conversation, for example, or by sharing the same air space for a prolonged time."²³ Continuing
19 to house inmates two to a cell exposes them to a serious and substantial "risk of serious damage

20 _____
21 ²⁰ *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018), cert. denied sub nom. Cty.
of Orange, Cal. v. Gordon, 139 S. Ct. 794, 202 L. Ed. 2d 571 (2019).

22 ²¹ *Id.*

23 ²² *Clinical Management of Severe Acute Respiratory Infection (SARI) When COVID-19 Disease*
is Suspected, World Health Organization (March 13, 2020),
24 [https://apps.who.int/iris/bitstream/handle/10665/331446/WHO-2019-nCoV-clinical-2020.4-](https://apps.who.int/iris/bitstream/handle/10665/331446/WHO-2019-nCoV-clinical-2020.4-eng.pdf?sequence=1&isAllowed=y)
[eng.pdf?sequence=1&isAllowed=y](https://apps.who.int/iris/bitstream/handle/10665/331446/WHO-2019-nCoV-clinical-2020.4-eng.pdf?sequence=1&isAllowed=y) (this source was published as interim guidance). Bill
25 Bostock, *Some People Who Recover From the Coronavirus Might Be Left with '20 to 30%' Less*
Lung Function, and Gasping for Breath When They Walk Quickly, Hong Kong Doctors Said,
26 *Business Insider* (March 13, 2020), [https://www.businessinsider.com/coronavirus-recovery-](https://www.businessinsider.com/coronavirus-recovery-damage-lung-function-gasping-air-hong-kong-doctors-2020-3)
[damage-lung-function-gasping-air-hong-kong-doctors-2020-3](https://www.businessinsider.com/coronavirus-recovery-damage-lung-function-gasping-air-hong-kong-doctors-2020-3) (last visited Apr. 16, 2020).

27 ²³ Apoorva Mandavilli, *Infected but Feeling Fine: The Unwitting Coronavirus Spreaders*, N.Y.
28 *Times* (Mar. 31, 2020), [https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-](https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html)
[transmission.html](https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html) (last visited Apr. 16, 2020).

1 to his future health.” *Helling*, 509 U.S. 25 at 35.²⁴

2 Continuing to incarcerate Mr. Seka if alternatives exist to protect the community and prevent
3 flight while placing Mr. Seka in mortal danger of contracting and spreading an infectious disease
4 constitute deliberate indifference to Mr. Seka’s health and safety. Mr. Seka’s incarceration, under
5 these new circumstances, constitutes an independent due process violation that the Court must
6 remedy.

7 For all the foregoing reasons Mr. Seka respectfully requests this Court grant his Motion
8 and release him with the condition of electronic monitoring pending appeal and retrial. If the
9 State shows by clear and convincing evidence as is mandated by *Valdez-Jimenez v. Eighth Jud.*
10 *Dist. Ct*²⁵ that the defendant should be detained, then a reasonable bail should be set.

11 Dated this 15th day of June, 2020.

12 Respectfully submitted,

13 Clark Hill PLC

14 

15 Paola M. Armeni
16 Nevada Bar No. 8357
17 3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169

18 Jennifer Springer
19 Rocky Mountain Innocence Center
20 Nevada Bar No. 13767
21 358 South 700 East, B235
Salt Lake City, Utah 84102
Attorneys for John Joseph Seka

22 _____
23 ²⁴ In response to the Covid-19 pandemic, governors, district attorneys, sheriffs, parole boards and
24 courts have ordered the release of individuals incarcerated in prisons and jails all around the
country. UCLA School of Law Covid-19 Behind Bars Data Project,
25 [https://docs.google.com/spreadsheets/d/1X6uJkXXS-](https://docs.google.com/spreadsheets/d/1X6uJkXXS-O6eePLxw2e4JeRtM41uPZ2eRcOA_HkPVTk/edit#gid=1641553906&range=B12:E12)
[O6eePLxw2e4JeRtM41uPZ2eRcOA_HkPVTk/edit#gid=1641553906&range=B12:E12](https://docs.google.com/spreadsheets/d/1X6uJkXXS-O6eePLxw2e4JeRtM41uPZ2eRcOA_HkPVTk/edit#gid=1641553906&range=B12:E12);
26 [https://docs.google.com/spreadsheets/d/1X6uJkXXS-](https://docs.google.com/spreadsheets/d/1X6uJkXXS-O6eePLxw2e4JeRtM41uPZ2eRcOA_HkPVTk/edit#gid=1641553906&range=B16:E16)
[O6eePLxw2e4JeRtM41uPZ2eRcOA_HkPVTk/edit#gid=1641553906&range=B16:E16](https://docs.google.com/spreadsheets/d/1X6uJkXXS-O6eePLxw2e4JeRtM41uPZ2eRcOA_HkPVTk/edit#gid=1641553906&range=B16:E16) (last
27 visited April 20, 2020). As of April 19, 2020, approximately 23,308 individuals have been
released from jails and 7,407 have been released from prisons in the United States. *Id.*

28 ²⁵ 136 Nev. Adv. Op. 20 (April 9, 2020).

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CERTIFICATE OF SERVICE

The undersigned, an employee of Clark Hill PLLC hereby certifies that on the 15th day of June, 2020, I served a copy of **MOTION FOR RELEASE PENDING APPEAL AND RETRIAL PURSUANT TO NRS 178.488 and 178.484**, electronic means addressed to:

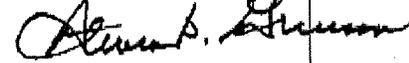
Clark County District Attorney
Alexander Chen
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101
Email: Alexander.Chen@clarkcountynyda.com



An employee of CLARK HILL PLLC

EXHIBIT 1

EXHIBIT 1



1 OGM
2 CLARK HILL
3 PAOLA M. ARMENI
4 Nevada Bar No. 8357
5 E-mail: parmeni@clarkhill.com
6 3800 Howard Hughes Parkway, Suite 500
7 Las Vegas, Nevada 89169
8 Tel: (702) 862-8300
9 Fax: (702) 862-8400

6 ROCKY MOUNTAIN INNOCENCE CENTER
7 JENNIFER SPRINGER
8 Nevada Bar No. 13767
9 E-mail: jspringer@rminnocence.org
358 South 700 East, B235
Salt Lake City, Utah 84102
Tel: (801) 355-1888

10 *Attorneys for Petitioner John Joseph Seka*

11 EIGHTH JUDICIAL DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 JOHN JOSEPH SEKA,
14 Petitioner,

15 vs.

16 STATE OF NEVADA,
17 Respondent,

CASE NO. 99C159915
DEPT. XXV

18
19 **DEFENDANT JOHN SEKA'S ORDER GRANTING MOTION FOR A NEW TRIAL**

20 John Seka's Motion for New Trial having come on regularly for hearing on the 11th day of
21 March 2020, in Department XXV, the Honorable Judge Kathleen Delaney presiding, the
22 Defendant, John Seka being represented by Paola M. Armeni, Esq., of the law firm of Clark Hill
23 PLC and Jennifer Springer, Esq., of the Rocky Mountain Innocence Center, the Plaintiff, State of
24 Nevada being represented by Alexander G. Chen, Chief Deputy District Attorney, and Skyler
25 Sullivan, Deputized Law Clerk, the issues being fully argued by counsel, the Court makes the
26 following findings:
27

28 1. That the evidence of the finger nail clippings of the named victim Eric Hamilton, cigarette

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butts, Skoal container and beer bottle that were located at the scene where Mr. Hamilton was located, as well as the baseball hat that was found at the purported crime scene was subjected to DNA testing after the Court granted in part Petitioner's Post Conviction Petition Requesting a Genetic Marker Analysis of Evidence Within the Possession, or Custody of the State of Nevada.

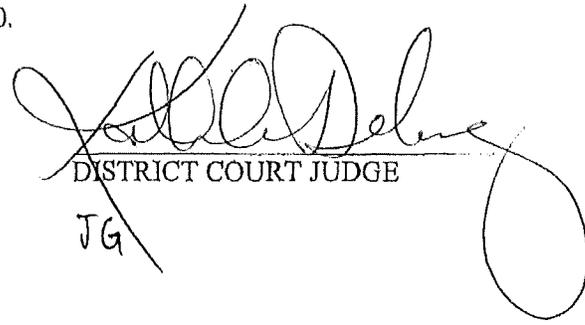
2. That DNA profiles to unknown individuals was located on five out of the 6 items that were tested. Additionally, five out of six of the items also excluded Mr. Seka as a DNA match.
3. The multiple unknown DNA profiles are favorable evidence to Mr. Seka.
4. Since there is favorable evidence, the two-year statute of limitations in NRS 176.515(3) is inapplicable, therefore, there is no statute of limitations and Mr. Seka's Motion for New Trial is timely.
5. Mr. Seka has established a basis for new trial as the evidence is newly discovered, material to his defense, that even with the exercise of reasonable diligence it could not have been discovered or produced for trial, is non-cumulative, renders a different result probable upon retrial, and is not only an attempt to discredit a witness and this evidence is the best evidence this case admits.

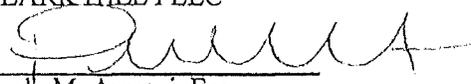
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1 The Court being fully advised in the premises and good cause appearing therefor,
2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant's Motion
3 for New Trial is hereby Granted.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a Status Check for
5 setting a new trial is set for April 15, 2020 at 9:00 a.m.

6 DATED this 24th day of March 2020.


DISTRICT COURT JUDGE
JG

9 Submitted By:
10 CLARK HILL PLLC
11 
12 Paola M. Armeni, Esq.
13 Nevada Bar No. 8357
14 3800 Howard Hughes Pkwy., #500
Las Vegas, Nevada 89169

15 Jennifer Springer
16 Rocky Mountain Innocence Center
17 Nevada Bar No. 13767
358 South 700 East, B235
Salt Lake City, UT 84102
Attorneys for John Joseph Seka

18
19 Approved as to form and content:
20 CLARK COUNTY DISTRICT ATTORNEY - CRIMINAL DIVISION

21 
22 _____
23 Alexander G. Chen
24 Chief Deputy District Attorney
25 Skyler Sullivan
26 Deputized District Attorney
27 200 Lewis Avenue
28 Las Vegas, Nevada 89101
Attorneys for Plaintiff, The State of Nevada

EXHIBIT 2

EXHIBIT 2

Dear Judge Delaney,

My name is Kylie Seka and I am the daughter of John Seka.

Through almost the entirety of the 22 years of my life, I have maintained contact with my father through thousands of timed phone calls, hand-written letters, birthday and holiday cards, and photographs. For me, those things are how I have created a strong and loving relationship with my father. I have kept every letter, every hand-made card, and every hand-crafted gift I have ever received from him and I cherish them like some people cherish memories. I have lived with my father being in prison, across the country, and out of physical reach for the last 20+ years, but our relationship would trick anyone into thinking that our lives were normal. Despite growing up in a unique situation, this has not hindered the love and admiration I have for my father.

The possibility of him being released is what I have waited my entire life for; something that I have spent my entire life wishing and preparing for. Being released after 20+ years of incarceration is no easy feat, but one that my father will not be going through alone. The family, friends, and loved ones that have been here for him over the years will continue to be by his side when he is back home with us. My father and I have been one another's support system throughout his incarceration and I know that our relationship will only grow stronger when it is no longer confined. There has never been a question as to whether or not I could help my dad begin his life again, it has always been a question of when we would be given the chance to make it happen.

Sincerely,

Kylie Seka

A handwritten signature in cursive script that reads "Kylie Seka". The signature is written in black ink and is positioned below the typed name.

RA 0042

EXHIBIT 3

EXHIBIT 3

Marianne Harkins

[REDACTED]
mghark2@yahoo.com

June 5, 2020

Dear Judge Delaney,

My name is Marianne Harkins and I am writing in support of my brother, John (Jack) Seka. I have been in touch with Jack throughout his life, including his time in the Nevada prison system. We have talked very often during his 22 years of incarceration and I was consistently available whenever he needed me for emotional support. I also supported him financially during this time. In addition to sending cash when I could, I ordered quarterly food packages because I was concerned about his weight, provided clothing and eyeglasses items to try to make him more comfortable, and purchased phone time so that he could stay in contact with his daughter throughout her childhood.

I did these things because I believe in Jack's innocence. If bail is granted, I plan to help Jack reintegrate into society by continuing to offer similar financial and emotional support to the best of my ability. I will do so because Jack has always been intelligent, kind, hopeful and resilient and I believe he will go on to do great things when he regains his freedom.

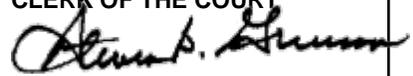
Thank you for your time and consideration.

Sincerely,

Marianne Harkins

Marianne Harkins
Sister of John (Jack) Seka

RA 0044



1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 J. TIMOTHY FATTIG
6 Chief Deputy District Attorney
7 Nevada Bar #006639
8 ALEXANDER G. CHEN
9 Chief Deputy District Attorney
10 Nevada Bar #010539
11 200 Lewis Avenue
12 Las Vegas, Nevada 89155-2212
13 (702) 671-2500
14 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 JOHN JOSEPH SEKA,
14 #1525324

15 Defendant.

CASE NO: 99C159915

DEPT NO: XXV

16 **STATE'S RESPONSE TO DEFENDANT'S MOTION FOR**
17 **AN OWN RECOGNIZANCE RELEASE AND/OR RELEASE**
18 **ON ELECTRONIC SUPERVISION PENDING APPEAL**

19 DATE OF HEARING: JUNE 22, 2020
20 TIME OF HEARING: 3:30 PM

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
22 District Attorney, through J. TIMOTHY FATTIG, Chief Deputy District Attorney, and hereby
23 submits the attached Points and Authorities in Response to Defendant's Motion for an Own
24 Recognizance Release.

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 “Defendant”) was charged by
4 way of Information with: Counts 1 & 2 – MURDER WITH USE OF A DEADLY WEAPON
5 (Felony – NRS 200.010, 200.030, 193.165); and Counts 3 & 4 – ROBBERY WITH USE OF
6 A DEADLY WEAPON (Felony – NRS 200.380, 193.165).

7 On July 26, 1999, the State filed Notice of Intent to Seek the Death Penalty.

8 On September 22, 1999, Defendant filed a Petition for Writ of Habeas Corpus. The
9 State filed its Return on November 8, 1999. On November 22, 1999, the Court denied
10 Defendant’s Petition. The Court filed its Order on November 29, 1999.

11 Jury trial commenced on February 12, 2001. On March 1, 2001, the jury returned a
12 verdict of guilty of First Degree Murder With Use of a Deadly Weapon as to Count 1, guilty
13 of Second Degree Murder With Use of a Deadly Weapon as to Count 2, and guilty of Robbery
14 as to Counts 3 and 4.

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

23 On May 15, 2001, Defendant filed a Notice of Appeal. On May 16, 2001, the Court
24 filed an Order appointing counsel. On May 24, 2001, Defendant, through counsel, filed an
25 Amended Notice of Appeal. On May 9, 2003, the Nevada Supreme Court filed an Order
26 affirming Defendant’s conviction and remittitur issued.

27 On February 13, 2004, Defendant filed a Petition for Writ of Habeas Corpus. The State
28 filed its Response on April 6, 2004. On November 5, 2004, the Court denied Defendant’s

1 Petition. The Court filed its Findings of Fact, Conclusions of Law and Order on January 31,
2 2005.

3 On February 9, 2005, Defendant filed a Notice of Appeal. On July 18, 2005, the Nevada
4 Supreme Court issued an Order affirming the Court's denial of Defendant's Petition and
5 remittitur issued.

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

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

15 On November 19, 2019, Defendant filed the instant Motion for a New Trial. The State
16 responds as follows:

17 **STATEMENT OF THE FACTS**

18 The instant case involves the murders of two men, Peter Limanni and Eric Hamilton.
19 On November 16, 1998, Jeffrey Lowery was driving a truck on Las Vegas Boulevard South
20 where he saw a body lying on the left-hand side of the road. Recorder's Transcript of Hearing
21 ("RT"), February 20, 2001, Vol. II p. 25-26. Lowery testified that he reported the body to the
22 police and that he did not disturb anything at the scene while he waited for the police to arrive.
23 Id. at 26. Homicide detectives James Buczek and Tom Thowsen, employed with Las Vegas
24 Metropolitan Police Department (LVMPD), responded to the area of Las Vegas Boulevard
25 South where the body was found. RT, February 14, 2001, Vol. II p. 13. Upon arrival, Detective
26 Buczek found a body lying west of Las Vegas Boulevard South covered with a variety of
27 pieces of lumber including cedarwood. Id. at 14. The body was a black male and was lying
28 face down in the middle of a set of tire tracks leading to the road. Id. at 16-17. Detective

1 Buczek testified that a piece of paper with the name "Jack" and a telephone number was found
2 in the body's front pants pocket. Id. at 17. Randall McPhail, a crime scene analyst with
3 LVMPD, testified that he recovered a green piece of paper with the work "Jack" and a phone
4 number on it from Hamilton's body. RT, February 20, 2001, Vol. II p. 28-29, 31. The telephone
5 number was checked by Detective Thowsen and came back to Cinergi, a business located at
6 1933 Western Ave. RT, February 14, 2001, Vol. II p. 18. Vincent Roberts, a crime scene
7 analyst with LVMPD, testified that he made a cast of the tire impressions found at the scene
8 on Las Vegas Blvd. on November 16, 1998. RT, February 20, 2001, Vol. I p. 39-40, 42.
9 Roberts also impounded pieces of lumber that were found on top of the body of Hamilton. Id.
10 at 47.

11 Dr. Giles Sheldon Green, a coroner with the Clark County Medical Examiner
12 Department, testified that he performed an autopsy on the body found on Las Vegas Boulevard
13 South which was later identified as Hamilton. RT, February 14, 2001, Vol. I p. 17, 21.
14 According to Dr. Green, Hamilton's body had three gunshot wounds: one in the back that
15 exited the chest, one in the left hip, and one that entered in the back of the leg and exited the
16 right thigh. Id. at 24-25. Further, Dr. Green testified that Hamilton's body had a laceration on
17 the right wrist which could be consistent with someone tearing a bracelet from the wrist. Id. at
18 25. Dr. Green testified that Hamilton was killed within twenty-four hours of his body being
19 discovered the morning of November 16, 1998 and that the cause of death was three gunshot
20 wounds and the manner of death was homicide. Id. at 28.

21 On November 17, 1998, Rick Ferguson, an employee at 1937 Western Ave., called the
22 police to report broken glass with blood on it several buildings down from his work. Id. at 38-
23 39. Officer Robert Kroll and Officer Robert Nagues, LVMPD, responded to the call regarding
24 broken glass at 1929 Western. RT, February 20, 2001, Vol. I p. 57, 81. Upon arriving, Officer
25 Kroll saw broken plate glass near the entrance of the property with apparent blood on it. Id. at
26 58. Officer Kroll also observed blood inside the business on the carpet, a dark blue jacket and
27 a baseball cap. Id. at 58. Expended bullets were also found on the floor inside the business. Id.
28 at 59.

1 While the officers were investigating the scene, Officer Kroll testified that Defendant
2 drove up to the business in a brown Toyota truck. Id. at 60-61. When Officer Kroll asked
3 Defendant if he knew where Limanni, the owner of the business was, Defendant told him that
4 Limanni was in Reno/Lake Tahoe with his girlfriend. Id. at 62. Officer Kroll testified that
5 Defendant gave his consent for them to search 1933 Western Ave. Id. at 64. Inside 1933
6 Western Ave, Officer Kroll observed a humidor under construction and a lot of wood laying
7 around. Id. In addition, Officer Kroll testified that he saw a bullet standing up on the desk. Id.
8 at 64-65. Additionally, Michael Cerda, the property manager who was also at the scene,
9 testified that he saw a bullet on top of a table inside 1933 Western. RT, February 13, 2001,
10 Vol. II p. 37, 47-48.

11 Officer Nogues testified that he investigated behind the businesses on Western. RT,
12 February 20, 2001, Vol. I p. 83. Officer Nogues observed a dumpster in an alcove in the rear
13 of the businesses. Id. When he opened the dumpster, Officer Nogues saw a few papers at the
14 bottom of the dumpster, but he could not see the bottom of the dumpster and did not observe any
15 items to be burned in any way. Id. at 83-84. The owner of the trophy business just down from
16 1929 and 1933 Western Ave. came out of his store and told Officer Nogues that the dumpster
17 had been emptied that morning or the prior night so nothing would be in it. Id. at 84.

18 David Ruffino, a crime scene analyst with LVMPD, was assigned to process the scene
19 at 1929 Western Ave. on November 17, 1998. RT, February 14, 2001, Vol. II p. 37, 41.
20 According to CSA Ruffino, when he arrived, he was told that he was investigating the scene
21 for malicious destruction of private property. Id. at 42. As Ruffino observed the scene he saw
22 glass with blood all over it, blood inside the business and bullets on the floor. Id. at 42-43.
23 Ruffino also found a dark jacket with apparent blood and bullet holes on it. Id. at 43. After
24 finding this evidence, Ruffino contacted the homicide unit because he thought there may be a
25 connection with the body found on Las Vegas Boulevard South based on the phone number
26 found on the body. Id. at 43-44. After Crime Scene Analyst Ruffino arrived and began
27 processing 1929 Western, Officers Kroll and Officer Nogues left the scene. RT, February 20,
28 2001, Vol. I p. 66, 86.

1 After Ruffino's phone call, Detective Buczek responded to the investigation at 1929
2 Western Ave approximately thirty minutes later. RT, February 14, 2001, Vol. II p. 19.
3 Detective Buczek testified that there were three bullets and three fragments of bullets inside
4 the business. Id. In addition, a dark blue jacket with bullet holes was found. Id. The bullet
5 holes in the jacket were later compared with the bullet holes in Hamilton's body and found to
6 be consistent. Id.

7 Detective Buczek also searched 1933 Western after Defendant signed a consent to
8 search card. Id. at 20-21. Inside, a humidor made with cedarwood was under construction. Id.
9 at 21. A bullet hole was found in the couch and the bullet was recovered from the wall behind
10 the couch. Id. at 22. Additionally, a .32 bullet was recovered from the toilet. Id. Detective
11 Buczek found some .357 ammunition and a couple .32 cartridges in the false ceiling. Id. A
12 wallet containing Limanni's driver's license, social security card, birth certificate and a couple
13 credit cards was also found in the false ceiling. Id. at 22-23.

14 Officer Nogues and Officer Kroll were called back to the scene to speak with homicide
15 detectives. RT, February 20, 2001, Vol. I p. 67, 87. When he returned to the scene, Officer
16 Kroll went into 1933 Western Ave. and testified that the bullet was missing from the table
17 where he had seen it. Id. at 67. Officer Kroll questioned the owner of the building, Michael
18 Cerda and he denied moving the bullet. Id. at 68. Officer Nogues testified that upon returning
19 to the scene, he went with homicide detectives to check the dumpster behind the businesses
20 again. Id. at 87-88. When he looked in the dumpster, Officer Nogues saw papers, burnt
21 clothing and shoes which filled the bottom of the dumpster. Id. at 88-89. Officer Nogues
22 testified that none of those things had been in the dumpster previously. Id. at 90.

23 Randy McPhail, a crime scene analyst with LVMPD, also responded to the crime scene
24 at 1933 Western on November 17, 1998. RT, February 20, 2001, Vol. II p. 34. McPhail found
25 four .357 cartridge cases that had been fired inside 1933 (to include one hidden in the false
26 ceiling) and a .32 bullet that traveled through the couch and lodged in the drywall behind it,
27 and a .32 caliber cartridge (unfired) lying at the bottom of a toilet bowl in the lone bathroom.
28 Id. at 39-40. McPhail testified that in the dumpster there were various items that were burned

1 including a green shirt that had the name Limanni on it. Id. at 41. In addition, there were some
2 playing cards from casinos, phone cards and other personal belongings of Limanni in the
3 dumpster. Id. A business card holder in the false ceiling containing a birth certificate with
4 Limanni's name on it was also found. Id. at 40-42. There were numerous blood stains or blood
5 transfers in the business. Id. at 42. McPhail also recovered some beer bottles located in the
6 trash can of the office at 1933 Western Ave. Id. at 65.

7 Gary Reed, crime scene analyst with LVMPD, did a vehicle examination on the brown
8 Toyota truck driven by Defendant. RT, February 16, 2001, Vol. II p. 26-27. CSA Reed testified
9 that the exterior of the truck appeared to be clean, but the tires and undercarriage appeared as
10 though the truck had been driven in dirt and rocks. Id. at 29. Ferguson testified that he
11 remembered noticing that the brown truck was very clean. RT, February 14, 2001, Vol. I p.
12 41-42. In addition, there were stains in the bed liner which caught Reed's attention. RT,
13 February 16, 2001, Vol. II p. 29-30. These stains were tested with phenylthaline and reflected
14 the presence of blood. Id. at 30-31. In addition, Reed conducted a luminol test which glows in
15 the dark when it reacts positively with blood. Id. at 31. The stains in the bed liner reacted
16 positively with the luminol. Id. at 33.

17 Tom Thowsen, homicide detective with LVMPD, conducted an interview of Defendant
18 on November 17, 1998 after responding to the scene at 1933 Western. RT, February 21, 2001,
19 Vol. II p. 34-36. Detective Thowsen mirandized Defendant and then took a taped interview of
20 Defendant. Id. at 37-38. During the interview, Defendant told Detective Thowsen that Limanni
21 had just disappeared several weeks before. Id. at 38. Following the interview, Detective
22 Thowsen told Defendant that the information he had given them was inconsistent and that he
23 was a suspect for the murder of Hamilton. Id. at 42-43. At that point Defendant smiled and
24 said, "You're really starting to scare me now. I think you'd better arrest me or take me home.
25 Do you have enough to arrest me right now?" Id. at 43. Detective Thowsen told Defendant
26 that he would wait until all of the forensic evidence had come back before arresting Defendant.
27 Id. Prior to releasing Defendant, Detective Thowsen photographed injuries on Defendant's
28 hand and took a DNA sample. Id. at 43-44.

1 After Detective Thowsen interviewed him, Defendant asked to leave the scene to go to
2 a dinner appointment. Id. at 44. Defendant was told the brown Toyota was being impounded.
3 Id. At that point Defendant requested that he be allowed to take the white Dodge van with the
4 Cinergi decals. Id. at 44-45. Detective Thowsen handed Defendant the keys to the all white
5 Dodge van and commented that he wanted to take the van with the decals on it. Id. at 45-46.
6 Detective Thowsen looked inside the van with the Cinergi decals and saw blood droplets and
7 blood stains. Id. at 46. A presumptive test was conducted which came back positive for blood.
8 Id. at 46-47. Defendant ended up taking the plain white van and told Detective Thowsen that
9 he would return after his dinner appointment to lock up the business once the police were
10 done. Id. at 47. Defendant was not seen again until May 1999 when he was arrested in
11 Pennsylvania. Id. at 47-48.

12 In November of 1998, Defendant met Jennifer Harrison, Limanni's girlfriend, in the
13 parking lot of 24 Hour Fitness and told her that a black guy had been killed, that police were
14 blaming him, and that he had to get out of there. RT, February 14, 2001, Vol. I p. 51, 70-71.
15 Defendant also told Harrison that police were going to call her in because they had pictures of
16 her from Lake Tahoe. Id. at 70. Defendant asked Harrison if he could borrow her car because
17 police were following him because he was called in to be prosecuted for murder. Id. at 72-73.
18 Harrison refused to let Defendant take her vehicle. Several weeks later, Defendant called
19 Harrison from Arizona and told her that he was going "underground". Id. at 71.

20 On December 23, 1998, Peter Borden was driving on Nipton Road on his way to work
21 at Moycor Mine when he saw a dog chewing on a partially decomposed body on the side of
22 the road. RT, February 14, 2001, Vol. II p. 4-6. Borden called 911 at a BLM trailer down the
23 road. Id. at 6-7. Borden testified that he did not disturb anything at the scene where the body
24 was found. Id. at 7. According to Borden, Nipton Road is about 5 miles from the Nevada state
25 line and it takes roughly 45 minutes to get there from 1-15 in Las Vegas. Id. at 7-8.

26 Kenneth Wolf, a detective with the San Bernardino Sheriff's Department, responded to
27 the location of the body on December 23, 1998. RT, February 16, 2001, Vol. II p. 106-07.
28 According to Detective Wolf, the body was partially buried from the legs down. Id. at 111.

1 There appeared to be tire tracks on one side of the berm where the body was found which
2 drove away from the body in a westerly direction. Id. Further, the body was only wearing
3 boxers. Id. at 112. Jeff Smink, a forensic specialist with the Sheriff's Department of San
4 Bernardino, testified that he obtained a fingerprint from the body by injecting a syringe full of
5 water into the dehydrated right thumb of the body and using ink to take the fingerprint. RT,
6 February 20, 2001, Vol. II p. 18-19, 21-22. The body found was later identified as Limanni.
7 RT, February 16, 2001, Vol. II p. 114.

8 Steven Trenkle, a coroner for San Bernardino County, performed an autopsy on the
9 body of Limanni. RT, February 16, 2001, Vol. II p. 47, 49-50. The body had two gunshot
10 wounds in the left lower back, four gunshot wounds to the head and a gunshot wound to the
11 left shoulder. Id. at 51. In addition, the body had a tattoo of a vulture on the right upper arm,
12 a tattoo of an eagle on the left arm and a tattoo of Italy on the right leg and a tattoo of a blue
13 flower on the left leg. Id. at 51-52. Harrison testified that Limanni had a tattoo of Italy on his
14 calf and a tattoo of an eagle on his arm. RT, February 14, 2001, Vol. I p. 72. Dr. Trenkle
15 testified that the amount of decomposition was consistent with the body being dead for weeks.
16 RT, February 16, 2001, Vol. II p. 50-51, 54. Dr. Trenkle testified that the cause of death was
17 multiple gunshot wounds to the head and the manner of death was homicide. Id. at 55. Dr.
18 Trenkle testified that one of the bullets was imbedded in the skull of the body which would be
19 consistent with a defective gun or ammunition. Id. at 56-57. McPhail recovered bullet
20 fragments from the body of Limanni during the autopsy. RT, February 20, 2001, Vol. II p. 63.

21 Fred Boyd, a fingerprint analyst employed by LVMPD, testified that he used known
22 prints from Hamilton, Limanni, and Defendant to compare with the prints found at the crime
23 scenes. RT, February 21, 2001, Vol. I p. 67, 71-72. Boyd testified that he found latent prints
24 on the lumber collected where Hamilton's body was found and that the numerous pieces of
25 wood contained the prints of Defendant and one contained the prints of Limanni. Id. at 75-78.
26 The latent prints recovered from the Toyota pickup all belonged to Defendant. Id. at 81-84.
27 Further, several Miller Lite beer bottles recovered from the same trash can in 1933 Western
28 contained the prints of both Defendant and Hamilton. Id. at 84-85. Boyd also testified that the

1 cast made of the tire tracks on Las Vegas Boulevard South matched the tread pattern on the
2 tires on the brown Toyota pickup driven by Defendant the day police contacted him on
3 November 17. Id. at 86-91; RT, February 21, 2001, Vol. II p. 7-9.

4 David Welch, a forensic chemist at LVMPD, testified regarding DNA testing on
5 evidence collected from the two bodies and the crime scenes at 1929 and 1933 Western Ave.
6 RT, February 16, 2001, Vol. I p. 19, 36. Welch testified that he used samples from Defendant,
7 Limanni and Hamilton as standards in his testifying. Id. at 40. Welch testified that the blood
8 sample collected from inside the Dodge van was human blood and that Limanni could not be
9 excluded as the source of the blood. Id. at 45. According to Welch, there was only a 1 in 1.8
10 million chance that another person aside from Limanni was the source of the blood found in
11 the swab taken from the Dodge van. Id. at 46. With regard to a glass fragment with blood on
12 it collected from 1929, Welch testified that the sample was human blood and that it matched
13 Hamilton's DNA. Id. at 47. One would have to sample 2.8 million African Americans to find
14 another DNA match with the blood on the glass. Id. Regarding the blood found in the back of
15 the brown Toyota pickup, Welch testified that Defendant and Limanni were excluded as a
16 source. Id. at 50-51. Further, the blood matched the DNA of Hamilton. Id. at 50.

17 Torrey Johnson, employed by LVMPD in the forensic lab as a firearm expert, testified
18 that the .357 magnum fragments that were discovered at 1929 Western where Hamilton was
19 presumably killed as well as Hamilton's body were all fired from the same firearm. RT,
20 February 21, 2001, Vol. I p. 49, 53-54. These fragments were compared with four .357
21 cartridge cases found at 1933 Western avenue and were deemed to be consistent with each
22 other. Id. at 53. In addition, Johnson testified that he analyzed a .32 caliber bullet found in a
23 wall at 1933 Western. Id. at 54. The bullets recovered from Limanni's body were all .32 caliber
24 and had characteristics consistent with being fired from a revolver that had a misaligned
25 cylinder. Id. at 55, 63-64. The .32 caliber bullet recovered from inside the wall at 1933 Western
26 also matched the caliber and the misalignment feature found on the bullets from Limanni's
27 body. Id. at 63-64. According to Detective Thowsen, the .32 caliber weapon was used to kill
28

1 Michele Hamilton, Eric Hamilton's sister, testified that her brother moved to Las Vegas
2 in the beginning of November or end of October 1998. Id. at 61. Ms. Hamilton testified that
3 Eric had about \$3,000.00 when he moved to Las Vegas. Id. at 62. According to Ms. Hamilton,
4 the last time she talked to Eric was the first week of November. Id. Eric told Ms. Hamilton
5 that he was working for a white man who owned a business and that he was building
6 something. Id. at 66-67.

7 ARGUMENT

8 **DEFENDANT IS NOT ENTITLED TO BAIL OR AN OWN RECOGNIZANCE** 9 **RELEASE FOR THE FIRST DEGREE MURDER OF PETER LIMANNI**

10 NRS 178.484(4) states in relevant part:

11 4. A person arrested for murder of the first degree may be admitted to bail
12 **unless the proof is evident or the presumption great** by any competent court
13 or magistrate authorized by law to do so in the exercise of discretion, giving due
14 weight to the evidence and to the nature and circumstance of the offense.
15 (Emphasis added).

16 The Defendant is asking for his own recognizance release in this case despite the fact
17 that he was previously convicted of the First Degree Murder with use of a Deadly Weapon of
18 Peter Limanni and there has been no new evidence discovered relating to that murder. In
19 2001, twelve random citizens were selected to hear the evidence in this case. In a trial that
20 lasted over two weeks, where he was represented by defense attorneys Pete Christiansen Jr.
21 and Kirk Kennedy, the Defendant was convicted beyond a reasonable doubt of shooting Peter
22 Limanni ten times and then burying his body on the side of Nipton Road in California. In
23 motions before that trial, the Defendant attempted to obtain a bail setting and he was denied
24 and held without bail pursuant to the provisions of NRS 178.484(4). With regards to the
25 evidence surrounding who killed Peter Limanni, literally nothing has changed as there has
26 been no additional DNA evidence that has been tested relating to that murder.

27 The Nevada Supreme Court has previously heard two different appeals in this case. The
28 Defendant filed a direct appeal challenging amongst other issues, the sufficiency of the

1 evidence. (See Attached Order of Affirmance #37907 dated April 8, 2003). He also filed a
2 post-conviction writ of habeas corpus challenging the effectiveness of his counsel. Both of
3 these appeals were reviewed by the Supreme Court and denied. In reviewing the sufficiency
4 of the evidence during the trial the Supreme Court noted the relevant facts that were proven
5 by the State. They remain extremely relevant to this Court when considering whether “proof
6 is evident or the presumption great” that the Defendant murdered Peter Limanni:
7

- 8 1) The Supreme Court found that Eric Hamilton had only recently come to Nevada
9 from California in late 1998 and had about \$3000 in cash when he arrived per his
10 relatives and was hired by Limanni to do labor for Cinergi. (See Order of
11 Affirmance #37907 filed 4/08/03 p. 2).
- 12 2) On November 16, 1998, police discovered Hamilton’s body with three gunshot
13 wounds and that it was covered in wood on the side of a road laying near a set of
14 tire tracks. Police subsequently found that the lumber contained fingerprints of both
15 the Defendant and Peter Limanni (Id. p. 2-3).
- 16 3) In Hamilton’s pocket was a piece of paper with the name “Jack” written on it and
17 the Defendant’s cell phone number. (Id.)
- 18 4) The following day, police responded to a call to 1929 Western which was a vacant
19 business next door to Cinergi and discovered broken glass, blood on the floor, three
20 spent bullets and/or fragments, a hat and a jacket with three bullet holes. (Id. p.2-3).
- 21 5) While police were on scene, Defendant arrived driving a brown Toyota truck and
22 then granted consent for officers to look inside 1933 Western where they observed
23 a .357 cartridge sitting upright on a desk which later disappeared after they left the
24 premises. (Id. p. 3).
- 25 6) Later that same day, after the police returned to the business, 1933 Western was
26 searched again and found to contain lumber that seemingly matched the lumber
27 covering the body of Eric Hamilton. (Id.)
28

- 1 7) Police also noted several locations of various droplets of blood inside the business
2 as well as a .32 caliber bullet found inside of a wall and another unfired .32 cartridge
3 laying at the bottom of a toilet in the bathroom of the business. (Id.)
- 4 8) “In the false ceiling, the police also found .357 ammunition, a couple of .32
5 cartridges and a wallet containing a Nevada driver’s license, a social security card,
6 a birth certificate and some credit cards bearing the name Peter Limanni. In the
7 dumpster located out back, which was empty earlier in the day, police located burnt
8 clothing and a checkbook with Limanni’s name on them.” (Id.)
- 9 9) Defendant was Mirandized and agreed to speak to the police about the suspicious
10 circumstances. Defendant told them that Limanni owned Cinergi but that he had
11 not seen him since November 5. (Id. p.3-4).
- 12 10) Defendant also admitted to knowing a Black male adult who had done odd jobs at
13 Cinergi named “Seymour” (that fit the description of Eric Hamilton) and claimed
14 that he had not seen him around the business for a month. (Id. p.4)
- 15 11) Police told Defendant he was a suspect in the murder of Hamilton but that they
16 would not arrest him because they had to wait for the forensic evidence to be tested.
17 Defendant told the police he would return after a dinner appointment he had and
18 then left in the white van that was not found to have blood in the back of it. (Id. p.
19 4).
- 20 12) “That evening Seka spoke with Limanni’s girlfriend, Jennifer Harrison, and told
21 her that some black guy had been killed and he had to get out of town. He wanted
22 to borrow Harrison’s car because he was being followed; she declined and he left.
23 Several weeks later, Seka called Harrison and indicated that he was going
24 underground.” (Id.)
- 25 13) On December 23, 1998, police located Peter Limanni’s body off Nipton Road with
26 a total of ten gunshot wounds and also determined that he had been dead for several
27 weeks. (Id. p.4-5).
- 28

- 1 14) Subsequent forensic testing revealed that blood found at the scene at 1929 Western
2 could not be excluded from Hamilton. (Id. p. 5).
- 3 15) The three bullet holes in the body of Hamilton were consistent with the bullet holes
4 found at the jacket left on the floor of 1929 Western. (Id.)
- 5 16) DNA testing on the blood in the back of the Toyota truck could not exclude
6 Hamilton as the donor. (Id.)
- 7 17) Tire marks left at the scene of where Hamilton’s body was dumped were consistent
8 with the tires found on the brown Toyota truck the Defendant was driving. (Id.)
- 9 18) DNA testing on the blood in the back of the white Cinergi van could not exclude
10 Limanni as the donor. (Id.)
- 11 19) A .32 caliber weapon was used to murder Limanni and the .32 caliber bullets
12 found inside Limanni’s body matched a .32 caliber bullet found in the wall of 1933
13 Western as all were fired from a gun with a mis-aligned chamber. (Id. p. 6).
- 14 20) “A.357 magnum was used to kill Hamilton and a bullet fragment from 1933
15 Western matched the bullet recovered from Hamilton’s body.” (Id.).
- 16

17 The Supreme Court also noted that the two murders were properly tried together noting
18 the similarities between them.

19

20 Both individuals disappeared in November of 1998. Both bodies were transported in
21 Cinergi vehicles and were discovered partially concealed by dirt or wood in shallow
22 graves. An intensive amount of forensic evidence was introduced at trial, including
23 bullets, fingerprint evidence, and DNA evidence indicating that both men were
24 murdered at the business owned by Limanni at 1929 and 1933 Western Avenue. Also,
25 both victims died as a result of gunshot wounds. Lastly, witnesses testified that both
26 victims had large amounts of cash in their possession shortly before they were missing
27 and no such cash was found on their bodies or amongst their personal possessions.
28 (Id. p.10).

26 The Court then flatly rejected the Defendant’s claim of insufficient evidence to convict
27 him of both murders noting that “circumstantial evidence alone may sustain a conviction.”
28

1 (Id. p.13 citing McNair v. State, 108 Nev.53, 61 (1992) and Deveroux v. State, 96 v. 388, 391
2 (1980) and Crawford v. State, 92 Nev.456, 457 (1976).

3 The Defendant's motion rests entirely on the argument that the new DNA evidence in
4 this case will result in an outright acquittal of the Defendant in this case which is why he
5 should be released. The Defendant's motion never addresses the obvious fact that none of the
6 new DNA testing effects any of the pieces of evidence used by both the jury and our Supreme
7 Court to convict the Defendant of the murder of Peter Limanni.

8 Indeed, the evidence at trial revealed that Limanni was last seen by anyone on
9 November 5, 1998. According to the Defendant's own statements to Homicide Detectives as
10 well as Limanni's girlfriend Jennifer Harrison, the Defendant last saw Limanni the morning
11 of November 5, 1998 when he left the Cinergi business with an unknown person. Evidence at
12 the scene where Limanni was found buried in the desert supported the other evidence in the
13 case that Limanni had been killed several weeks before, likely on or about November 5, 1998.
14 We also know from the evidence that Eric Hamilton was killed at least eleven days later on
15 November 16, 1998. As such the new evidence surrounding Hamilton's murder (DNA testing
16 of Hamilton's fingernails, DNA testing of a hat found where Hamilton was murdered at 1929
17 Western, DNA testing of cigarettes, two beer bottles and a Skoal tobacco container found lying
18 in the vicinity of Hamilton's body) has no bearing on the jury's decision to convict the
19 Defendant of Peter Limanni's murder. The new DNA evidence has never been linked to
20 providing an alternative suspect to the murder of Peter Limanni.

21 The jury and our Supreme Court certainly viewed the evidence of the Defendant's cover
22 up or attempted cover up of Limanni's murder as compelling in this case. Defendant told
23 Jennifer Harrison that Limanni left Cinergi with an unknown person and that he also
24 repeatedly attempted to stop Harrison from filing a missing person's report for Limanni by
25 telling her that Limanni was missing because "he wanted to be missing." Sometime prior to
26 November 12,1998, the evidence at trial revealed that the Defendant already knew that Peter
27 Limanni was never coming back to Cinergi. The Defendant wrote a "to do list" that was
28 discovered on November 12 by Takeo Kato and included items such as liquidate the assets at

1 Cinergi and “find a home for Jake.” Jake was an extremely loved dog that Peter Limanni
2 owned and the testimony at trial showed that Limanni would bring Jake with him all the time
3 to various engagements. When Harrison saw Jake was left alone at Cinergi on November 5,
4 she believed that it was highly suspicious and unusual.

5 Defendant knew prior to November 12, 1998 when he wrote the list that Peter Limanni
6 was never coming back. He knew that Limanni was not coming back despite the fact that
7 nearly all of Limanni’s personal belongings (to include his wallet, driver’s license, social
8 security card, clothing, shoes, etc.) were still present at 1933 Western. Indeed, evidence
9 revealed that Limanni kept a wooden crate filled with very personal and important mementos
10 and family photographs and that Harrison knew he would never leave behind the crate so she
11 asked Defendant if Limanni took the wooden crate and Defendant lied to her and told her that
12 he did take the crate with him on November 5. The crate was later found inside Limanni’s
13 room by police at 1933 Western.

14 On November 17, after police arrived at 1929 and 1933 Western, Defendant continued
15 his attempt to cover up evidence related to Limanni’s murder. Patrol officers noted Defendant
16 had a .357 cartridge standing on a desk inside 1933 Western when they first arrived. The
17 cartridge later was moved and hidden in a false ceiling by the Defendant after the patrol
18 officers left the scene and prior to the arrival of Homicide Detectives. Patrol officers also noted
19 that the dumpster behind 1933 Western was empty when they first arrived. After Homicide
20 Detectives called the officers back to the scene, they noted that there were items that were
21 partially burned and placed into that dumpster. A Crime Scene Analyst also noted that several
22 of the items that were burned had the name of Peter Limanni and that various clothing and
23 items belonging to Limanni had been either placed into the dumpster or were laying on the
24 floor of 1933 Western in the pathway that led out to the dumpster. Later that night, after the
25 police had told him he was a suspect in the murder of Hamilton but also told him that they had
26 to wait on forensic testing, the Defendant attempted to drive away in a white van with a Cinergi
27 decal on the side. Detectives looked into the back of the van and noted what appeared to be
28

1 blood in it and so they seized the van and did not allow Defendant to drive away in the van.
2 Later DNA testing revealed that Peter Limanni's blood was in the back of that van.

3 Ballistic evidence found at 1933 Western was also undoubtedly considered powerful
4 evidence of the Defendant's involvement in Limanni's murder. After Defendant had been left
5 alone in 1933 Western and police came back to the scene, they found a .32 caliber cartridge
6 laying at the bottom of the toilet as if it had been unsuccessfully attempted to be flushed. They
7 also noted a gunshot hole in the wall of the business and inside the wall recovered a .32 caliber
8 bullet. Testimony at trial from firearms expert Torrey Johnson revealed that Peter Limanni
9 was murdered with a rather unique .32 firearm by being shot ten times with a gun that had a
10 mis-aligned chamber. The .32 bullet that was recovered from inside the wall at 1933 Western
11 was also fired from a gun with a mis-aligned chamber.

12 Since the Defendant was convicted of second degree murder with use of a deadly
13 weapon with regards to Eric Hamilton, the State does not believe that the provisions of NRS
14 178.484(4) apply to that particular charge. However, the facts of that murder, along with the
15 murder of Peter Limanni certainly are relevant to determining whether or not the Defendant
16 poses a risk of danger to the community if released on his own recognizance. Obviously, the
17 State believes that the Defendant, even at age 51, poses an extreme danger to our community
18 if released with or without conditions and as such, believe he should continue to be held
19 without bail pursuant to NRS 178.484(4).

20 The new DNA evidence that was tested also has obvious limitations in helping to acquit
21 the Defendant in the murder of Eric Hamilton. The new DNA evidence fails to explain how
22 Hamilton's blood got into the bed of the Toyota truck the Defendant was driving on November
23 17, the same truck whose tire tracks matched the tracks at the scene where Hamilton's body
24 was dumped, covered in wood matching wood found at 1933 and with the Defendant's
25 fingerprints on the wood. It also fails to explain the Defendant's claim to the police that
26 Hamilton had not been around Cinergi doing work for about a month, despite the presence of
27 Hamilton's blood in the bed of the truck, Hamilton's blood on the ground of the adjacent
28 vacant business at 1929 Western (when we know Hamilton was killed on or about November

1 16, 1998 from the coroner's testimony) and Hamilton and the Defendant's multiple
2 fingerprints on empty Miller Lite beer bottles (found in the same trash can) at 1933 Western.
3 The new evidence also fails to explain the ballistic evidence tying the Defendant to Hamilton's
4 murder which included four .357 cartridge cases (fired) being found inside 1933 Western that
5 were consistent with bullet fragments recovered from Hamilton's body and the scene at 1929
6 Western. Both the jury and our Supreme Court once again undoubtedly considered all this
7 evidence, albeit circumstantial, as powerful and none of the new DNA testing raised doubts
8 as to these compelling facts.

9
10 **DEFENDANT FLED THE STATE OF NEVADA IN 1998**
11 **AND REMAINS A FLIGHT RISK**

12 Under a Valdez-Jimenez analysis, this Court must also consider whether or not the
13 Defendant poses a flight risk. The Defendant's motion seems to assume that certain steps in
14 this case will happen in the future and uses these suppositions as a basis to argue that he no
15 longer poses a risk to flee this state. The Defendant assumes that 1) the State will be
16 unsuccessful in its appeal of this Court's order granting him a new trial in both murders, 2)
17 that if this case proceeds to trial the evidence is so weak that Defendant will be acquitted and
18 as such it is improper to hold an innocent man pre-trial or 3) the evidence is so weak that the
19 State will voluntarily dismiss and not proceed with a re-trial.

20 The State certainly disagrees with all of these assumptions. The Defendant's
21 suggestion that, if this case proceeds to trial, the State will voluntarily dismiss rather than
22 proceed has absolutely no basis in fact. The State has every intention of taking this Defendant
23 to trial again and convincing another twelve random citizens of our community what the first
24 twelve citizens already found, that the Defendant is responsible for the murders of Peter
25 Limanni on or about November 5, 1998 and of Eric Hamilton on or about November 16, 1998.

26 The State absolutely believes that this Defendant poses a flight risk. The Defendant
27 was previously sentenced in this case to four life in prison sentences, all to run consecutive.
28 For the murder of Peter Limanni along, Defendant was sentenced to two consecutive Life

1 sentences without any chance at parole. Although the Defendant has been granted a new trial,
2 the evidence against him for the murder of Peter Limanni remains incredibly compelling and
3 in fact, unchanged from the time of his trial. The defendant knows this fact and it provides
4 him with every incentive to avoid being present during any possible re-trial.

5 Besides the impending life sentences facing the Defendant, the other reason to believe
6 the Defendant is an obvious high risk of flight is that he has done it before in this case. Once
7 the Defendant realized the police were onto him as a suspect in the murder of Eric Hamilton,
8 the Defendant fled the state. On November 17, 1998 the Defendant told Detective Thowson
9 that he had a dinner engagement but then he was coming back to Cinergi to lock it up after the
10 police finished their processing. The Defendant had all or most of his personal property on
11 scene at 1933 Western because he lived at the business. Despite this, once he learned he was
12 a suspect, the Defendant fled Nevada. The Defendant told Jennifer Harrison that he was a
13 suspect in a murder and that he was hiding from the police. The Defendant asked her if he
14 could borrow her car because he believed he was being followed by the police. Several weeks
15 later in December, 1998, Defendant told Harrison he was hiding in Arizona and going
16 "underground." After the police received results back on the forensics in this case, they issued
17 an arrest warrant in February 1999 for the Defendant for two counts of murder with use of a
18 deadly weapon and two counts of robbery. The Defendant was not apprehended until nearly
19 three months later in May and found across the country in Pennsylvania.

20 **CONCLUSION**

21 For the foregoing reasons, Defendant's Motion must be denied.

22 DATED this 18th day of June, 2020.

23 Respectfully submitted,

24 STEVEN B. WOLFSON
25 Clark County District Attorney
26 Nevada Bar #001565

27 BY /s// J. TIMOTHY FATTIG
28 J. TIMOTHY FATTIG
Chief Deputy District Attorney
Nevada Bar #006639

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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 18th day of June, 2020, by electronic transmission to:

PAOLA ARMENI
parmeni@clarkhill.com

JENNIFER SPRINGER
jspringer@rminnocence.org

BY /s// E. DEL PADRE
E. DEL PADRE
Secretary for the District Attorney’s Office

JTF/ed/GCU

RECEIVED

APR 10 2003

APPELLATE DIVISION

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 37907

FILED

APR 08 2003

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury trial, for first-degree murder with use of a deadly weapon, second-degree murder with use of a deadly weapon, and two counts of robbery. After finding the defendant, John Joseph Seka guilty of the above charges, the jury was unable to reach a decision as to sentence on the first-degree murder charge during the penalty phase of the trial. Therefore the district court requested the establishment of a three-judge panel pursuant to statute. Prior to the convening of the panel, Seka and the State stipulated to a sentence on Count I of life without the possibility of parole for first-degree murder, plus an equal and consecutive sentence for use of a deadly weapon.

Seka was also sentenced as follows: Count II: life with the possibility of parole for second-degree murder plus an equal and consecutive sentence for use of a deadly weapon to run consecutive with Count I; Count III: a maximum of one hundred fifty-six months with a minimum parole eligibility of thirty-five months to run consecutive to Count II; Count IV: a maximum of one hundred fifty-six months with a minimum parole eligibility of thirty-six months to run consecutive to Count III; \$5,325.00 in restitution and 720 days credit for time already served.

C15991587
Tara Ames

FACTUAL BACKGROUND

John Joseph Seka ("Seka"), also known as "Jack", was convicted of the murder and robbery of two individuals, Peter Limanni ("Limanni") and Eric Hamilton ("Hamilton"). Seka was a friend of Limanni and an employee for Limanni's heating and air conditioning business, Cinergi HVAC, Inc., located at 1933 Western Avenue, Las Vegas, Nevada. Seka and Limanni were in the process of setting up a cigar business out of the same location. Seka and Limanni also resided at 1933 Western Avenue.

Hamilton, an African American gentleman, appeared at Cinergi around the latter part of 1998. He had only recently come to Las Vegas from California and had in his possession approximately \$3,000 (three thousand dollars). Limanni hired Hamilton to do some casual labor (clean-up work) for Cinergi.

On November 16, 1998, pursuant to a report, the police discovered a body that was later identified as Hamilton, with three gun shot wounds. The body was covered with wood, lying face down near a set of tire tracks. Hamilton had a piece of paper in his front pocket with the name Jack written on it and a phone number. Police determined the number was to Jack's (Seka's) cell phone for Cinergi.

The following day, police responded to a call for a possible break-in at a vacant business, located at 1929 Western Avenue, the business next door to Cinergi's office. At the scene, officers Nogess and Kroll observed that glass was broken out of the front of the business and blood was visible on the sidewalk, on the glass and inside the business. Inside, the officers found several items, among which were three spent

bullets, a jacket, a hat and a bracelet. The jacket had three bullet marks in it.

While police were investigating the premises of 1929, Seka arrived at 1933 Western in a small brown pickup. Seka granted the police permission to look inside the business at 1933. While there, police saw what appeared to be a .357 cartridge, which subsequently disappeared.

Later that same day, the premises of 1933 Western were searched a second time pursuant to written consent, after it was decided that the bullets, blood and jacket recovered at 1929 could be related to the homicide of Hamilton, whose body was discovered the day before. During the second search at 1933 Western, the police discovered new lumber that was being used to build a walk-in humidior. This wood was similar to the wood found on top of Hamilton. Police later determined that the wood on top of Hamilton bore latent fingerprints matched to Seka and Limanni. The police noted several locations with droplets of apparent blood. Also, police recovered a bullet from a piece of drywall directly behind a couch with a hole and a .32 cartridge from the inside of the toilet. In the false ceiling, the police also found .357 ammunition, a couple of .32 cartridges and a wallet containing a Nevada driver's license, a social security card, a birth certificate and some credit cards bearing the name Peter Limanni. In a dumpster located out back, which was empty earlier in the day, police located burnt clothing and a checkbook with Limanni's name on them.

As a result of their search and believing the evidence might be relevant to Hamilton's homicide, police asked Seka to come to the detective bureau for questioning. Seka consented, was Mirandized and police conducted a taped interview. During the interview, Seka explained that Limanni owned the business at 1933, but that Seka had not seen

Limanni since November 5, 1998. This was about the time Limanni's landlord had seen Limanni with \$2,000 to \$3,000 (two to three thousand dollars) cash in his possession. Seka also informed police that a black male named Seymour (Hamilton) had done some odd jobs at 1933 Western, but that he had last seen Seymour about a month before. He further explained to police that Cinergi had two white Dodge vans and a brown Toyota pickup that they utilized.

After questioning, police explained to Seka that while he was a suspect in the killing of Hamilton, they would not arrest him because they had to wait for the return of all the forensic evidence. The police drove Seka back to 1933 Western. Seka claimed he had a dinner appointment, but he would return to the premises later. Police allowed Seka to leave in one of the white vans belonging to Cinergi, but impounded the brown truck and the remaining white van after they discovered blood in both vehicles. Seka never returned to the premises.

That evening, Seka spoke with Limanni's girlfriend, Jennifer Harrison ("Harrison"), and told her that some black guy had been killed and he had to get out of town. He wanted to borrow Harrison's car because he was being followed; she declined, and he left. Several weeks later, Seka called Harrison and indicated that he was "going underground".

In the meantime, on December 23, 1998, police found Limanni's decomposing body, partially buried and partially uncovered. The body was discovered in California, approximately five miles from the California-Nevada state boundary, roughly a forty-five minute drive from Las Vegas and a several hour drive from any city in California. The San Bernadino County Coroner's Office ruled that Limanni died from gunshot

wounds; 10 (ten) in all. They also estimated that Limanni had been dead for several weeks.

Thereafter, Seka was charged with: (1) one count of murder with use of a deadly weapon, alleging the murder of Hamilton; (2) one count of murder with use of a deadly weapon, alleging the murder of Limanni and (3) two counts of robbery with use of a Deadly Weapon, alleging Hamilton and Limanni were robbed as part of each murder. In March of 1999, Seka was arrested in Pennsylvania and stood trial on these charges.

At trial, the prosecution presented testimony supporting the above-referenced facts. The prosecution also presented the results of the forensic analysis conducted on the items of evidence, as follows:

1. DNA testing conducted on the blood recovered from glass fragments at 1929 Western revealed that Hamilton could not be excluded as the source;

2. The bullet holes in the jacket found at 1929 Western were consistent with the gunshot wounds in Hamilton's body;

3. DNA testing on the blood from the white Cinergi van revealed that Limanni could not be excluded as the source;

4. DNA testing on the blood from the brown Toyota pickup revealed that Hamilton could not be excluded as the source;

5. The tire marks found at the location of Hamilton's body were consistent with the type of tire on the brown Toyota pickup;

6. A .32 caliber weapon was used to kill Limanni, and the .32 bullets recovered from Limanni's body matched some found at 1933 Western; and

7. A .357 magnum was used to kill Hamilton, and a bullet fragment from 1933 Western matched the bullet recovered from Hamilton's body.

Additionally, the prosecution offered testimony from a friend of Seka's, Thomas Cramer ("Cramer"), which indicated Seka's responsibility for Limanni's murder. Cramer testified that, on January 23, 1999, during a fight with Seka, Seka asked Cramer, "Do you want me to do to you what I did to Pete Limanni?" Cramer also testified that Seka had told him that Limanni came at him with a gun over missing money and that he wrestled the gun from Limanni and shot him several times. As a result of his wounds, Limanni began to gurgle blood out of his mouth, at which point Seka continued to shoot.

After hearing this evidence, the jury returned a verdict on March 1, 2001, finding Seka guilty of: (1) count one - first degree murder with use of a deadly weapon; (2) count two - second degree murder with use of a deadly weapon; and (3) counts three and four - robbery.

DISCUSSION

Seka first contends that the district court improperly admitted evidence that Seka left Nevada for Pennsylvania in order to avoid criminal prosecution. We disagree. Evidence of flight may be admissible to demonstrate consciousness of guilt.¹ This court has reviewed flight

¹See Walker v. State, 113 Nev. 853, 870-71, 944 P.2d 762, 773 (1997) (quoting Miles v. State, 97 Nev. 82, 85, 624 P.2d 494, 496 (1981)).

instructions to ensure that the record supported the conclusion that the defendant's leaving the scene was with a consciousness of guilt and for the purpose of avoiding arrest.²

In the present case, the record supports the inference that Seka's flight to Pennsylvania was related to his criminal involvement in the murders of Limanni and Hamilton. Seka's conversation with LVMPD demonstrates that he was on notice that he was a target of a pending criminal investigation into the disappearance and murders of Limanni and Hamilton. Also, Seka's request to borrow Harrison's car because he was wanted for murder and his subsequent call to her a few weeks later informing her of his plans to go "underground" clearly indicate an intent to evade the police. Thus, we conclude that the district court properly admitted evidence of Seka's flight from the police.³

Next Seka argues that the district court lacked jurisdiction to prosecute him for Limanni's murder, because the State did not prove that Limanni was murdered in California, not Nevada. We disagree. Pursuant to NRS 171.020, any person who commits a crime within Nevada may be

²See id.

³Additionally, we conclude that Seka's position that his case is factually inapposite to that in Santillanes v. State, 104 Nev. 699, 700, 765 P.2d 1147, 1148 (1988), is without merit. In Santillanes, we concluded that flight evidence was properly admitted where the defendant twice consented to meet with authorities and after failing to appear for both meetings, fled the jurisdiction. Here, Seka expressly promised the police that he would return to the scene of the crime after attending a dinner appointment. Seka subsequently disappeared before reemerging in Pennsylvania a year later. Thus, we find Seka's situation analogous to that in Santillanes and evidence pertaining to his flight properly admitted.

punished for that crime in Nevada.⁴ Notwithstanding a lack of direct evidence, we conclude that there was sufficient circumstantial evidence admitted at trial to support the conclusion that Limanni was killed in Las Vegas, his body loaded into a Cinergi Dodge van, and then dumped over the border in California.

DNA testing revealed that Limanni's blood was found inside the Dodge van located at 1933 Western Avenue. Several expended bullets matching those found in Limanni's body were located at 1933 Western Avenue. Limanni's body was discovered in a remote area only five miles from the Nevada state line. The location where his body was found was approximately forty-five minutes away from Las Vegas. Lastly, Limanni's body was situated a great distance away from any California city. Thus, we conclude that there is sufficient evidence to support a finding that the murder of Limanni was committed in Nevada and the district court's exercise of jurisdiction on the Limanni murder was proper.

Seka's next assertion of error involves the joinder of the Limanni and Hamilton charges. Seka argues that the charges against him for the robbery and murders of Limanni and Hamilton were improperly joined by the district court. We disagree. NRS 173.115 defines

⁴NRS 171.020 states:

Whenever a person, with intent to commit a crime, does any act within this state in execution or part execution of such intent, which culminates in the commission of a crime, either within or without this state, such person is punishable for such crime in this state in the same manner as if the same had been committed entirely within this state.

when joinder of charges is appropriate.⁵ Decisions to sever charges "are within the sound discretion of the trial court and will not be reversed absent an abuse of discretion."⁶ We review alleged errors by the district court under a harmless error analysis.⁷

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

⁵NRS 173.115 states:

Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are:

1. Based on the same act or transaction; or
2. Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

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

⁷See Robins, 106 Nev. at 619, 798 P.2d at 563 (citing Mitchell v. State, 105 Nev. 735, 738, 782 P.2d 1340, 1342-43 (1989)).

⁸See NRS 174.165(1), which provides in pertinent part:

If it appears that a defendant or the State of Nevada is prejudiced by a joinder of offenses or of defendants in an indictment or information, or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

See also Middleton v. State, 114 Nev. 1089, 1107, 968 P.2d 296, 309 (1998).

a mere showing that severance might have made acquittal more likely.”⁹ Reversal for misjoinder is required only if the error “has a substantial and injurious effect on the jury’s verdict.”¹⁰

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

We also conclude that the district court’s decision to join charges was appropriate because evidence of Limanni’s murder would have been cross-admissible in a separate trial for Hamilton’s murder.

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

¹⁰Middleton, 114 Nev. at 1108, 968 P.2d at 309 (citing Mitchell, 105 Nev. at 739, 782 P.2d at 1343).

This court has held that, "if . . . evidence of one charge would be cross-admissible in evidence at a separate trial on another charge, then both charges may be tried together and need not be severed."¹¹ Evidence of Limanni's murder would have been admissible in a separate trial for Hamilton's murder to prove the identity of his killer, pursuant to NRS 48.045(2).¹² Both victims were robbed, shot, stripped naked, and left covered by dirt or wood in shallow graves and there is evidence from which a reasonable trier of fact could conclude that the murders took place at the same time and place. Thus, we conclude that the district court did not abuse its discretion in joining charges against Seka for the murders of Hamilton and Limanni.

Next Seka contends that he was prejudiced because the State exhausted the blood samples that were identified at trial as belonging to Limanni and Hamilton. We disagree. This court has held that the State's failure to preserve evidence does not warrant dismissal unless the defendant can either show: (1) bad faith by the government or (2) prejudice from the loss of the evidence.¹³

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

¹²NRS 48.045(2) states:

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

¹³See Williams v. State, 118 Nev. ___, ___, 50 P.3d 1116, 1126 (2002) cert denied ___ U.S. ___, 123 S. Ct. 569 (U.S. 2002); Leonard v. State, 117

continued on next page . . .

Seka does not show that the State acted in bad faith. Dr. Welch, a forensic chemist with LVMPD, testified that at the time the DNA samples were tested, the department's testing system required a large amount of a sample. Also, Dr. Welch testified that at the time the samples were tested there was no formal or informal procedure in place to alert the district attorney's office before using the entire sample. Currently, according to Dr. Welch, the department tries to preserve at least half the sample for the defense. Therefore, we conclude that the record demonstrates that the State did not destroy the DNA samples in bad faith.

Also, Seka does not show that he was prejudiced by the loss of the evidence. Other blood samples were available from the various crime scenes that contained DNA of both Limanni and Hamilton, which Seka could have re-tested. In addition, Seka does not point to any evidence that demonstrates that the first tests done on the DNA samples that matched Seka's DNA were flawed. Thus, we conclude the destruction of these samples, which clearly identify both Seka's and the victims' DNA, did not prejudice his case.

Finally Seka asserts that the record contains insufficient evidence to support the jury's verdicts. We disagree. "We review a claim of sufficiency of evidence by looking at the facts in the light most favorable

... continued

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

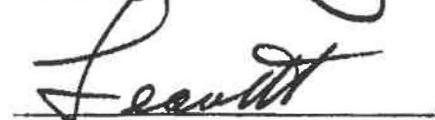
to the State.”¹⁴ In addition, this court has specifically stated that “[c]ircumstantial evidence alone may sustain a conviction.”¹⁵

The jury convicted Seka of all four counts after considering the evidence presented by the parties. After examining the facts in the light most favorable to the State, we conclude that sufficient evidence exists for the jury to have convicted Seka of the robbery and murder of Limanni and Hamilton.

Accordingly, we ORDER the judgment of the district court AFFIRMED.

 J.

Shearing

 J.

Leavitt

 J.

Becker

cc: Hon. Donald M. Mosley, District Judge
Kajioka, Christiansen & Toti
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁴Grant v. State, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001) (citing Koza v. State, 100 Nev. 245, 250-51, 681 P.2d 44, 47 (1984)).

¹⁵McNair v. State, 108 Nev. 53, 61, 825 P.2d 571, 576 (1992) (citing Deveroux v. State, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980); Crawford v. State, 92 Nev. 456, 457, 522 P.2d 1378, 1379 (1976)).

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

June 29, 2020

99C159915

The State of Nevada vs John J Seka

June 29, 2020

1:45 PM

Motion for Own
Recognizance
Release/Setting Reasonable
Bail

Defendant's Motion
for Release Pending
Appeal and Retrial
Pursuant to NRS
178.488 and 178.484

HEARD BY: Delaney, Kathleen E.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Phyllis Irby

RECORDER:

REPORTER: Bill Nelson

PARTIES

PRESENT:

Armeni, Paola M.
Goodman, Laura
Seka, John
State of Nevada

Attorney for the Deft
Attorney for the State
Petitioner
Plaintiff

JOURNAL ENTRIES

- DEFT NOT PRESENT. Ms. Armeni informed the Court Ms. Springer is appearing via telephonically. COURT STATED, it is this Court's determination to DENY DEFT'S MOTION FOR RELEASE PENDING APPEAL. Further, proof is evident or the presumption is great. COURT FINDS, Deft should be detained, Deft to not be admitted to any money bail of any kind. The State did meet to show by clear and convincing evidence that a detention Order was appropriately being asked for and the State's request for no bail. COURT ORDERED, MOTION DENIED.

NDC