

85227-8

~~85557-9~~

SUPERIOR COURT NO. 08-1-07953-4

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

64327-4

LAKI MOIMOI,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

MOTION FOR DISCRETIONARY REVIEW

Devon Knowles, WSBA No. 39153
Attorney for Petitioner

The Defender Association
810 Third Avenue, Suite 800
Seattle, WA 98104
(206) 447-3900, ext. 786
dknowles@defender.org

FILED
COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON
2008 OCT 22 PM 2:51

I. IDENTITY OF PETITIONER

Laki MoiMoi, Petitioner in this Court and Appellant in the King County Superior Court, ask this Court to accept review of the decision designated in Part II.

II. DECISION

Petitioner seeks review of the attached decision by the King County Superior Court affirming his conviction in King County District Court No. Y0-SD0013 for one count of Unregistered Contracting contrary to RCW § 18.27.010 and RCW § 18.27.020. Appendix A.

III. ISSUE PRESENTED FOR REVIEW

Is the Superior Court's decision affirming the admissibility of a certification by the Department of Labor and Industries (DLI) sworn before a notary public averring to the absence of any record that MoiMoi was a registered contractor under *State v. Kirkpatrick*, 160 Wash.2d 873, 161 P.3d 990 (2007), in direct conflict with the United States Supreme Court decision in *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009)?

IV. WHY REVIEW SHOULD BE GRANTED

This Court should grant review in this case under RAP 2.3(d)(1)-(3). The Superior Court's ruling that a certification from the Department of Labor and Industries averring to the absence of a public/business record

is admissible under *State v. Kirkpatrick*, 160 Wash.2d 873, 161 P.3d 990, directly conflicts with the United States Supreme Court's ruling in *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527, 174 L.Ed.2d 314. Additionally, the issue presented here raises the significant constitutional question of admissibility of certifications under the confrontation clause. The question is a matter of public interest applicable to the majority of Unregistered Contracting cases brought in King County District Court and should be decided by means of a published decision.

A defendant has a constitutional right to confront adverse witnesses. In a charge of Unregistered Contracting, the prosecution must prove beyond a reasonable doubt that the defendant was, in fact, not registered as a contractor at the time of the alleged work. Prosecutors routinely use a certification authored by the records custodian for the DLI and sworn before a notary public to establish this essential element. In June of 2009 the United States Supreme Court directly addressed such certifications in *Melendez-Diaz v. Massachusetts*, holding that admission without live testimony violated a defendant's constitutional right to confrontation. In Washington, however, similar documents have previously been found admissible in *State v. Kirkpatrick*. In order to rectify this conflict in caselaw, as well as clarify the scope of the confrontation clause, this Court should determine whether admission of a

certification averring to the absence of a public/business record violates a defendant's constitutional right to confrontation. As a determination of whether the admissibility of such documents under *Kirkpatrick* conflicts with *Melendez-Diaz* could extend beyond Unregistered Contracting cases to those involving certifications by the Department of Licensing (DOL) and other government agencies, this Court should provide guidance as to the viability and scope of *Kirkpatrick*.

V. STATEMENT OF THE CASE

MoiMoi was charged in King County District Court No. Y0-SD0013 with Unregistered Contracting in violation of RCW §18.27.010 and RCW §18.27.020 for a continuous course of conduct alleged to have occurred between April 24, 2009 and April 29, 2009.¹ Appendix B.

¹ Moi Moi was prosecuted under the portion of RCW §18.27.020 making it a gross misdemeanor for individuals to “[a]dvertise, offer to do work, submit a bid, or perform any work as a contractor without being registered as required by this chapter[.]”

RCW §18.27.010(1) provides:

“Contractor” includes any person, firm, corporation, or other entity who or which, in the pursuit of an independent business undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, develop, move, wreck, or demolish any building, highway, road, railroad, excavation or other structure, project, development, or improvement attached to real estate or to do any part thereof including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works in connection therewith, the installation or repair of roofing or siding, performing tree removal services, or cabinet or similar installation; or, who, to do similar work upon his or her own property, employs members of more than one trade upon a single job or project or under a single building permit except as otherwise provided in this chapter. “Contractor” also includes a consultant acting as a general contractor. “Contractor” also includes any person, firm, corporation, or other entity covered by this subsection, whether or not registered

To establish MoiMoi's contracting status, or lack thereof, the court admitted State's Exhibit No. 1 – a certification from the DLI averring the Department's records did not include a contracting registration for MoiMoi. Appendix C. The certification was authored by Pamela Bergman, the Clerical Supervisor for the Contractor Registration Section of the DLI. Ms. Bergman – who did not testify at trial – attested that she was the Custodian of the records of registration for contractors within the State of Washington. She further certified that, after a diligent search of the Department's records, she was unable to locate a registration for MoiMoi. The certification was subscribed and sworn before a notary public, Bobbie Jo Saya, on June 22, 1999.

Matthew Jackson, a construction compliance inspector from the DLI, testified for the prosecution at trial as to the process by which such certifications are created:

State: Again, Mr. Jackson, how – how did you determine whether or not Mr. Moimoi was a registered contractor?

Jackson: ***Well, any time that we issue a civil infraction or a complaint with the King County Prosecutor's Office we obtain a search of the records letter,***

as required under this chapter or who are otherwise required to be registered or licensed by law, who offer to sell their property without occupying or using the structures, projects, developments, or improvements for more than one year from the date the structure, project, development, or improvement was substantially completed or abandoned.

which is a sealed letter from the supervisor of the keeper of the records of – of the contractor file section. That person will type the letter out, basically stating the individual person’s registration status and seal the letter as a – a authenticated document that’s person’s status as a registered contractor.

State: Mr. Jackson, I’m handing you what’s been marked as State’s Exhibit No. 1, do you recognize that?

Jackson: Yes, I do.

State: How do you recognize that?

Jackson: This is the letter that I just explained to you about. It’s from Pamela Bergman (phonetic) and Pamela is the keeper of the – the supervisor of the records – the files for the contractors in Olympia.

State: And do you recognize the signature at the bottom of that page?

Jackson: Yes, it’s Pamela Bergman’s signature. And it’s notarized by Bobby Jo Saya (phonetic).

State: And who’s Bobby Jo Saya?

Jackson: She’s a – a person that works in the contractor file section of Olympia.

Appendix D, Vol. I, VRP 51-52 (emphasis added).

VI. ARGUMENT & AUTHORITY

The Washington Supreme Court’s decision in *State v. Kirpatrick*, 160 Wash.2d 873, 161 P.3d 990, holding that a certification by a government official as to the absence of a public record does not violate a

defendant's constitutional right to confrontation, is in direct conflict with the United States Supreme Court decisions in *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), and *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527, 174 L.Ed.2d 314. Thus, the Superior Court's holding in *MoiMoi*'s case that such certifications are admissible under *Kirkpatrick* is contrary to governing caselaw and was entered in violation of *MoiMoi*'s rights under the confrontation clause.²

**A. MELENDEZ-DIAZ PROHIBITS
CERTIFICATIONS AS TO THE ABSENCE OF
A PUBLIC RECORD**

The United States Supreme Court's June 25, 2009 decision in *Melendez-Diaz v. Massachusetts* is dispositive in *MoiMoi*'s case. In *Melendez-Diaz*, the Court expounded on its holding in *Crawford*, clarifying what constitutes a testimonial document and reaffirming that, even where documents fall within a well-established exception to the hearsay rule, such evidence remains subject to the confrontation clause.

Melendez-Diaz was convicted of distributing and trafficking cocaine. At trial, the State introduced three "certificates of analysis" reporting that forensic analysis revealed "[t]he substance [possessed by *Melendez-Diaz*] was found to contain: Cocaine." *Melendez-Diaz*, 129

² As no other valid evidence exists establishing *MoiMoi*'s licensing status, this Court should reverse *MoiMoi*'s conviction and dismiss with prejudice.

S.Ct. at 2531, 174 L.Ed.2d 314. The certificates were issued by analysts at the State Laboratory Institute of the Massachusetts Department of Public Health and were sworn in front of a notary public. *Id.* Defense counsel’s objection to the admission of the certificates under the confrontation clause was overruled by the trial court as Massachusetts law specifically provides that such certificates constitute prima facie evidence of the nature of the narcotic tested. *Id.* (citing Mass. Gen. Laws ch. 111, §13).³ The Massachusetts Court of Appeals affirmed the conviction. *Melendez-Diaz*, 129 S.Ct. at 2531, 174 L.Ed.2d 314.

The United States Supreme Court reversed, finding that the certificates fell within the “core class of testimonial statements” identified in *Crawford*:

The documents at issue here, while denominated by Massachusetts law “certificates,” are quite plainly affidavits: “declaration[s] of

³ Ma. Gen. Laws. ch. 111, §13 provides,

[T]he analyst or an assistant analyst of the department [of public health] . . . upon request furnish a signed certificate, on oath, of the result of the analysis provided for in the preceding section to any police officer or any agent of such incorporated charitable organization, and the presentation of such certificate to the court by any police officer or agent of any such organization shall be prima facie evidence that all the requirements and provisions of the preceding section have been complied with. This certificate shall be sworn to before a justice of the peace or notary public, and the jurat shall contain a statement that the subscriber is the analyst or an assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, medicine, or chemical analyzed or the net weight of any mixture containing the narcotic or other drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst, and of the fact that he is such.

facts written down and sworn to by the declarant before an officer authorized to administer oaths.” They are incontrovertibly a “solemn declaration or affirmation made for the purpose of establishing or proving some fact.”

129 S.Ct. at 2532, 174 L.Ed.2d 314 (citations omitted) (alteration in original). In so holding the Court emphasized not only the form of the certificates, but also their content and the purpose for which they were created:

The fact in question is that the substance found in the possession of Melendez-Diaz and his codefendants was, as the prosecution claimed, cocaine—the precise testimony the analysts would be expected to provide if called at trial. The “certificates” are functionally identical to live, in-court testimony, doing “precisely what a witness does on direct examination.”

Here, moreover, not only were the affidavits “made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial,” but under Massachusetts law the *sole purpose* of the affidavits was to provide “prima facie evidence of the composition, quality, and the net weight” of the analyzed substance.

Id. (citations omitted).

Importantly, the Court explicitly rejected the argument that the affidavits were admissible as public and/or business records: The certificates were created solely for the purpose of litigation. The Court went even further, however, in reiterating that, assuming *arguendo* the certificates were public records, the confrontation clause remained applicable. *Id.* at 2538, 174 L.Ed.2d 314. While allowing a limited

exception for instances in which agencies simply certified that an admitted record was correct, the Court emphasized the distinction between authenticating a copy of a record and creating a record solely to be introduced as evidence at trial. In Melendez-Diaz's case, the need for confrontation was apparent in the "bare-bones" nature of the certificates. *Id.* at 2537, 174 L.Ed.2d 314. By simply asserting the substance was cocaine, Melendez-Diaz was precluded from inquiring as to the methodology of the testing, the risk of error, the extent to which the process allowed for individual discretion and even the analysts' skill and honesty.⁴

Decisive to the case at hand, the Court addressed a clerk's certification of an *absence* of a record head on:

Far more probative here are those cases in which the prosecution sought to admit into evidence *a clerk's certificate attesting to the fact that the clerk had searched for a particular relevant record and failed to find it*. Like the testimony of the analysts in this case, the clerk's statement would serve as substantive evidence against the defendant whose guilt depended on the nonexistence of the record for which the clerk searched. Although the clerk's certificate would qualify as an official record under respondent's definition—it was prepared by a public officer in the regular course of his official duties—and although the clerk was certainly

⁴ The Court reasoned that allowing for cross-examination would not only allow a defendant to assess the honesty of the affiant, but would also ensure more accurate forensic analysis as it would deter the fraudulent analyst from "drylabbing." *Id.* at 2536-37, 174 L.Ed.2d 314. The benefit of such precautions has been exemplified in Washington subsequent the discovery of widespread fraud the State toxicology lab's verification of breath test solutions. *See also State v. Roche*, 114 Wash.App 424, 59 P.3d 682 (2002) (defendant's conviction reversed due to newly discovered evidence of "drylabbing" and drug use by testifying toxicologist).

not a “conventional witness” under the dissent’s approach, the clerk was nonetheless subject to confrontation.

Id. at 2539, 174 L.Ed.2d 314 (quotations and citations omitted) (emphasis added). *Melendez-Diaz* conclusively resolves any doubts as to the admissibility of State’s Exhibit No. 1 in MoiMoi’s case. The Exhibit is plainly testimonial. It is a sworn and notarized statement attesting to the absence of a record, executed by a government officer pursuant to law. It was made not only with reasonable belief that it would be available at trial or with an eye towards trial, but for the specific purpose of proving an element of a crime in a criminal trial. Appendix E. It prevents the exact type of cross-examination anticipated in *Melendez-Diaz*, leaving MoiMoi with no means to ensure the reliability or accuracy of its contents. It was admitted in violation MoiMoi’s constitutional rights. This Court should clarify that all such letters, when not accompanied by live testimony, are inadmissible pursuant to *Melendez-Diaz*.

**B. KIRKPATRICK CONFLICTS WITH
MELENDEZ-DIAZ**

To the extent that *Kirkpatrick* provides for the admissibility of a certification establishing the absence of a public record, it is overruled by *Melendez-Diaz*. While *Melendez-Diaz* did not create new law, instead serving as a clarification of *Crawford*, it is controlling. *See State v. Radcliff*, 164 Wash.2d 900, 906, 194 P.3d 250 (2008) (“When the United

States Supreme Court decides an issue under the United States Constitution, all other courts must follow that Court's rulings.”).

In *Kirkpatrick*, the Washington Supreme Court found that a DOL certification as to the absence of a driver’s license was non-testimonial for the purposes of the *Crawford* analysis.⁵ *Kirkpatrick*, 160 Wash.2d at 884-86, 161 P.3d 990. Because the document was non-testimonial its admission could not violate Kirkpatrick’s right to confrontation. The *Kirkpatrick* Court appears to have based its holding on the premise that public records, like business records, are per se non-testimonial. *Id.* at 882, 161 P.3d 990 (citing *Crawford*, 541 U.S. at 53-54, 124 S.Ct. 1354158 L.Ed.2d 177). This premise is wrong. The United States Supreme Court has emphasized repeatedly that whether a document violates the confrontation clause is a distinct inquiry from its admissibility under the hearsay rule. *See, e.g., Melendez-Diaz*, 129 S.Ct. at 2538, 174 L.Ed.2d 314. Thus, the simple fact that a document qualifies as a business record, while instructive on the issue, is not conclusive.

The *Kirkpatrick* Court did, however, acknowledge the substantive differences between the DOL certification sought to be admitted and a DOL record:

⁵ *Kirkpatrick* was convicted of reckless driving and No Valid Operator’s Permit (NVOP). The trial court admitted, over defense objection, a DOL certification that Kirkpatrick did not have a license on September 8, 2003. *Kirkpatrick*, 160 Wash.2d at 878, 161 P.3d 990.

In *Crawford*, the Court suggested that business records are nontestimonial in part because they are not prepared with an eye toward trial. In contrast, the public record here, at least the certification, was literally prepared for purposes of litigation and was intended to be relied upon by the State. Likewise, the DOL certification here was probably not kept in the normal course of DOL business.

160 Wash.2d at 884-85, 161 P.3d 990 (citations omitted). Despite these noted differences, the Court reasoned that the records remained non-testimonial. Namely, the certification referred to part of a class of documents not prepared for litigation and which existed prior to the litigation. It is on this point that *Melendez-Diaz* serves to clarify *Crawford*: ***A sworn certification prepared for litigation is always testimonial.*** See *Melendez-Diaz*, 129 S.Ct. at 2532, 174 L.Ed.2d 314.

Whether the certification describes the content of an existing record or the absence of a record does not change the fundamental nature of the document.

Other aspects of *Kirkpatrick* are troubling under *Crawford* and *Melendez-Diaz*. Namely, *Kirkpatrick* appeared to be based, in part, on the fact that “Washington courts have long recognized the inherent reliability and admissibility of driving records from DOL.” Finding that a document satisfies the confrontation clause due to its determined reliability, however, is exactly the reasoning rejected in *Crawford*:

Admitting statements deemed reliable by a judge is fundamentally

at odds with the right of confrontation. To be sure, the Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. The Clause thus reflects a judgment, not only about the desirability of reliable evidence (a point on which there could be little dissent), but about how reliability can best be determined.

* * * *

The *Roberts* test allows a jury to hear evidence, untested by the adversary process, based on a mere judicial determination of reliability. It thus replaces the constitutionally prescribed method of assessing reliability with a wholly foreign one. In this respect, it is very different from exceptions to the Confrontation Clause that make no claim to be a surrogate means of assessing reliability.

* * * *

Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because a defendant is obviously guilty. This is not what the Sixth Amendment prescribes.

541 U.S. at 61-62, 124 S.Ct. 1354, 158 L.Ed.2d 177 (citations omitted).

Similarly, *Melendez-Diaz* rejected the more practical concerns raised in the *Kirkpatrick* decision. In *Kirkpatrick* the Court minimized the need for confrontation given that the government witnesses were unlikely to testify to anything different from the bare fact certified. 160 Wash.2d at 888, 161 P.3d 990. By comparison, *Melendez-Diaz* viewed the similarity between the certification and the anticipated testimony as exemplifying the testimonial nature of the documents. 129 S.Ct. at 2532, 174 L.Ed.2d

314. In *Kirkpatrick* the Court noted, but did not rely upon, the burden of ensuring live testimony each time the government sought to introduce a certification. 160 Wash.2d at 887-88, 161 P.3d 990. This concern, also raised by the dissenters in *Melendez-Diaz* was deemed essentially irrelevant to the issue of confrontation:

Finally, respondent asks us to relax the requirements of the Confrontation Clause to accommodate the “ ‘necessities of trial and the adversary process.’ ” It is not clear whence we would derive the authority to do so. The Confrontation Clause may make the prosecution of criminals more burdensome, but that is equally true of the right to trial by jury and the privilege against self-incrimination. The Confrontation Clause-like those other constitutional provisions-is binding, and we may not disregard it at our convenience.

129 S.Ct. 2540, 174 L.Ed.2d 314.

Ultimately, *Kirkpatrick*, like the Ma. Gen. Laws. ch. 111, § 13, is no longer consistent with the *Crawford* proposition that business/public records are “by their nature” non-testimonial. *Crawford*, 541 U.S. at 56, 124 S.Ct. 1354, 158 L.Ed.2d 177. The clarification of *Crawford* through *Melendez-Diaz* is in direct conflict with the holding in *Kirkpatrick*. This Court should accept review as a means of reconciling this conflict.

VI. CONCLUSION

For the reasons articulated above, this Court should exercise its authority and accept Discretionary Review in *MoiMoi*’s case.

Respectfully submitted this 21st day of October, 2009.

A handwritten signature in cursive script, appearing to read "Devon Knowles".

Devon Knowles, WSBA No. 39153
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Devon Knowles, certify under penalty of perjury under the laws of the State of Washington that I am the counsel for defendant herein and that on 10/21/09 I caused to be served on the person listed below in the manner shown.

MOTION FOR DISCRETIONARY REVIEW

Jerry Taylor
Deputy Prosecuting Attorney
Office of the Prosecuting Attorney
900 Fourth Avenue, Room 1000
Seattle, WA 98164
Tel: 206-296-9540
Fax: 206-296-2901

- United States Mail, First Class
- By Legal Messenger
- By Facsimile
- In person

Dated this 21st day of October, 2009.

Devon Knowles
Devon Knowles, WSBA No. 39153

APPENDIX A

FILED
KING COUNTY, WASHINGTON

SEP 16 2009

SUPERIOR COURT CLERK
BY Melissa Ehlers
DEPUTY

**SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING**

Laki Moi Moi

Appellant,

NO. 08-1-07953-4 SEA

VS.

**DECISION ON RALJ APPEAL
SCOMIS CODE: DCRA
[CLERK'S ACTION REQUIRED]**

State of Washington

Respondent.

This appeal came on regularly for oral argument on September 8, 2009, pursuant to RALJ 8.3, before the undersigned Judge of the above entitled court and after reviewing the record on appeal and considering the written and oral argument of the parties, the court holds the following:

Reasoning Regarding Assignment of Error: The trial court did not err when it admitted State's Exhibit no. 1. *State v. Kirkpatrick*. 160 Wash.2d 873. This case, like *Kirkpatrick*, deals with records which are routinely maintained by a governmental agency, and is distinguishable from *Melendez-Diaz v Massachusetts*, 129 S.Ct. 2527, which deals with results of a test which was performed specifically for that litigation. IT IS HEREBY ORDERED that the above cause is:

AFFIRMED; REVERSED; MODIFIED;

COSTS _____

REMANDED TO _____ Court for further proceedings, in accordance with the above decision and that the Superior Court Clerk is directed to release any bonds to the Lower Court after assessing statutory Clerk's fees and costs.

DATED: September 11, 2009



JUDGE

ORIGINAL

APPENDIX B

RCW § 18.27.010 – Definitions:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Contractor” includes any person, firm, corporation, or other entity who or which, in the pursuit of an independent business undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, develop, move, wreck, or demolish any building, highway, road, railroad, excavation or other structure, project, development, or improvement attached to real estate or to do any part thereof including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works in connection therewith, the installation or repair of roofing or siding, performing tree removal services, or cabinet or similar installation; or, who, to do similar work upon his or her own property, employs members of more than one trade upon a single job or project or under a single building permit except as otherwise provided in this chapter. “Contractor” also includes a consultant acting as a general contractor. “Contractor” also includes any person, firm, corporation, or other entity covered by this subsection, whether or not registered as required under this chapter or who are otherwise required to be registered or licensed by law, who offer to sell their property without occupying or using the structures, projects, developments, or improvements for more than one year from the date the structure, project, development, or improvement was substantially completed or abandoned.

* * * *

(14) “Unregistered contractor” means a person, firm, corporation, or other entity doing work as a contractor without being registered in compliance with this chapter. “Unregistered contractor” includes contractors whose registration is expired, revoked, or suspended. “Unregistered contractor” does not include a contractor who has maintained a valid bond and the insurance or assigned account required by RCW 18.27.050, and whose registration has lapsed for thirty or fewer days.

**RCW § 18.27.020 – Registration required--Prohibited acts--Criminal penalty--
Monitoring program:**

(1) Every contractor shall register with the department.

(2) It is a gross misdemeanor for any contractor to:

(a) Advertise, offer to do work, submit a bid, or perform any work as a contractor without being registered as required by this chapter;

APPENDIX C



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

P.O. BOX 44450, OLYMPIA, WA 98504-4450
June 22, 1999

King County Prosecutor
1002 Bank of California
900 4th Ave
Seattle WA 98164

I, Pamela R. Bergman, certify that I am the Clerical Supervisor, for the Contractor Registration Section, Specialty Compliance Services Division, a division of Department of Labor and Industries for the State of Washington.

I state it is my lawful duty to see that records of registration are kept for contractors within the State of Washington. I certify that I am Custodian of the records of registration for contractors within the State of Washington.

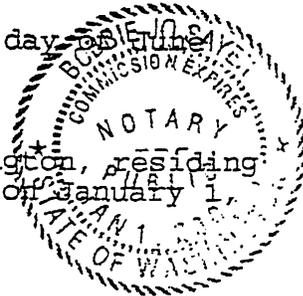
I further certify that we have searched our records from January 1980, to the present and are unable to locate a previous or current registration for Laki Moi Moi under that specific name located at 10118 Des Moines Memorial Drive, Seattle WA 98168 doing business as L & L Concrete, Seattle Concrete and Landscape as being registered with this section as a specialty or general contractor.

Sincerely,

Pamela R. Bergman
Clerical Supervisor
Consultation and Compliance
Contractor Registration

Subscribed and sworn as to before on the 22 day of June, 1999.

NOTARY PUBLIC in and for the State of Washington, residing in Thurston County. My commission expires on January 1, 2000.



APPENDIX D

VOL. I

FILED
KING COUNTY, WASHINGTON
JUN 12 2009
SUPERIOR COURT CLERK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE DISTRICT COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,)	
)	
Petitioner,)	Cause No. Y0-SD0013
)	
v.)	
)	COA No. 08-1-07953-4
LAKI MOIMOI,)	
)	
Defendant.)	

Official record of proceedings
Held before the Honorable
Judge Linda Thompson
Held on February 14, 2007
In Seattle, Washington

Anna Hirsch, Transcriptionist
Flygare & Associates, Inc.
1715 South 324th Place, Suite 250
Federal Way, WA 98003

 ORIGINAL

APPEARANCES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FOR THE PETITIONER:

Leah Altaras, Attorney at Law
516 3rd Avenue
Seattle, WA 98104-2385
(206) 296-9000

FOR THE DEFENDANT:

Rodney Benjamin, Attorney at Law
PUBLIC DEFENDER ASSOCIATION
810 3rd Avenue, Suite 800
Seattle, WA 98104-1656
(206) 447-3900

ALSO PRESENT:

Fatima Taimi-Aho, Tongan Interpreter

INDEX

WITNESS	EXAMINATION	PAGE
MATHEW JACKSON		
	Direct Examination by Ms. Altaras	44
	Cross Examination by Mr. Benjamin	60
DENNIS LAMEY		
	Direct Examination by Ms. Altaras	62
	Cross Examination by Mr. Benjamin	83
JUDY LAMEY		
	Direct Examination by Ms. Altaras	85

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>No.</u>	<u>Description</u>	<u>Marked</u>	<u>Admit</u>
1	Letter from L&I	52	543
2	Mr. Lamey's Cancelled Check to Mr. Moimoi	66	67
3	Copy of Mr. Moimoi's Driver's License	68	69
4	Receipt From Mr. Moimoi to the Lamey's	71	88
5	Photograph	77	79
6	Photograph	80	
7	Photograph	81	82

1 JUDGE THOMPSON: Okay, we have Mr. Moimoi here and
2 we have an interpreter. Will the interpreter please
3 identify yourself for the record?

4 THE INTERPRETER: I'm Fatima Aho and I've been an
5 interpreter in the King County for last three years.

6 JUDGE THOMPSON: Okay. Let me swear you in,
7 please.

8 Do you swear that you will fairly and fully interpret
9 the words of this proceeding to the defendant and of the
10 defendant to this proceeding?

11 THE INTERPRETER: I do, yes.

12 JUDGE THOMPSON: Thank you. Okay. And this is
13 Cause No. Y0-SD0013 and --

14 MS. ALTARAS: Good morning, Your Honor. Leah
15 Altaras, L and I for the State of Washington.

16 JUDGE THOMPSON: Okay.

17 MR. BENJAMIN: Good morning, Rod Benjamin for the
18 Defendant, Laki Moimoi, who's also present to my left.

19 JUDGE THOMPSON: Okay. And we were last in court
20 on Monday to -- and there was a motion that was pending
21 related to Defendant's motion to dismiss due to violation of
22 equal protection. And so I set this over to today to allow
23 me an opportunity to read briefs and the case law. So at
24 this time I'll hear oral argument and it is the Defense
25 motion so I'll hear from you first, Mr. Benjamin.

1 MR. BENJAMIN: Thank you, Your Honor. Your Honor,
2 briefly this is a case where there are two exact statutes
3 that govern the situation. One is an infraction and one is
4 a crime. Unlike for example, Fountain (phonetic), where
5 there are two different criminal statutes, but slightly
6 different elements, these have exactly the same elements and
7 it gives the prosecutor discretion to choose how they wish
8 to proceed. Under Article 1, Section 12 of the Washington
9 State Constitution I believe this is a violation of equal
10 protection.

11 There's no good reason to draw any distinction between
12 the prosecutor filing criminal charges and labor and
13 industry filing an infraction, they are all the State. Not
14 only -- not only are these statutes exactly the same I
15 believe this close -- this case is very similar to the Mason
16 case where there was a felony and a misdemeanor, two
17 different crimes that had the exact same elements and the
18 Court ruled that that gives the prosecutor the discretion to
19 decide which to -- which to prosecute.

20 Prosecutor has unfettered discretion here, Your Honor,
21 they shouldn't have it. They could have chose to simply
22 proceed on an infraction only and -- and periodically they
23 do. So for that reason, Your Honor, we feel that this is a
24 violation of equal protection and the case should be
25 dismissed.

1 JUDGE THOMPSON: Okay. Counsel?

2 MS. ALTARAS: Your Honor, there's no violation of
3 equal protection here. Washington Courts have called
4 (inaudible) that where a similar infraction is issued over
5 and over to prior to a criminal prosecution for the same
6 conduct there is no violation of equal protection. In June
7 v. Fountain, the Court held that elements of -- standards of
8 proof are elements but a person is innocent until whether or
9 not there are different elements. In cases where there is a
10 -- there is an alleged violation of equal protection the
11 Court held that a -- that a similar clashing the standard of
12 proof for a similar fashion is a preponderance of the
13 evidence where the standard of proof for a criminal
14 prosecution is beyond a reasonable doubt. There was our two
15 clearly different elements that apply to this statute in
16 question here with the Contractor Registration Act.

17 Your Honor, the Contractor Registration Act, the two
18 sections that Defense Counsel points to RCW 80.27.020 which
19 says that it's a misdemeanor to contract without being
20 registered and RCW 18.27.200 which provides issuance of a
21 civil infraction for unregistered contracting are not
22 identical. The -- although there are identical sections,
23 there's an additional section in -- in the misdemeanor area
24 that is not mentioned in the civil infraction statute.

25 This Court held a State v. Acme (phonetic) that there

1 was a dog fight, there was a -- someone's dog bit somebody
2 and the owner of the dog was issued a civil infraction for
3 that incident. Subsequently, the owner was prosecuted
4 criminally for the same incident. And the Courts held that
5 there was no violation of civil protection where a civil
6 penalty is a precursor to a criminal prosecution.

7 Your Honor, this case is the same as State v. Acme.
8 And the State v. Fountain (inaudible) similar issue as well.
9 (Inaudible) in Kennewick 2000 a -- someone was -- the
10 defendant was charged with aiding and abetting in the crime
11 of driving while under the influence of alcohol, a -- a
12 criminal defense. And she argued that that same act was
13 also a civil infraction. The Court held that there was no
14 violation of equal protection even though there were two
15 statutes that provided different penalties. They waived the
16 civil infraction in lieu of prosecution for (inaudible).
17 Again, the standards of proof that (inaudible) they were
18 different elements.

19 And also the Supreme Court held in Belcheck (phonetic)
20 in (inaudible) that the choice (inaudible) the prosecutor is
21 not indiscriminate regarding whether or not to charge a
22 civil infraction or a -- or to prosecute criminally. And
23 the prosecutor does not have another discretion to proceed
24 with either a civil action or a criminal prosecution.

25 Defense Counsel points to State v. Mason, State v.

1 Mason is clearly distinguishable from this case. In State
2 v. Mason, there was a -- there were two criminal statutes,
3 one was a city statute and the other was a state statute
4 holding that it was -- it was -- holding that they both
5 penalize engaging in prostitution and had this very
6 punishment.

7 In this case, the Contractor Registration Act provides
8 for civil regulatory liability and for criminal punishment
9 both under Revised Code of Washington. Again the
10 prosecutor's discretion is not unfettered in this case and
11 there are clearly different elements applicable to the civil
12 infraction that ends with criminal prosecution.

13 JUDGE THOMPSON: Okay.

14 MS. ALTARAS: The State would also note to the
15 Court that the defense carries the heavy a -- a heavy burden
16 to show that -- that equal protection is violated in this
17 case. They must prove beyond a reasonable doubt that
18 statute isn't constitutional, they have not done so.

19 JUDGE THOMPSON: Thank you.

20 MR. BENJAMIN: Just to respond briefly, Your
21 Honor.

22 JUDGE THOMPSON: Yes.

23 MR. BENJAMIN: There is an additional part under
24 the misdemeanor but that's not what he's charged with. He's
25 charged with A) advertised, offered to do work, submit a bid

1 or confirm any work as a contractor without being
2 registered, a requirement of this sector. That's exactly
3 word for word as the civil penalty for unregistered
4 contract, advertise, offered to do work, submit a bid or
5 perform any work as a contractor without being registered as
6 required by this (inaudible).

7 In Fountain, we see elements were different. Although
8 the Court noted that its possible under certain
9 circumstances that a person could be charged under both of
10 those statutes, they note that the statutes appear to be
11 originally enacted to deal with different circumstances and
12 that they do contain slightly different elements.

13 So I -- I think this case is closer to the Mason case
14 where there's two statutes (inaudible) driving the same
15 conduct and that gives the prosecutor the choice of what to
16 do, that gives the State the choice of what to do, they
17 shouldn't have that right under legal protection.

18 JUDGE THOMPSON: Counsel, can you differentiate
19 between this case and -- and the Acme case, State v. Acme?

20 MR. BENJAMIN: Well, let me pull it up here, hold
21 on a second. Well let me take a quick look in -- well, Your
22 Honor, know I'm not certain that in the Acme case that --
23 that this is a situation where the person had an opportunity
24 to contest the civil penalty. In this case L and I just
25 imposes it as opposed to, you know, the Acme case where

1 someone can contest the similar penalty. And in fact,
2 Mister -- Mr. Moimoi has been imposed civil penalties, so he
3 had no ability to contest that. At least in Acme you can
4 fight both of them conceivable, you can fight the civil
5 penalty, you can fight the criminal penalty.

6 Here in this case they can impose the civil penalty
7 without any opportunity for a hearing and then come back and
8 only have one opportunity for a hearing when he's already
9 received punishment. I think that's the distinction between
10 Acme and this case, argument.

11 JUDGE THOMPSON: Okay. Okay in -- in reading
12 through specifically City of Kennewick v. Fountain, the
13 Court, Supreme Court in that case did adopt the U.S. Supreme
14 Court analysis of the 14th Amendment that was enunciated in
15 Bashelder and did find that the -- there is no equal
16 protection violation when the crime -- the crimes prosecuted
17 has the discretion to charge, require proof of different
18 elements. It said in this instance the prosecutor's
19 discretion is limited by consideration of which elements
20 under the respective statutes can be proved. The Court then
21 goes on to state that just as different elements satisfy
22 this requirement so to do different burdens of proofs. So a
23 Court -- a prosecutor according to Fountain does not have
24 unbridled discretion to file. They must first choose which
25 to file under to determine whether or not they can meet the

1 burden of proof required in a criminal matter. So according
2 to City of Kennewick v. Fountain, there is a -- a different
3 element imposed by the virtue of the fact that there's a
4 different burden of proof.

5 So Court is in agreement that an element that is not
6 necessary for the crime charged certainly isn't a different
7 element. So the fact that there may be different ways of
8 committing the crime alleged here doesn't mean that the
9 elements of this crime are different from the infraction.

10 The Court finds the elements in the statute are
11 identical however, Court also in State v. Acme, the Court
12 would note in Acme it did involve a very, very similar
13 circumstance in which this same statute allowed for a civil
14 infraction and misdemeanor and the individual was charged
15 with an infraction and the criminal element as well.

16 So I -- I do feel that Acme is on point and that the
17 standards set out in Kennewick v. Fountain apply and based
18 on that I do not find a violation here. So the motion to
19 dismiss is denied.

20 MR. BENJAMIN: Very well.

21 JUDGE THOMPSON: So are the parties prepared to go
22 forward to jury trial?

23 MR. BENJAMIN: I am, Your Honor. I have two
24 clients waiting in another courtroom I should tell that
25 Court that we'll be going to trial and have those continued.

1 MS. ALTARAS: And Your Honor, the State is also
2 ready to proceed.

3 JUDGE THOMPSON: Okay. We will bring jurors down
4 and if you want to go ahead and --

5 MR. BENJAMIN: Give me 10 minutes or so.

6 JUDGE THOMPSON: Okay.

7 MS. ALTARAS: Your Honor, do you have a copy of
8 the State's pretrial memorandum?

9 JUDGE THOMPSON: It should be --

10 UNKNOWN FEMALE VOICE: Do you want me to go off
11 the record?

12 JUDGE THOMPSON: Yeah, we should probably be off
13 the record.

14 (COURT IN RECESS)

15 (COURT BACK ON RECORD)

16 JUDGE THOMPSON: Thank you, please be seated.
17 Okay. Are there motions in limine from the State?

18 MS. ALTARAS: Yes, Your Honor. The State has not
19 yet submitted (inaudible).

20 JUDGE THOMPSON: Pardon me?

21 MS. ALTARAS: The State just has not seen a
22 (inaudible). And Ms. Longsley who (inaudible) a copy of my
23 (inaudible).

24 MR. BENJAMIN: Your Honor, in our file this --
25 this is -- I'd like the opportunity to refer an attorney on

1 this case for our office. Back in August when this was --
2 went to -- before the trial judge before a trial brief was
3 prepared and there was only one in my file so I assumed the
4 Court got one and the prosecutor got one and maybe that's
5 not true. But I'm happy to give them both one now the one
6 that was filed in -- in August.

7 JUDGE THOMPSON: (Inaudible).

8 MR. BENJAMIN: And actually I think there are
9 probably fewer issues than (inaudible).

10 JUDGE THOMPSON: I don't see the copy of the brief
11 so okay. And starting with the State's motions in limine?

12 MS. ALTARAS: Yes, Your Honor. The first motion,
13 the State's motions are limited to motions that are
14 overseeing the State's trial memorandum at this time. The
15 first motion is to exclude witnesses. At this time the
16 State moves this Court will enter an order excluding all
17 witnesses from the courtroom except during their own
18 testimony. However, the State does retain the right to have
19 the Labor and Industry investigator, Mr. Walden, (inaudible)
20 at counsel table during the trial. And these (inaudible)
21 based on evidentiary rules (inaudible).

22 MR. BENJAMIN: We turned that (inaudible) about
23 that, we want witnesses excluded also.

24 JUDGE THOMPSON: The Court will grant the motion
25 to exclude witnesses allowing the representative of the

1 State to remain in the courtroom.

2 MS. ALTARAS: Thank you. Your Honor, the second
3 motion is for objection of defense investigator's notes,
4 physical evidence and documents as State moves in
5 (inaudible) at this time to provide the State with any
6 written or attorney's statements of anything defense
7 interviews.

8 MR. BENJAMIN: Well, Your Honor, Mr. and Mrs.
9 Lamey again and again and again and again denied to talk to
10 our investigators, refused to talk. I (inaudible) go
11 forward with this but right now I think I know what their
12 testimony (inaudible). There's no notes 'cause the State's
13 witnesses refused to give any.

14 JUDGE THOMPSON: Okay. So apparently there are no
15 notes to disclose so the Court need not rule on that motion.

16 MS. ALTARAS: Thank you. The third motion from
17 State is a motion in limine for an order prohibiting the
18 defense at any point during trial (inaudible) for arguing to
19 see testimony of the evidence suggestive or limiting to in
20 any way the possibility or effect of punishment in this
21 case. The order to include but not be alluded to any
22 mention of the fact that the defendant could be jailed for
23 this offense and/or that the defendant could use any rights
24 or privileges and this motion is based on ER4014243 in the
25 (inaudible).

1 MR. BENJAMIN: Well, Your Honor, the -- the WPIC
2 doesn't say that we're precluded from arguing prejudent.
3 We're only precluded to arguing punishment I think as -- as
4 would prejudice the jurors. So usually on voir dire I've
5 always done it, you know, I point out the difference between
6 a simple case and a criminal case and the criminal case, you
7 know, can include the possibility of someone's liberty being
8 taken away. You know, I've always been able to do that and
9 I don't anticipate parting that (inaudible) sympathetic
10 because of that. But I think the -- the juror -- jury has
11 the right to understand that punishment can be invoked and I
12 think that's consistent with the WPIC.

13 JUDGE THOMPSON: The Court will allow voir dire as
14 to the fact that they -- as to the differences between a
15 civil and criminal matter and in the light that Counsel has
16 just presented and so I will allow that. However, I will
17 not allow testimony to be elicited or questions be asked
18 related to whether or not there is punishment involved.

19 MS. ALTARAS: Thank you. Your Honor, the State's
20 final motion in limine is to bar the defendant from raising
21 any of the 16 affirmative defenses and extra contract and
22 contained RCW 18.27.090 or any other form of defenses
23 pursuant to CRLJ 4.7V17. The defendant is obliged upon our
24 demands to disclose the general nature of his or her
25 defense. In this case the State has made the required

1 demand in written form in -- on June 8th in the -- in his
2 response to (inaudible) response to discovery and receipt
3 notified. However, I had -- did speak to Defense Counsel
4 last week and was informed that the nature of the defense is
5 general denial. As such this response communicates that
6 information beyond what is implicit and then claims to
7 (inaudible) of not guilty and as soon as we proceed to trial
8 and the defendant should be marked (inaudible).

9 JUDGE THOMPSON: Okay, Counsel.

10 MR. BENJAMIN: I don't agree with that, Your
11 Honor. We do not anticipate that any of the affirmative
12 defenses are met with a sort of -- (inaudible) defenses by
13 any of the exemptions listed in the statute. It is going to
14 be related to Mr. Moimoi's defense. But I think the court
15 rules don't indicate that every affirmative defense is
16 automatically -- has to be given notice if they talk about
17 mental defenses and self-defense. But other defenses even
18 though they're affirmative don't have to be given notice of
19 prior to trial. Now again, I don't anticipate that's going
20 to be an issue that one of these exemptions is going to be
21 Mr. Moimoi's defense but I would, Your Honor, reserve the
22 right to raise it if -- if the evidence so presents itself.
23 I don't think we had to in advance give them notice of any
24 exemption we intend to use.

25 JUDGE THOMPSON: So is Counsel aware of any of the

1 exemptions of RCW 18.27.090 that apply in this case?

2 MR. BENJAMIN: I'm not aware of it at this time,
3 Your Honor. But -- and I don't anticipate that it will come
4 up but I don't think we have to if they come up I think we
5 have the right to use them.

6 JUDGE THOMPSON: Okay I'm going to at this point
7 in time grant the motion and again the Court will revisit
8 that if during the course of the testimony it becomes
9 evidence that -- evident that one of those exemptions would
10 apply the Court will readdress it.

11 MR. BENJAMIN: Thank you.

12 MS. ALTARAS: Thank you, Your Honor, nothing
13 further.

14 JUDGE THOMPSON: Okay. From the Defense motions
15 in limine?

16 MR. BENJAMIN: Yes, just going through the -- the
17 trial brief, No. A, is motion to exclude witnesses, the
18 Court has addressed that. I believe that 3.5 is evident
19 however in this case and whether the State intends to elicit
20 any statements allegedly made to a law enforcement officer
21 by Mr. Moimoi?

22 MS. ALTARAS: No, Your Honor. There were no --
23 Mr. Moimoi was never in custody and there were not
24 statements made to any law enforcement officer. There was
25 statements made to a Labor and Industries investigator but

1 he is not a law enforcement officer.

2 MR. BENJAMIN: Oh I -- I would argue, Your Honor,
3 that he is a law enforcement officer if he's employed by the
4 State as an investigator. And I think its appropriate to
5 have a 3.5 hearing on -- on whether those statements should
6 -- should be -- should come in as evidence.

7 MS. ALTARAS: Your Honor, if I may respond
8 briefly, Mr. Moimoi was never in custody, never made any
9 statements to investigating parties (inaudible) he was never
10 taken into custody, he was never held, (inaudible) any
11 questionings. I don't think that 3.5 is relevant. If
12 indeed Your Honor does decide that if you wish to hold a 3.5
13 hearing we need to find all of our investigators, officer
14 whose planning on coming in at lunch time.

15 JUDGE THOMPSON: Okay.

16 MR. BENJAMIN: And Your Honor, I'm happy to do
17 that after the jury is picked.

18 JUDGE THOMPSON: Okay. Counsel, have you had an
19 opportunity to review the -- the officers or -- or the
20 individuals report?

21 MR. BENJAMIN: Yes.

22 JUDGE THOMPSON: And do you believe in good faith
23 as an officer of the court that there is a potential
24 justification for suppression of those statements?

25 MR. BENJAMIN: Yeah, I do, Your Honor.

1 JUDGE THOMPSON: Okay. So we'll go ahead and a
2 3.5 hearing on that. We'll go ahead and impanel the jury
3 first and then we will ask that you locate your witness and
4 we'll conduct a 3.5 hearing.

5 MS. ALTARAS: Thank you, Your Honor.

6 MR. BENJAMIN: And Your Honor, the next two are
7 whether the -- whether the State intends and we would ask to
8 exclude any ER609 prior convictions or any prior bad acts in
9 ER404B.

10 JUDGE THOMPSON: And is the State in agreement?

11 MS. ALTARAS: The State does not intend to present
12 any prior bad acts or criminal history.

13 JUDGE THOMPSON: Court will grant the motion to
14 exclude ER609 evidence of prior crimes and 404B evidence of
15 prior bad acts.

16 MR. BENJAMIN: And Your Honor, No. E relates to
17 the exemptions under the statute. I think that Your Honor
18 has addressed that.

19 Number F is a motion to exclude -- letter F is a motion
20 to exclude testimony on the quality of the work performed
21 and any alleged damages. Both the quality and what if any
22 damages there are is not a -- an element of the statute, the
23 question is was work performed? Was he the contractor? And
24 did he have a license? Those are the issues. The quality
25 of the work, any damages is irrelevant in this case.

1 JUDGE THOMPSON: Counsel?

2 MS. ALTARAS: Your Honor, The -- the State
3 concedes that the damages are not are not element of the
4 trial, however, they are a element of -- of potential
5 sentencing in this matter were the defendant to be found
6 guilty. Of course the -- the Court can elect to hold a
7 restitution hearing in case of a guilty verdict at a later
8 time.

9 JUDGE THOMPSON: Okay.

10 MS. ALTARAS: And State would defer to the Court's
11 decision on that.

12 JUDGE THOMPSON: Okay. So Court will grant the
13 motion to exclude any testimony at the trial related to the
14 quality of the work performed or any alleged damages as a
15 result of the work performed. However, those issues can be
16 considered at the time of sentencing.

17 MS. ALTARAS: And Your Honor, just for
18 clarification, the State does intend to offer evidence that
19 is related to the crime of registered contracting that may
20 also be related to damages, specifically a check that the
21 victims wrote to Mr. Moimoi when they agreed to have him do
22 the work for them. And also evidence that Mr. Moimoi
23 then requested additional monies from them, which they did
24 not pay. I do not fully (inaudible) at this time to have
25 the Court allow that evidence as it does (inaudible).

1 JUDGE THOMPSON: Okay. Any objection to that
2 evidence?

3 MR. BENJAMIN: If its -- if its narrowly limited
4 to that I would not object, Your Honor.

5 JUDGE THOMPSON: Okay. It does appear that the
6 issue of the check that is alleged should be giving Mr.
7 Moimoi as well as your request for additional monies would
8 be relevant to whether or not Mr. Moimoi committed this
9 crime. And so based on that I will allow that testimony.

10 MR. BENJAMIN: Under H1, we would ask that Mr.
11 Moimoi not be referred to as the defendant, instead be
12 referred to as Mr. Moimoi. I believe he -- he deserves that
13 dignity in the courtroom.

14 JUDGE THOMPSON: Okay. Any objection?

15 MS. ALTARAS: No objection, Your Honor. I -- I
16 will do my best to do that. I maybe slip and I (inaudible).

17 JUDGE THOMPSON: Okay. I would just strongly ask
18 that each of you avoid violating any of the rulings of this
19 Court on motions in limine and I will require that Mr.
20 Moimoi be called Mr. Moimoi.

21 MS. ALTARAS: And Your Honor, of course the State
22 would ask that it be -- that it be allowed to refer to Mr.
23 Moimoi as the defendant, Mr. Moimoi for the purposes of the
24 jury's understanding who I'm talking about.

25 JUDGE THOMPSON: Okay. And I will allow it in

1 that reference however, lets try to call Mr. Moimoi by his
2 given name.

3 MR. BENJAMIN: And Your Honor, the next one is
4 sort of the flip side of that coin, we would ask that Mr.
5 and Mrs. Lamey not be referred to as victims. You know,
6 that assumes that -- that they have been wronged and we
7 don't want to -- won't know that until the end of trial. So
8 we would as that they be referred to by name also and not as
9 victims.

10 JUDGE THOMPSON: Okay.

11 MS. ALTARAS: No objection.

12 JUDGE THOMPSON: Okay. The witnesses will be
13 referred to by their names and only titles will be added to
14 their names.

15 MR. BENJAMIN: And lastly, Your Honor, I think
16 three, four, and five relate to potential hearsay evidence.
17 Mr. and Mrs. Lamey may use or they may have heard from other
18 people regarding Mr. Moimoi or that they told the complaint
19 hotline or anything like that so those are probably more
20 cautionary than anything else and -- and you know, as they
21 come up we would be objecting as hearsay to -- to those type
22 of statements.

23 JUDGE THOMPSON: Okay.

24 MS. ALTARAS: Your Honor, clearly anything we say
25 will be excluded (inaudible). I'm not objecting to that but

1 we'd ask that this Court reserve any ruling regarding
2 (inaudible).

3 MR. BENJAMIN: No problem.

4 JUDGE THOMPSON: Okay. Those to me are objections
5 that will be dealt with through the course of the trial --

6 MR. BENJAMIN: Right.

7 JUDGE THOMPSON: -- and certainly either party is
8 free to object to any hearsay that is -- that is offered.

9 MR. BENJAMIN: Thank you, Your Honor. And I don't
10 have any motions (inaudible) a couple things to raise.

11 JUDGE THOMPSON: Okay.

12 MR. BENJAMIN: Your Honor, I've never had the
13 pleasure of having a trial in front of Your Honor, a lot of
14 judges have so many different procedures as to how they voir
15 dire, time limits, preemptory challenges and if the Court
16 could give me some guidelines I'd appreciate it.

17 JUDGE THOMPSON: Okay. Normally I -- I'll seat
18 the jurors out in the audience, I don't -- I don't empanel
19 any until the end when we have selected jurors. So they'll
20 be seated starting with the left with one through however
21 many fit on the front row and then from the left again.

22 I'll go through some preliminary instructions and
23 questions with the jury; those that are standard and then
24 I'll allow each of the party's to -- to conduct voir dire.
25 And normally I try to limit the time I don't know as well as

1 you do obviously what your case involves. And so what I
2 normally do is allow 20 minutes with a 10-minute follow-up
3 for a total of 30, is that sufficient?

4 MR. BENJAMIN: That's sufficient, 20 minutes with
5 a possible 10-minute follow-up.

6 JUDGE THOMPSON: Ten minute follow up.

7 MS. ALTARAS: That should be sufficient, Your
8 Honor.

9 JUDGE THOMPSON: Okay. Opening statements how
10 long do you anticipate the State will need for the opening
11 statement?

12 MS. ALTARAS: Your Honor, I estimate 10 minutes I
13 believe.

14 JUDGE THOMPSON: And --

15 MR. BENJAMIN: I will be limited to whatever the -
16 - is allowed to the State, Your Honor.

17 JUDGE THOMPSON: Okay, I'll --

18 MR. BENJAMIN: Its just -- if the Court allows
19 them

20 10 minutes I will do mine in 10 minutes.

21 JUDGE THOMPSON: I'll give you 10 minutes for
22 opening then. Okay? And we'll see how the trial goes and
23 then I'll set some limits on closing.

24 MR. BENJAMIN: Very well, Your Honor.

25 JUDGE THOMPSON: Other questions? And what I'll

1 usually -- what I do is sidebar and we select the jurors and
2 so then you don't make the challenges in open court. And
3 you're each allowed three preemptory's and obviously
4 challenges for cause if there are some.

5 MR. BENJAMIN: Right. And Your Honor, do you
6 allow preemptory's for the whole panel or just in the first
7 six? I just want --

8 JUDGE THOMPSON: Well you can exercise your
9 preemptory any way you choose.

10 MR. BENJAMIN: Okay.

11 JUDGE THOMPSON: However, we will start from the
12 first six, those will be the ones that theoretically are
13 empanelled until stricken --

14 MR. BENJAMIN: Sure.

15 JUDGE THOMPSON: -- and -- and go through in that
16 manner.

17 MR. BENJAMIN: Thank you.

18 MS. ALTARAS: Your Honor, is it your practice to
19 keep an alternate juror in case of (inaudible)?

20 JUDGE THOMPSON: Because our trials are somewhat
21 short I usually don't select a -- a presiding or a -- a
22 substitute juror. So I think probably six would be
23 sufficient in this. I expect -- I'm -- I'm looking at --
24 from what I see that you will have three witnesses from the
25 State, is that correct?

1 MS. ALTARAS: That is correct, Your Honor.

2 JUDGE THOMPSON: And Mr. Moimoi may testify in his
3 own behalf. Any other witnesses?

4 MR. BENJAMIN: No, I don't anticipate anyone other
5 than Mr. Moimoi.

6 JUDGE THOMPSON: Okay. So I'm anticipating we
7 would be able to complete this trial today. So I -- I
8 really don't think an extra juror would be -- would be
9 necessary.

10 MR. BENJAMIN: I would think tomorrow morning at
11 the latest, Your Honor.

12 JUDGE THOMPSON: Okay. We have a problem if its -
13 - goes over into tomorrow morning.

14 MR. BENJAMIN: Okay.

15 JUDGE THOMPSON: So if it goes over into tomorrow
16 it will be tomorrow afternoon.

17 MR. BENJAMIN: Okay.

18 JUDGE THOMPSON: I have a meeting that I have to
19 speak at tomorrow morning and I can't get out of it so.

20 MR. BENJAMIN: Okay.

21 JUDGE THOMPSON: I wish I could. Okay.

22 MR. BENJAMIN: Just one last thing, Your Honor.

23 JUDGE THOMPSON: Uh-huh.

24 MR. BENJAMIN: I think I sound worse than I am but
25 I do cough periodically. I would just like to say something

1 to the jury if the Court would allow that I'm suffering from
2 a cold.

3 JUDGE THOMPSON: Sure.

4 MR. BENJAMIN: I know that's a personal story but
5 (inaudible).

6 JUDGE THOMPSON: Any problem?

7 MS. ALTARAS: The State would not object to that.

8 JUDGE THOMPSON: Okay. Okay. So if you want to
9 go ahead and bring the jurors up.

10 UNKNOWN FEMALE SPEAKER: (Inaudible).

11 JUDGE THOMPSON: Okay.

12 UNKNOWN FEMALE SPEAKER: Please rise.

13 JUDGE THOMPSON: Thank you, please be seated. And
14 are we ready for the jury?

15 MR. BENJAMIN: Yes, Your Honor.

16 MS. ALTARAS: Yes, Your Honor.

17 JUDGE THOMPSON: Okay. Thank you for (inaudible).

18 UNKNOWN FEMALE SPEAKER: Please rise.

19 JUDGE THOMPSON: Thank you. Okay would each of
20 the jurors in the room please raise your right hand and be
21 sworn?

22 Do each of you solemnly swear or affirm that you will
23 truthfully answer any questions directed to you by the Court
24 or the attorneys in this matter concerning your
25 qualifications to serve as jurors? If your answer is in the

1 affirmative please say I do.

2 JURORS: I do.

3 JUDGE THOMPSON: Thank you. Please be seated.

4 And good morning, we are going to try to seat a jury and
5 then I'll release you for lunch so please bear with us and
6 be patient and we will try to get you to lunch as quickly as
7 possible. I'm Judge Thompson and we are here today on the
8 matter of State of Washington versus Moimoi.

9 The remarks that I make, the questions that I ask, the
10 questions I permit the attorney's to ask and the
11 instructions that I give are directed to each and every one
12 of you in the courtroom and I'll ask that you please pay
13 close attention in this matter.

14 In order that this case be tried before an impartial
15 jury the attorney's and I will be asking you questions not
16 to embarrass you or to pry into your private affairs but to
17 determine if you are unbiased and without an preconceived
18 ideas which might affect this case.

19 You should not withhold any information in order to be
20 seated on this particular jury. You should be truthful in
21 your answers rather than answering the way that you feel
22 the attorney's or the Court expect you to answer.

23 It is presumed that once a jury has been selected and
24 accepted by both sides that each of you will keep an open
25 mind until the case is finally submitted to you on the

1 record, that each of you will accept the instructions of the
2 Court and will base any decision upon the law and the facts
3 and influenced by any other considerations.

4 The purpose of the questions on voir dire is to
5 determine if you have that frame of mind. The attorney's
6 have the right and the duty to challenge jurors for cause.
7 They may also challenge up to three jurors each without
8 giving any reason, these are called preemptory challenges.
9 Please do not take offense if you are challenged, the
10 challenge is not exercised as personal reflection of you.

11 As I stated earlier this is a criminal action
12 instituted by the State of Washington. The State in this
13 matter is represented by attorney Leah Altaras. Thank you.

14 The Defendant in this matter, Laki Moimoi, is
15 represented by attorney Rodney Benjamin.

16 MR. BENJAMIN: Good morning, I'm Rod Benjamin.
17 This is Mr. Laki Moimoi. We're also in the presence of an
18 interpreter, order of the court.

19 JUDGE THOMPSON: Thank you, Mr. Benjamin. The
20 Defendant has entered a plea of not guilty that plea puts in
21 issue every element of the crime charged. The complaint in
22 this case is only an accusation against the Defendant and
23 informs the Defendant of the crime charged. You are not to
24 consider the filing of the complaint or its contents as
25 proof of the matters charged. It will be your duty to

1 determine the facts in this case from the evidence produced
2 in court it also is your duty to accept the law from the
3 Court regardless of what you personally believe the law is -
4 -

5 UNKNOWN MALE SPEAKER: Is the mike on? It's hard
6 to hear you.

7 JUDGE THOMPSON: It only goes to a recorder so it
8 doesn't help much. It's -- it's a recorder so do you need
9 to maybe pull a chair up closer?

10 UNKNOWN MALE SPEAKER: No, I -- I just wanted to
11 be able to hear that's all.

12 JUDGE THOMPSON: Okay. Do you want to pull a
13 chair up closer so you can hear? This -- this microphone is
14 not a P.A. it only goes to the recorder so it doesn't
15 amplify my voice.

16 Could -- could you pull a chair from over there and
17 pull it up a little closer so he can hear?

18 UNKNOWN FEMALE SPEAKER: I'm going to put it over
19 here now.

20 JUDGE THOMPSON: Well, that might be a little
21 closer. Okay, is that better? Can you hear better?

22 UNKNOWN MALE SPEAKER: That's perfect.

23 JUDGE THOMPSON: Okay. Okay, I'll try to keep my
24 voice up I don't speak very loudly normally so but if you
25 have trouble hearing please let me know.

1 Okay, the Defendant is presumed innocent this
2 presumption continues throughout the entire trial unless you
3 find that it has been overcome by the evidence beyond a
4 reasonable doubt. The Plaintiff or the prosecutor in this
5 matter has the burden of proving each element of the crime
6 beyond a reasonable doubt. A reasonable doubt is one for
7 which a reason exists and it may exist from the evidence or
8 from the lack of evidence. It is such a doubt as would
9 exist in the mind of a reasonable person after fully, fairly
10 and carefully considering all the evidence or lack of
11 evidence. If after such consideration you have an abiding
12 belief in the truth of the charge you are satisfied beyond a
13 reasonable doubt.

14 For those of you who may have been involved in other
15 juror pools I'm -- I'm going to explain to you the -- a few
16 of the differences between a civil case and a criminal case.
17 In a civil case the Plaintiff must prove his or her case by
18 a preponderance of the evidence, or that it is by the
19 greater weight of the evidence.

20 In a criminal case a plaintiff or prosecutor must prove
21 every element of the crime charge beyond a reasonable doubt.
22 In a civil case the verdict need not be unanimous, in a
23 criminal case the law requires that all jurors agree.

24 I'm going to begin to ask you a few questions and then
25 the attorney's will follow up with some additional

1 questions. If you would answer yes or probably to any of
2 these questions please raise your hand and leave your hand
3 raised until the Court is able to make note of your answer.

4 ***** VOIR DIRE NOT TYPED *****

5 JUDGE THOMPSON: Okay. I'll ask the jurors to
6 stand and be sworn. Please raise your right hand.

7 Do each of you swear or solemnly affirm that you will
8 well and truly try this case and declare a true and correct
9 verdict to the best of your abilities, so help you God?

10 THE JURORS: I do.

11 JUDGE THOMPSON: Go ahead and be seated and I'll
12 just give you a few instructions and then I will release you
13 for the lunch hour although we are somewhat late.

14 Okay. The first one is important that each of you keep
15 your minds open and be attentive throughout this entire
16 trial. Do not discuss the case either among yourselves or
17 with anyone else. Do not permit anyone to discuss it either
18 with you or in your presence. The violation of this order
19 is serious, it may involve personal penalty to you as well
20 as result in a mistrial which would cause great injury to
21 the parties in this case.

22 You will not be sequestered or kept together during the
23 course of this trial you will be released for lunch hour and
24 if case goes over to -- to tomorrow we will not make you
25 stay here overnight so you will (inaudible) to go home.

1 Because of this you are not admonished not to review or
2 listen to any report in the newspaper, radio or television
3 on the subject matter of this trial. Although I do not
4 expect that this case will be recorded but could be similar
5 matters that are reported in the press so please refrain
6 from reading any reports about anything related to similar
7 subject matter. Do not permit anyone to read or comment on
8 it to you or in your presence. It's important that you keep
9 you mind free of any extraneous influences so that you may
10 decide this case on the evidence only in this case and under
11 the Courts instructions on the law.

12 If your family or friends ask you about this case you
13 should tell them that you under the Court's instructions not
14 to discuss it. When the trial is over you will be released
15 from this instruction and you will then be free to discuss
16 the case among yourselves, with witnesses or with any family
17 members with whom you choose to discuss it.

18 Please remember that even a discussion which have no
19 relationship to this case would put a bad appearance. For
20 this reason the participants in the trial are instructed not
21 to greet or converse with you during your recesses and the
22 delivery -- or as you come or go from the courtroom. So if
23 you are in the same elevator with someone that you recognize
24 as being here in the courtroom and they don't greet you it's
25 not because you're not friendly but they've been instructed

1 not to talk to you and please don't even exchange greetings
2 with them. Any conversation could be seen as being
3 something that could prejudice this trial.

4 When you return come directly to the jury deliberation
5 room and avoid any inadvertent contact with anyone who may
6 be a witness that you may not be aware of.

7 You as a juror should never seek out any evidence or do
8 any research on your own. You should not inspect the scene
9 where this event is alleged to have occurred. There may be
10 many -- there are many reasons why this case should be
11 decided only on the proper evidence admitted in the
12 courtroom. So if your normal coming or going from court
13 sessions would result in passing or seeing the scene where
14 this incident is alleged to have occurred please do not stop
15 and investigate and please advise the bailiff so that -- so
16 you can advise the Court.

17 I may be repeating these instructions from time to time
18 but if I do not repeat them please be advised that they do
19 apply to you throughout the course of this trial.

20 Additionally when you are in the jury room you will not
21 be allowed to speak on cell phones or use any electronic
22 devices. So if the -- the lunch hour is your time to make
23 any phone calls you need to make but please do not have your
24 cell phones on when you are in the jury deliberation room or
25 in the courtroom.

1 At this time I'm going to go ahead and release you for
2 lunch and I'll ask that you return at 2:00.

3 (COURT IN RECESS)

4 (COURT BACK ON RECORD)

5 UNKNOWN FEMALE SPEAKER: Please rise

6 JUDGE THOMPSON: Thank you, please be seated. And
7 I'll explain to the jurors the function and the duties of
8 the jurors for -- and the attorneys and the procedures that
9 we will be following in the course of this trial. The
10 attorney's remarks, statements and arguments are intended to
11 help you understand the evidence and apply the law. They
12 are not evidence however and you should disregard any
13 remarks, statements or arguments, which are not supported by
14 the evidence or by the law as the Court gives it to you.

15 The law does not permit me to comment on the evidence
16 in any way and I will not intentionally do so. By comment
17 on the evidence I mean some expression or indication from me
18 as to my opinion on the value of the evidence or the weight
19 of it. If it appears to you that I do comment on the
20 evidence you are to disregard that apparent comment
21 entirely. The attorneys may make objections to any
22 questions and evidence. They have the right and the duty to
23 make any objections that they deem to be appropriate. Such
24 objections however should not influence you and you should
25 make no presumptions because of their objections.

1 The evidence you are to consider consists of the
2 testimony of the witnesses and the exhibits admitted into
3 evidence. It will be my duty to rule on the admissibility
4 of evidence. You must not concern yourselves with the
5 reasons for these rulings. You will disregard any evidence,
6 which either is not admitted or which may be stricken by the
7 Court.

8 The case will proceed in the following order. First of
9 all, the prosecuting attorney will make an opening statement
10 outlining the evidence to be presented on behalf of the
11 State's case. The defense attorney may then make an opening
12 statement outlining defendant's case either immediately
13 after the prosecutor's statement or defense attorney may
14 reserve opening statement until the conclusion of the
15 prosecutor's case.

16 Secondly, the prosecutor will introduce evidence. At
17 the conclusion of the prosecution evidence the defendant may
18 also introduce evidence. Rebuttal evidence may also be
19 introduced by either side.

20 Third, at the conclusion of all of the evidence further
21 instructions will be given to you after which the attorneys
22 will have an opportunity to make closing arguments. You
23 will then select a presiding juror and deliberate on your
24 verdict. You are officers of the Court and you must act
25 judiciously and with an earnest desire to determine and

1 declare a proper verdict. Throughout the trial you should
2 be impartial and permit neither sympathy nor prejudice to
3 influence you. You have been provided with some notepads
4 and pens to be able to take notes if you choose to do so.
5 By providing these I don't mean to suggest that you are
6 required to take notes, you are not. Each of you is most
7 likely aware of your listening style and whether or not
8 taking notes would be of assistance to you. If you do
9 decide to take notes please be advised these notes are for
10 your own personal use only, you will be allowed to consult
11 them yourself and to -- to help refresh your recollection.
12 You should not however presume that your notes are any more
13 accurate than anybody else's memory or notes related to the
14 proceeding. Also your notes will be kept here at the -- in
15 your jury room if you -- if we do not finish this evening
16 they will be kept in the jury room, they will not be shown
17 to anyone else at the end of the trial they will be
18 destroyed and will not be used by anyone. So they are
19 strictly for your own personal use if you choose to avail
20 yourself of that opportunity. If you choose not to and you
21 listen better without taking notes then I would strongly
22 encourage you not to take notes.

23 At this time we will begin and we'll ask Ms. Altaras to
24 make her opening statement.

25 MS. ALTARAS: This is a very straightforward case

1 about someone who did work when he shouldn't have done work.
2 A person who contracted to do work when he shouldn't have.
3 That person is the Defendant, Mr. Laki Moimoi.

4 Good afternoon Ladies and Gentlemen, my name is Leah
5 Altaras and as you know I am the prosecutor for the State of
6 Washington in this case.

7 In 1999, Denis and Judy Lamey were looking for someone
8 to lay a foundation and a concrete slab for a 24 by 24 --
9 can you translate that?

10 THE INTERPRETER: Yes, but --

11 MS. ALTARAS: For a 24 by 24 foot garage at their
12 home in Pacific, Washington, in King County. By April 24th
13 of 1999 Mr. Moimoi was in the neighborhood of Mr. and Mrs.
14 Lamey and went to their residence and asked Mr. Lamey if he
15 needed some work done around his garage. Mr. Moimoi
16 explained that he could do the work for the Lamey's, that he
17 could lay the foundation for the garage and (inaudible).
18 Mr. Lamey asked Mr. Moimoi for some letterhead, a business
19 card and Mr. Moimoi explained that he had had other business
20 with him but that he would do the job for approximately
21 \$2,500.00.

22 After some discussion Mr. Lamey agreed to have Mr.
23 Moimoi do the work for him and the same day wrote Mr. Moimoi
24 a check for the down payment of \$1,800.00. Mr. Lamey to
25 make sure that he was writing a check to -- to the right

1 person and to make sure the I.D. of the defendant checked
2 the (inaudible) of Mr. Moimoi's, checked Mr. Moimoi's
3 Washington identification to insure who he was writing a
4 check to and he wrote Mr. Moimoi's I.D. number on the check
5 that he wrote to Mr. Moimoi. Mr. Moimoi issued a receipt
6 for the down payment and left for the day.

7 A couple days later on April 27th Mr. Moimoi returned
8 to (inaudible) Lamey's residence to begin the work. He came
9 with a crew of workers he didn't come by himself. And the
10 workers began tearing the foundation and laying the forms
11 for the garage. After a days work Mr. Moimoi and his
12 workers left and he came back a couple days later on April
13 29th, 1999. Mr. Moimoi began complaining to the Lamey's
14 that he'd forgotten to include labor in his estimate for the
15 garage slab and on April 30th, 1999 he asked to speak with
16 Mr. and Mrs. Lamey. They met and Mr. Moimoi informed them
17 that he had forgotten to include labor (inaudible) --

18 MR. BENJAMIN: I'm -- I'm going to object, Your
19 Honor. I think this is beyond the scope of our pretrial
20 hearings, this possible testimony.

21 MS. ALTARAS: Your Honor, this is relevant to the
22 work that Mr. Moimoi (inaudible).

23 JUDGE THOMPSON: Okay. I'll just remind you that
24 this is an opening statement to summarizing your evidence.

25 MS. ALTARAS: (Inaudible).

1 JUDGE THOMPSON: Overruled.

2 MS. ALTARAS: Mr. Moimoi wanted an additional
3 \$4,600.00 to complete the work (inaudible) --

4 MR. BENJAMIN: I would -- I would have a
5 continuing objection to this type of testimony, Your Honor.
6 I think it's beyond the scope of what we -- what was -- the
7 Court's ruling in pretrial motions.

8 JUDGE THOMPSON: Okay. I'll overrule the object -
9 - well, why don't we have a sidebar for a second to make
10 sure I understand your objection.

11 (SIDEBAR WITH JUDGE AND COUNSEL - NOT RECORDED)

12 UNKNOWN FEMALE SPEAKER: (Inaudible).

13 MS. ALTARAS: I was -- okay, thank you.

14 Ladies and gentlemen, on April 29th Mr. Moimoi came to
15 the Lamey's, told them that he had forgotten to include
16 labor in his estimate. He told the Lamey's that he needed
17 an additional \$4,600.00 to complete the job in order to pay
18 for the labor on it. The Lamey's at that time said they
19 would not pay that additional amount and asked Mr. Moimoi
20 why he hadn't brought that up before he began the work
21 (inaudible).

22 At the point the Lamey's asked Mr. Moimoi to leave the
23 residence, they requested his full name, his business
24 license number and a receipt for ordering the material for
25 the work that he did perform at their home.

1 Mr. Moimoi left, he never provided the Lamey's with his
2 business license number, with receipts or any other
3 information that they asked for. So the Lamey's file a
4 complaint with the Department of Labor and Industries. They
5 went (inaudible) to investigate (inaudible) and then to
6 (inaudible) and determined that Mr. Moimoi was never
7 registered as a contractor as required by Washington State
8 Law.

9 Ladies and gentlemen, this is a straightforward case.
10 At the close of all testimony the State is confident that
11 you will find beyond a reasonable doubt that Mr. Moimoi is
12 guilty of the crime of unregistered contracting. Thank you.

13 JUDGE THOMPSON: Thank you. Okay and do you wish
14 to give opening statement?

15 MR. BENJAMIN: Yes, Your Honor.

16 JUDGE THOMPSON: Thank you. Please give your
17 attention to Mr. Benjamin.

18 MR. BENJAMIN: Good afternoon. Ladies and
19 gentlemen, Mr. Moimoi is not guilty of being an unregistered
20 contractor; he did not do contracting work for the Lamey's.
21 He did use to work for them and he should have (inaudible)
22 substance, had a business license to do landscaping which is
23 what he did at the Lamey's and he also brought in equipment
24 in which some could confuse in order to do the foundation.
25 It had nothing whatsoever to do with laying the foundation

1 and nothing whatsoever to do with how it was done or when it
2 was done. All he did was what he was asked to do and that
3 is taking and bringing equipment.

4 I want you to listen very carefully to the State's
5 evidence remembering that they have the burden to prove this
6 case. They can't do it. I will ask you to again in the
7 case to bring the only proper verdict and that of not
8 guilty. Because they have this burden you have to listen to
9 their evidence with a critical ear. And I think if you do
10 that and if you ask yourself "What should I do in this case?
11 What would be the best thing to do? What would be the best
12 evidence to prove the case?

13 I know at the end of the case I'll ask you whether the
14 State's provided that. And if you listen with that critical
15 ear to what they say, even more importantly what they don't
16 say, I think you'll find the only proper verdict that of not
17 guilty. Thank you.

18 JUDGE THOMPSON: Thank you. Okay, if you go take
19 the jurors into the jury room, we are going to take another
20 matter briefly and then we'll resume the testimony.

21 (COURT IN RECESS)

22 (COURT BACK ON RECORD)

23

24 (The oath of Mathew Jackson was not captured on the audio)

25 ///

1 DIRECT EXAMINATION

2 BY MS. ALTARAS:

3 Q: Good afternoon.

4 A: Good afternoon.

5 Q: Please state your full name and spell your name for
6 the record.7 A: My name is Mathew Jackson with one T, M-A-T-H-E-W,
8 J-A-C-K-S-O-N.

9 Q: What is your occupation?

10 A: My jobs a -- I'm a construction compliance
11 inspector with the Department of Labor and Industries.12 MR. BENJAMIN: Can the witness be asked to speak
13 up just a little bit?14 MR. JACKSON: Okay. I'll try -- I'll try to do
15 that.

16 BY MS. ALTARAS:

17 Q: And how long have you been employed as a
18 construction compliance inspector?19 A: I've been employed with the Department of Labor and
20 Industries for 14 years.21 Q: What did you do before your job as a construction
22 compliance inspector?23 A: Prior to coming to work with the Department of
24 Labor and Industries I was in the construction field. I
25 spent 12 years as a carpenter, a gentleman carpenter and

1 three years as a registered general contractor.

2 Q: What sort of training or experience do you have to
3 be a construction compliance inspector?

4 A: Well the -- the -- probably the most valuable
5 training is the training that I learned in the construction
6 field. And then once I came to work for the Department of
7 Labor and Industries I took a lot of technical classes. The
8 Department provides training to the inspectors every six
9 months. And we -- we have approximately 35 inspectors
10 statewide and once a year we meet for four or five days for
11 an in-depth training on the contractor law, plumbing law and
12 electrical law.

13 Q: What do you and your' -- what do you in your
14 capacity as a construction compliance inspector?

15 A: I think there's -- there's a multitude of things
16 that a construction compliance inspector does. Number one
17 is I check and maintain compliance under the contractor
18 registration law. Under the electrical licensing laws, the
19 plumbing certification laws and I also inspect factory built
20 structures so I'm a certified building inspector with my --
21 I think that's why we -- the -- the minimum qualifications
22 are that we come out of the construction trade so we have
23 building knowledge of construction.

24 Q: What do you do in relation to contractors in your
25 capacity as a construction compliance inspector?

1 A: In relation? Can you --

2 Q: How does your -- how does your job relate to
3 contractors and unregistered contracting?

4 A: Well, as -- as I stated earlier its my job to check
5 and make sure that individuals that are engaged in the
6 business of a contractor that they're registered which means
7 that they're bonded and they're insured and they've
8 registered that bonding and that insurance with the
9 Department of Labor and Industries.

10 Q: How do you investigate contractors that
11 (inaudible)?

12 A: There's -- sometimes we will just observe
13 construction activity and they'll stop and make a routine
14 stop at that job and check the individuals doing that work
15 to make sure they're registered. And in many cases though
16 we have referrals from people that are in the industry and
17 we receive complaints from consumers that have hired a
18 contractor and have a complaint against that contractor.

19 Q: Can you describe the investigation process?

20 A: Well once if -- if someone were to -- to call and
21 file a -- launch a complaint on the phone with me, the first
22 thing we need to determine is whether or not that person is
23 registered because that would be -- that would make the
24 difference on how we proceed with their complaint. If
25 they're bonded and insured -- we have a contractor database

1 that lists and registers all the companies in the State of
2 Washington so I can just immediately type them in and find
3 out whether or not they're registered. And if they're
4 registered we give them the bond and insurance information
5 and that's a civil matter because that person's properly
6 registered in Washington.

7 If the person isn't registered then we would send them
8 a complaint form and get a statement of fact from them and
9 all the documents that would be associated with the
10 complaint like cancelled checks, bid proposals, a statement
11 of why they're the complaint and just any other documents
12 that would support that that person was working at their
13 home.

14 Q: How do you determine whether or not someone is
15 registered? A registered contractor?

16 A: There's the -- by the computer database. It's --
17 it's updated daily so it's a thoroughly active system. You
18 can -- we actually have a website that you can (inaudible)
19 anybody can go on the website and check a contractor, they
20 can check the sizes of bond, if there's been any complaints
21 against it. But I actually have a -- we have a database
22 that's private to employees of Labor and Industries that
23 would search that database and determine whether or not
24 someone was registered.

25 Q: And you explained a little bit about how you used

1 the determination as to whether or not a contractor was
2 registered. In your investigations you rely on the results
3 of the license checks?

4 A: Very much so. But that database is very accurate,
5 it's updated daily. And usually when you look, you know,
6 them up there's -- if a person -- if there's some kind of
7 expiration that's been very recent I'll actually call down
8 to the -- to the records section of L and I and have them
9 pull that contractor's file and check their file for, you
10 know, what -- what's lacking in the file as far as maybe a
11 certificate of insurance or an expired bond or something
12 like that.

13 Q: In your work as a construction compliance inspector
14 did you receive a complaint from Mr. and Mrs. Lamey?

15 A: Yes, I did.

16 Q: What was the nature of that complaint?

17 A: Well there -- I believe it was a phone call just as
18 I reported (inaudible) complaints then I sent Mr. and Mrs.
19 Lamey out a complaint form. They -- they filled that
20 complaint form out and provided me information back. Then I
21 actually went out to their home and looked at -- looked at
22 the work and talked to Mr. and Mrs. Lamey and tried to
23 identify who exactly did the work.

24 Q: What did Mr. and Mrs. Lamey complain about?

25 MR. BENJAMIN: I'd object, hearsay, Your Honor.

1 JUDGE THOMPSON: Sustained.

2 MS. ALTARAS: Your Honor, this testimony and
3 certainly the State can recall Mr. Jackson after Mr. and
4 Mrs. Lamey testify without (inaudible) signed those leases
5 are not yet present in the courtroom. And that motion will
6 be made.

7 JUDGE THOMPSON: Okay. Thank you.

8 BY MS. ALTARAS:

9 Q: You mentioned that after you received the complaint
10 from the Lamey's you visited their residence (inaudible)
11 identified. (Inaudible) complaining about. How do you
12 determine who Mr. and Mrs. Lamey were complaining about?

13 A: The -- within the Tongan community there's a lot of
14 concrete contractors. It's been my experience that a lot of
15 times their names are different than an American name so its
16 -- its -- and us a different names than their actual given
17 name. So -- and they use each others names. So a lot of
18 times that -- the way that we would determine who it is is
19 number one, we (inaudible) who got paid for the job and in
20 this case I called the Department of Licensing and had a
21 photo montage sent to me because I suspected who the person
22 was which was Laki Moimoi and I took the photo montage out
23 to Mr. and Mrs. Lamey's house which was six pages, it was
24 issued to me from the Department of Licensing. And Mr. and
25 Mrs. Lamey --

1 MR. BENJAMIN: I would have to object at this
2 point. May I have a sidebar, Your Honor?

3 JUDGE THOMPSON: Yes.

4 (SIDEBAR WITH JUDGE AND COUNSEL - NOT RECORDED)

5 JUDGE THOMPSON: The jury will be -- will
6 disregard any testimony related to the photo montage.

7 BY MS. ALTARAS:

8 Q: Mr. Jackson, (inaudible) pass what you talked about
9 and past the identification issue when you said that you
10 visited the Lamey's residence after you received the
11 complaint did you make any observations at the Lamey's
12 residence as to the work that was going on?

13 A: Just the remnants of where the foundation for their
14 garage was going.

15 Q: And did you run a search of the records regarding
16 Mr. Moimoi's status as to whether or not he was registered?

17 MR. BENJAMIN: Objection, hearsay.

18 JUDGE THOMPSON: Sustained.

19 BY MS. ALTARAS:

20 Q: After receiving the complaint from Mr. and Mrs.
21 Lamey, did you determine whether or not Mr. Moimoi was a
22 registered contractor?

23 A: Yes, I did.

24 Q: And how did you do that?

25 A: By checking our database --

1 MR. BENJAMIN: And I would object to what was or
2 was not on the database, Your Honor. It's a -- its hearsay.
3 He didn't mention what the -- he didn't mention about the
4 documents in the database itself. It's hearsay.

5 JUDGE THOMPSON: Okay. There has been testimony
6 that the database is a source that's commonly relied upon,
7 has established reliability and can be verified by contact
8 with the files in the office. So it would appear to me that
9 it would be a business record. Can you address that
10 objection?

11 MR. BENJAMIN: I would address that, Your Honor.
12 We haven't seen the record. And you can't testify to any
13 record that can't -- he doesn't have with him or that the
14 jury -- otherwise it's something hearsay. You know, let's
15 see if he has (inaudible).

16 JUDGE THOMPSON: Okay.

17 MS. ALTARAS: Your Honor, the State's attempting
18 to lay the foundation for the search of the record that Mr.
19 Laki obtained. And this --

20 JUDGE THOMPSON: Okay. Okay, I'll allow you to
21 lay that foundation.

22 MS. ALTARAS: Thank you.

23 BY MS. ALTARAS:

24 Q: Again, Mr. Jackson, how -- how did you determine
25 whether or not Mr. Moimoi was a registered contractor?

1 A: Well, any time that we issue a civil infraction or
2 a complaint with the King County Prosecutor's Office we
3 obtain a search of the records letter, which is a sealed
4 letter from the supervisor of the keeper of the records of -
5 - of the contractor file section. That person will type the
6 letter out, basically stating the individual person's
7 registration status and seal that letter as a -- a
8 authenticated document of that's person's status as a
9 registered contractor.

10 Q: Mr. Jackson, I'm handing you what's been marked as
11 State's Exhibit No. 1, do you recognize that?

12 A: Yes, I do.

13 Q: How do you recognize that?

14 A: This is the letter that I just explained to you
15 about. It's from Pamela Bergman (phonetic) and Pamela is
16 the keeper of the -- the supervisor of the records -- the
17 files for the contractors in Olympia.

18 Q: And do you recognize the signature at the bottom of
19 that page?

20 A: Yes, it's Pamela Bergman's signature. And it's
21 notarized by Bobby Jo Saya (phonetic).

22 Q: And who's Bobby Jo Saya?

23 A: She's a -- a person that works in the contractor
24 file section of Olympia.

25 Q: Is that a fair and accurate copy of a search of the

1 records that you ran to determine whether or not Mr. Moimoi
2 was a licensed contractor?

3 A: Yeah, this -- this letter basically states that Mr.
4 Moimoi --

5 MR. BENJAMIN: I (inaudible) to object, non-
6 responsive to question.

7 MS. ALTARAS: (Inaudible). Mr. Jackson, if you
8 could please just answer --

9 MR. JACKSON: Sorry.

10 MS. ALTARAS: -- my direct question.

11 BY MS. ALTARAS:

12 Q: Is that a fair and accurate copy of the search of
13 records that you requested to determine whether or not Mr.
14 Moimoi was a registered contractor?

15 A: Yes, it is.

16 MS. ALTARAS: Your Honor, at this time the State
17 offers Exhibit 1 into evidence.

18 MR. BENJAMIN: I'd object, Your Honor. The
19 business record must be kept as a routine part of the
20 business. It appears that this was made -- this record --
21 particular record was made for litigation not as a -- any
22 routine part of any business operation from Labor and
23 Industries.

24 MS. ALTARAS: Your Honor, this document is self-
25 authenticating under (inaudible). A -- that's the seal of

1 the State of Washington on the bottom. As Mr. Jackson just
2 explained to you it is standard procedure (inaudible) the
3 Department of Labor and Industries.

4 JUDGE THOMPSON: Court finds that it is a business
5 record and it is certified and self-authenticating. So I
6 will overrule the objection.

7 (Whereupon, State's Exhibit No. 1
8 was admitted into evidence).

9 MS. ALTARAS: Thank you, Your Honor.

10 MR. BENJAMIN: Your Honor, I'd ask the record to
11 reflect that the document is being published.

12 MS. ALTARAS: Oh I apologize, Your Honor, if I may
13 publish the document to the jury?

14 JUDGE THOMPSON: The document may be published.

15 BY MS. ALTARAS:

16 Q: Mr. Jackson, I'm going to hand you what's been
17 marked as State's Exhibit No. 1. Would you please read to
18 the Court the third paragraph of that document?

19 MR. BENJAMIN: Your Honor, I think the document
20 speaks for itself. It's been admitted and published
21 already. I don't know why you'd need to read it. I don't
22 know hwy we'd need a third rendering of what's on it.

23 JUDGE THOMPSON: Okay. And I'll allow him to
24 testify as to the contents of the document that's been
25 admitted.

1 MS. ALTARAS: Thank you.

2 JUDGE THOMPSON: Overruled.

3 BY MS. ALTARAS:

4 A: The third paragraph states from Pamela Bergman, "I
5 further certify that we have searched all records from
6 January 1980 to the present and are unable to locate a
7 previous or current registration for Laki Moimoi under that
8 specific name located at 1-0-1-1-8 Des Moines Memorial
9 Drive, Seattle, Washington, 98168 doing business as L and L
10 Concrete, Seattle Concrete and Landscape, as being
11 registered with this section as specialty or general
12 contractor."

13 Q: Mr. Jackson, following the complaint and a search
14 of the records did you have any personal contact with Mr.
15 Moimoi?

16 A: Several times over the years done by phone. I've -
17 - the (inaudible) concrete jobs where Laki's been working
18 with another person and spoke to Mr. Moimoi regarding this
19 particular complaint.

20 Q: Mr. Jackson, focusing on your communications with
21 Mr. Moimoi with regards to this particular complaint, have
22 you had any personal contact or conversations with Mr.
23 Moimoi in regards to this particular complaint?

24 A: A couple -- a couple different occasions. One time
25 on a job site, one time by phone. The first time was by

1 phone in March -- in March of 2000 when Mr. Moimoi spoke to
2 me on the phone. He said --

3 MR. BENJAMIN: I have to object, Your Honor,
4 without laying the foundation with Mr. Moimoi (inaudible).

5 JUDGE THOMPSON: Sustained.

6 BY MS. ALTARAS:

7 Q: Mr. Jackson, you mentioned that there was a
8 conversation via phone, did you make the call or did someone
9 else call you?

10 A: Mr. Moimoi called me.

11 Q: And how did you know that it was Mr. Moimoi that
12 was calling you?

13 A: He identified himself to me on the phone.

14 Q: And how did he identify himself?

15 A: Mr. Moimoi and myself are familiar with each other
16 because I am out there checking and obtaining the job sites
17 and I've met a lot of Mr. Moimoi's relatives and friends and
18 the Tongan community knows my name and Mr. Moimoi knew me
19 and my relations of other relatives and friends of his.

20 Q: Did you recognize Mr. Moimoi's voice when he called
21 you on the phone?

22 A: I -- I can't say that I recognized his voice but I
23 did not doubt that it was Mr. Moimoi when -- when he called
24 me.

25 Q: Do you know why Mr. Moimoi contacted you?

1 MR. BENJAMIN: Objection, speculation.

2 JUDGE THOMPSON: Sustained.

3 BY MS. ALTARAS:

4 Q: Mr. Jackson, did you leave any messages for Mr.
5 Moimoi to call you?

6 A: Several, I believe. It's been a long time but --
7 and I'd have to refer to my notes but yes, I mean, that's --
8 the first thing you do when you receive a complaint is not
9 just get the consumers side, its very important to talk to
10 the contractor, get -- get the -- the story from them what -
11 - what happened and what took place and so yeah, I made
12 attempts to contact Mr. Moimoi. Can I -- can I add a little
13 bit too? Just -- even on -- even on jobs where I would run
14 into Mr. Moimoi's cousin --

15 MR. BENJAMIN: I would object, beyond the scope of
16 the question.

17 JUDGE THOMPSON: Sustained.

18 BY MS. ALTARAS:

19 Q: Thank you. Mr. Jackson, you mentioned that Mr.
20 Moimoi called you, after he identified himself what was the
21 -- what was the substance of the conversation that ensued?

22 A: There was -- regarding Mr. and Mrs. Lamey's
23 complaint against him. Mr. Moimoi claimed that it -- he was
24 not the person that had contracted to do -- to do the work
25 at Mr. and Mrs. Lamey's. I explained to Mr. Moimoi that we

1 had a cancelled check with his driver's license number
2 written on the check and that the name was made out to a --

3 MR. BENJAMIN: I'm going -- I'm going to object,
4 Your Honor. There's -- there's been no evidence of this
5 presented to the Court, any check or anything along those
6 lines. He's testifying the name there's no foundation for
7 it.

8 JUDGE THOMPSON: Okay. I'll sustain the
9 objection.

10 MS. ALTARAS: And the State will -- will
11 reestablish.

12 BY MS. ALTARAS:

13 Q: Mr. Jackson, you mentioned that you visited the
14 Lamey's residence, when you visited their residence and
15 disregarding anything regarding photographs, did you do
16 anything else to determine whether or not the -- who the
17 person was they were complaining about? (Inaudible).

18 A: Sure, as I mentioned earlier we -- we checked who
19 got paid for the project and so I observed --

20 MR. BENJAMIN: Again, I would object to that
21 testimony, Your Honor, without some describe (inaudible)
22 that would be the best available evidence.

23 MS. ALTARAS: Your Honor, the State does have
24 evidence and again this is to lay the foundation for
25 admission of that evidence. Mr. and Mrs. Lamey are present

1 today they are witnesses, they are available for cross
2 examination. And Mr. Jackson is testifying regarding first
3 person experience in (inaudible).

4 MR. BENJAMIN: And I don't believe the foundation
5 can be laid properly, Your Honor.

6 JUDGE THOMPSON: Okay. You need to first lay a
7 foundation for that evidence so I'll -- I'll sustain the
8 objection.

9 MS. ALTARAS: Thank you.

10 BY MS. ALTARAS:

11 Q: When you were on Mr. and Mrs. Lamey's residence did
12 they present anything to show you who the person was that
13 they contracted with?

14 A: Yes, they provided me a copy of the cancelled check
15 that they had issued to the person that they'd hired.

16 MR. BENJAMIN: Again, Your Honor, I'd ask that
17 that be stricken and that the jury disregard that last
18 answer. We have yet to have identified any physical
19 documents and yet he's testifying to it. That's not a
20 proper foundation.

21 MS. ALTARAS: Your Honor, maybe (inaudible) for
22 the Court and for Counsel to at this time we can quite Mr.
23 Jackson's testimony for the moment and call Mr. and Mrs.
24 Lamey after cross has been -- has been concluded. Mr. and
25 Mrs. Lamey have just arrived I see them in the lobby area --

1 JUDGE THOMPSON: Okay.

2 MS. ALTARAS: -- they weren't here earlier, which
3 is why I called Mr. Jackson.

4 JUDGE THOMPSON: Okay. State has reserved any
5 right to recall this witness and you may cross examine at
6 this time.

7 MR. BENJAMIN: Thank you, Your Honor.

8

9 CROSS EXAMINATION

10 BY MR. BENJAMIN:

11 Q: Good afternoon, Mr. Jackson.

12 A: Good afternoon.

13 Q: Mr. Jackson, you never saw anyone doing the work
14 prior to visiting the Lamey's house did you?

15 A: No, I did not see any work being done at Mr. and
16 Mrs. Lamey's.

17 Q: And you never saw any contract between the Lamey's
18 and anyone else, did you?

19 A: No, just their statements to me.

20 Q: And did you check to see whether Mr. Moimoi had a
21 business license with the City of Seattle?

22 A: Its -- I didn't check the City license but I do
23 check Washington State business licenses which is also a
24 database that I use along with the contractor registration
25 database.

1 Q: So he could have had a -- a business license in the
2 City of Seattle to do landscaping and construction?

3 A: That -- that might be possible, yes.

4 Q: I have nothing further.

5 JUDGE THOMPSON: Thank you, you may step down.

6 MR. JACKSON: Okay, thank you.

7 JUDGE THOMPSON: Can you call the next witness
8 please?

9 MS. ALTARAS: Your Honor, at this time the State
10 would call Dennis Lamey and I ask that I be allowed a moment
11 to go speak to Mr. and Mrs. Lamey, they just arrived.

12 JUDGE THOMPSON: Okay.

13 MS. ALTARAS: Thank you.

14 JUDGE THOMPSON: We're going to go ahead and taken
15 an afternoon recess while the prosecutor speaks with her
16 witnesses.

17 UNKNOWN FEMALE SPEAKER: Please rise.

18 (COURT IN RECESS)

19 (COURT BACK ON RECORD)

20 JUDGE THOMPSON: Okay, thank you. You want to
21 bring the jurors in please. Do you have any jury
22 instructions (inaudible)?

23 MS. ALTARAS: Pasrdon?

24 JUDGE THOMPSON: Do you have any jury
25 instructions?

1 MS. ALTARAS: Yes, Your Honor.

2 MR. BENJAMIN: I'm not sure I'll have any, Your
3 Honor. I'm not obligated. I'll take a look at what hers
4 are and then I'll see if I have any.

5 JUDGE THOMPSON: Okay. Would you -- if you don't
6 mind, do you have copies to pass around?

7 MS. ALTARAS: Yes, I have a copy but I only -- I
8 don't have copies for both, I have one copy for the Court.
9 I don't have copies for Defense Counsel (inaudible) my copy
10 he can look at.

11 JUDGE THOMPSON: Okay. Did you provide him with a
12 copy of your proposed instructions?

13 MS. ALTARAS: I have a copy with -- I have a copy
14 with the citations and a copy without citations.

15 UNKNOWN FEMALE SPEAKER: Please rise.

16 MR. BENJAMIN: I can take it either way just so I
17 can look at it.

18 MS. ALTARAS: Okay. I have the extra copies
19 (inaudible).

20 MR. BENJAMIN: Thank you.

21 JUDGE THOMPSON: Thank you, please be seated.
22 Okay, please call your next witness.

23 MS. ALTARAS: The State calls Dennis Lamey.

24 JUDGE THOMPSON: Please up here please, Mr. Lamey.
25 Please raise your right hand.

1 Do you swear to tell the truth in this matter so help
2 you God?

3 MR. LAMEY: I do.

4 JUDGE THOMPSON: Thank you, please be seated right
5 there, please.

6 *****

7 MR. DENNIS LAMEY having been first duly sworn
8 under oath, testified as follows:

9
10 DIRECT EXAMINATION

11 BY MS. ALTARAS:

12 Q: Good afternoon, Mr. Lamey.

13 A: Hi.

14 Q: Please state your full name and spell your name for
15 the record.

16 A: Dennis Michael Lamey, D-E-N-N-I-S, middle name?

17 Q: (Inaudible) your last is fine.

18 A: L-A-M-E-Y.

19 Q: Thank you. Where do you live?

20 A: 116 Third Avenue Northwest, City of Pacific.

21 Q: Is that in King County?

22 A: Yes, Ma'am.

23 Q: Were you living at that address on April 24th of
24 1999?

25 A: Yes.

1 Q: On that date did you happen to contract with any
2 person in this courtroom?

3 A: Yes, Laki Moimoi.

4 Q: Now, please tell the Court where that person is now
5 sitting.

6 A: Sitting right down there in that green jacket.

7 MS. ALTARAS: Let the record reflect that the
8 witness identified the Defendant.

9 JUDGE THOMPSON: Record will so reflect.

10 BY MS. ALTARAS:

11 Q: Where did your contact with Mr. Moimoi occur?

12 A: At my home.

13 Q: Is that the same address that you stated earlier?

14 A: Yes.

15 Q: And how did you come into contact with Mr. Moimoi?

16 A: Well, it's been so many years ago I don't -- I
17 don't recall if he -- if he called on the phone or -- or
18 came over to the door but, you know, I just remember, you
19 know, that I had got the permit for -- for building a garage
20 from the City of Pacific.

21 Q: All right you mentioned a garage. What type of
22 work were you looking to have done on your home?

23 A: A 24 by 24 garage with a 16 foot garage door
24 opening and -- and a pedestrian door.

25 Q: Did you solicit Mr. Moimoi's business?

1 A: No.

2 Q: Did you receive a bid or estimate for the work from
3 Mr. Moimoi?

4 A: Yes.

5 Q: Was that in person?

6 A: Yes.

7 Q: And where -- where did that bid -- where did you
8 talk to Mr. Moimoi about the work?

9 A: Well actually in my -- in my dining room, my dining
10 room table.

11 Q: How much was the bid that Mr. Moimoi (inaudible)?

12 A: Twenty-five hundred dollars.

13 Q: And what was that \$2,500.00 to include?

14 A: To complete the -- the footings -- footings for the
15 garage and the slab. The floor, you know, slab.

16 Q: Did Mr. Moimoi provide you with a written contract?

17 A: No, other than what we found our -- our check
18 there.

19 Q: Okay. You mentioned a check, before we get to that
20 did you ask Mr. Moimoi for any information regarding his
21 business?

22 A: Yes.

23 Q: What did you ask him about?

24 A: A business card or anything with a letterhead of
25 his business.

1 Q: Did he provide any of that to you?

2 A: No, he said he didn't have any.

3 Q: You mentioned a check. Did you pay the Defendant -
4 - first of all, did you agree to have Mr. Moimoi do any work
5 at your house?

6 A: Yes, when I -- when I signed -- signed the check
7 for \$1,800.00.

8 Q: And what was that \$1,800.00 for? What was the
9 \$1,800.00 for?

10 A: It was for starting the work on -- that we agreed
11 to.

12 UNKNOWN FEMALE SPEAKER: Do you want the State
13 form?

14 MS. ALTARAS: Yeah, if you would. Thank you.

15 UNKNOWN FEMALE SPEAKER: You're welcome.

16 BY MS. ALTARAS:

17 Q: I'm handing you what's been marked at State's
18 Exhibit No. 2, do you recognize that?

19 A: That looks like -- that looks like my handwriting.
20 It looks like Laki's drivers license number on -- on the top
21 there.

22 Q: And what is that?

23 A: It's a check for \$1,800.00 that I -- that I wrote
24 out.

25 Q: Is that a true and accurate copy of the check that

1 you wrote to Mr. Moimoi?

2 A: True wall and foundation, yes, yes it certainly
3 looks like it. It's been -- it's been about eight years now
4 since -- many, many times (inaudible).

5 MS. ALTARAS: Your Honor, at this time the State
6 offer's Exhibit 2 into evidence.

7 MR. BENJAMIN: No objection.

8 JUDGE THOMPSON: All right, Exhibit 2 is admitted.

9 (Whereupon, State's Exhibit No. 2
10 was admitted into evidence).

11 MS. ALTARAS: Thank you.

12 BY MS. ALTARAS:

13 Q: Mr. Lamey, when you looked at that -- the check you
14 mentioned that you observed the handwriting, what is written
15 on the top of that check in your handwriting?

16 A: On the top it looks like his -- his driver's
17 license number.

18 Q: Did you write that driver's license number down on
19 the check?

20 A: Yes.

21 Q: And why did you do that?

22 A: Well, I wanted to get something to verify -- to
23 know who -- who I was asking the -- to do the work on my
24 property or for my garage.

25 Q: And how did you determine what license number to

1 write down on that check?

2 A: Well, I asked him for his driver's license number
3 so I copied it right off his driver's license.

4 Q: Mr. Lamey, I'm handing you what's been marked as
5 State's Exhibit No. 3, do you recognize that?

6 A: Yes.

7 Q: How do you recognize it?

8 A: Well I could see -- I could see Moimoi on there --
9 or Laki Moimoi.

10 Q: And recalling the data that you saw on Mr. Moimoi's
11 I.D. (inaudible) check, is that a fair and accurate copy of
12 the I.D. that you checked to determine (inaudible)?

13 A: Yeah they -- yep they match up.

14 Q: We can --

15 MR. BENJAMIN: I'll object as non-responsive.

16 MS. ALTARAS: Objection, I'll -- I'll re-ask the
17 question.

18 BY MS. ALTARAS:

19 Q: Mr. Lamey, if you could just answer yes or no, is
20 that -- is State's Exhibit No. 2 that I handed you of the
21 copy the license, is that a fair and accurate copy of the
22 license as you recall you looked at on the date that you
23 wrote Mr. Moimoi the check?

24 A: Yes.

25 Q: Okay.

1 MS. ALTARAS: The State at this time offer's
2 Exhibit 3 into evidence.

3 MR. BENJAMIN: No objection.

4 JUDGE THOMPSON: Exhibit 3 is admitted.
5 (Whereupon, State's Exhibit No. 3
6 was admitted into evidence).

7 MS. ALTARAS: Thank you.

8 BY MS. ALTARAS:

9 Q: Mr. Lamey, again I'm handing you what's been marked
10 as State's Exhibit 2, could you please read off the license
11 number that you wrote on the top of that check?

12 A: M-0- looks like I or 1 -M-C-L-4-4-6-C-R.

13 Q: Thank you. Now, Mr. Lamey, I'm handing you again
14 what's been marked as State's Exhibit 3, a copy of the
15 license. Would you please read the license number off
16 that's listed on that license?

17 A: M-0-I-M-0-L-4-4-6-C-R.

18 Q: And Mr. Lamey, when you first read the number on
19 the -- on the check there was some discrepancy, one thing
20 that did not match, do you know why the numbers did not
21 exactly match?

22 A: Oh (inaudible) looks like a C's not or the O's --
23 looks like the O's not closed on it next to the -- between
24 the M and the L. But then this is a copy of a copy or
25 whatever's going on here.

1 MS. ALTARAS: Your Honor, at this time the State
2 asks to publish Exhibit 2 to the jury.

3 JUDGE THOMPSON: Any objection?

4 MR. BENJAMIN: No objection.

5 JUDGE THOMPSON: Yes, you may.

6 MS. ALTARAS: And Your Honor, the State would also
7 ask to publish Exhibit 3 to the jury.

8 JUDGE THOMPSON: Any objection?

9 MR. BENJAMIN: No objection.

10 JUDGE THOMPSON: Okay, yes you may.

11 MS. ALTARAS: And I just told the jury to look at
12 these exhibits one at a time once they finished looking at
13 it to pass it on.

14 BY MS. ALTARAS:

15 Q: Mr. Lamey, I'm again handing you what's been marked
16 as State's Exhibit 2. And who did you write that check to?

17 A: Laki Moimoi.

18 Q: Is that the name that's listed in the -- in the --
19 right on the check, on the first line?

20 A: That's (inaudible), (inaudible) whatever that is.

21 Q: Do you recall why you wrote the check to that name?

22 A: I don't -- yeah, I don't know, that don't -- that
23 don't make sense.

24 Q: So if you just -- do you remember --

25 MR. BENJAMIN: Objection, asked and answered.

1 MS. ALTARAS: Thank you. Please disregard that
2 question.

3 BY MS. ALTARAS:

4 Q: Did Mr. Moimoi provide a -- any proof of payment to
5 you after you wrote the check to him?

6 A: No, I just wrote out -- yeah, well I, you know,
7 like I said that was so many years ago I don't -- yeah, all
8 I remember is I wrote a check out for him and he certainly,
9 certainly cashed it.

10 Q: Do you remember if there was a receipt or anything
11 (inaudible)? Do you remember if Mr. Moimoi wrote a receipt
12 for that payment?

13 A: I don't -- I don't recall. All I remember is a --
14 is the check we wrote, you know, for the --

15 Q: Mr. Lamey, I'm handing you what's been marked as
16 State's Exhibit 4. Do you recognize that?

17 A: I know it certainly looks like my signature --

18 MR. BENJAMIN: I'm going to -- I'm going to
19 object, Your Honor, non-responsive. The question is did he
20 recognize it not what does it show.

21 JUDGE THOMPSON: Okay, sustained.

22 MS. ALTARAS: Thank you.

23 BY MS. ALTARAS:

24 Q: Mr. Lamey --

25 MS. ALTARAS: Your Honor, if I may just re-ask the

1 question, Mr. Lamey did not (inaudible) at first.

2 BY MS. ALTARAS:

3 Q: Do you recognize that document? Or can you tell me
4 what the document is that I just handed you?

5 MR. BENJAMIN: Oh, I'd object, Your Honor. First
6 he has to be able to recognize it before he can talk about
7 what it is and -- and apparently he did not recognize what
8 it is.

9 JUDGE THOMPSON: Sustained.

10 BY MS. ALTARAS:

11 A: Yeah, I don't -- what's this L and L? There's an L
12 and L up here and --

13 MS. ALTARAS: Your Honor, at this time the State
14 will recall his response to State's Exhibit 4 so that
15 (inaudible) testimony. Thank you.

16 BY MS. ALTARAS:

17 Q: Mr. Lamey, do you remember when -- when Mr. Moimoi
18 began to work on your garage?

19 A: Yeah, I don't -- I don't remember actually when he
20 came over and when he started -- started working, you know,
21 started digging back there.

22 Q: Do you remember how long after you wrote the check
23 it was that he came over?

24 A: I don't know it was -- it was a few days after --
25 after I wrote the check out for him.

1 Q: And what kind of work did he first begin to do?

2 A: Started -- started digging the -- the footings for
3 the -- for the garage.

4 Q: Was anyone else working on the big garage? Anyone
5 besides Mr. Moimoi?

6 A: Yeah, a couple -- a couple days afterwards he -- he
7 had some -- he had two other guys over there working with
8 him.

9 Q: How long did Mr. Moimoi work on that garage?

10 A: Quite a few -- quite a few times he came over
11 there, then there'd be -- then there'd be days that he
12 wouldn't be there for -- for a week or so and then he'd come
13 back and -- and work a few hours and then he'd be gone
14 again. You know, because he's telling me he had other work
15 to do for the -- the guy he's normally working full time
16 for.

17 Q: Did Mr. Moimoi ever finish the work on the garage?

18 A: Oh, no.

19 Q: And why didn't he finish the work?

20 A: Well, it was all -- well it was all (inaudible).

21 MR. BENJAMIN: I'd object, Your Honor, as --

22 JUDGE THOMPSON: Sustained.

23 MS. ALTARAS: I'll recede the question.

24 BY MS. ALTARAS:

25 Q: Mr. Lamey, when -- at what point did Mr. Moimoi

1 stop working on the garage?

2 A: Well, after I called and talked to L and I and they
3 -- they told me that -- to get rid of -- fire him because --

4 MR. BENJAMIN: I'm going to object as hearsay to
5 anything beyond that.

6 JUDGE THOMPSON: Sustained.

7 BY MS. ALTARAS:

8 Q: You mentioned that you called L and I, why did you
9 call L and I?

10 A: Well, because the work -- work wasn't getting done
11 and -- and it certainly wasn't -- you couldn't pour -- you
12 couldn't pour the cement because it -- you couldn't.

13 Q: Did you make any more payments to Mr. Moimoi?

14 A: No.

15 Q: Did Mr. Moimoi ask you for any more money?

16 MR. BENJAMIN: I'd object, Your Honor, for --

17 JUDGE THOMPSON: Overruled, go ahead.

18 BY MS. ALTARAS:

19 A: Oh, did he? Yeah, he came back later on I don't
20 remember when it was but he said -- he said I forgot -- I
21 forgot to charge you for labor.

22 Q: Did he tell you how much money he needed for labor?

23 A: I think it was \$4,600.00.

24 Q: Did you give him that?

25 A: Pardon me?

1 Q: Did you pay that \$4,600.00 for labor?

2 A: No.

3 Q: What did you tell him when he asked you for that
4 money?

5 MR. BENJAMIN: I'd object as irrelevance
6 (inaudible), Your Honor.

7 JUDGE THOMPSON: Overruled.

8 BY MS. ALTARAS:

9 A: Well I -- I just told him I -- I just told him I
10 wasn't going to pay him any more money just do the job that
11 -- that I hired him to do. And that's -- that's when I
12 called L and I to complain about him or, you know, to call
13 the Better Business Bureau or whatever, you know, because it
14 certainly -- certainly getting way out of hand.

15 Q: Did you ever talk to him after he asked you for
16 that money and you told him no?

17 A: Oh yeah, well, well he planned on coming back over
18 but then I -- then I just told him, you know, get off -- get
19 off my property, you're fired and get -- take all your tools
20 and everything and you know, just get off my property.

21 Q: Did you ever get any -- any business card or
22 letterhead from Mr. Moimoi?

23 A: No.

24 Q: Did you ask him for anything like that again? At
25 least in a conversation?

1 A: Oh yeah. Well I -- I wrote down the license number
2 off his truck and --

3 MR. BENJAMIN: Objection, Your Honor, (inaudible).

4 BY MS. ALTARAS:

5 A: -- couldn't -- couldn't find any --

6 MR. BENJAMIN: I would object, Your Honor.

7 JUDGE THOMPSON: Just a minute.

8 MS. ALTARAS: Mr. Lamey, can you please wait for
9 the Court's ruling?

10 JUDGE THOMPSON: Okay. I'm sorry, I missed your
11 question, I didn't hear question.

12 MS. ALTARAS: I asked Mr. Lamey if he -- if he --
13 I believe he had asked Mr. Moimoi for the licensing or for
14 the -- for the card (inaudible).

15 JUDGE THOMPSON: Overruled, go ahead.

16 BY MS. ALTARAS:

17 A: Yeah, we're -- I was trying to get more information
18 from him, you know, from the truck that he was driving so I
19 wrote the license number down on it --

20 MR. BENJAMIN: I would object as non-responsive.

21 I -- objection, the question was did he ever get a business
22 card or letterhead and --

23 MR. LAMEY: No.

24 MR. BENJAMIN: Okay, thank you.

25 JUDGE THOMPSON: Thank you.

1 BY MS. ALTARAS:

2 Q: (Inaudible) question you ever asked Mr. Lamey
3 again.

4 A: Yes, I asked him.

5 Q: And did he ever provide it?

6 A: No.

7 Q: Did Mr. Moimoi ever do any other work on your
8 property besides (inaudible)?

9 A: No.

10 Q: Did you make any recording of the work that Moimoi
11 did on the garage?

12 A: Yes, I took pictures of it.

13 Q: Mr. Lamey, I'm showing you what's been marked as
14 State's Exhibit 5, do you recognize that?

15 A: Oh yeah.

16 Q: What is it?

17 A: That's a corner of the footings on the garage.

18 Q: Is that what Mr. Moimoi did?

19 A: Yes.

20 Q: Who took that photograph?

21 A: I did.

22 Q: And do you know when you took it?

23 A: Says -- says here 99-5-1.

24 Q: And there's some handwriting on the outside of that
25 photograph, do you recognize that handwriting?

1 A: Yes, it's -- yeah, it's my wife's printing. It has
2 my name and address --

3 MR. BENJAMIN: I would object, Your Honor, if he
4 didn't put it there he shouldn't be --

5 JUDGE THOMPSON: Pardon me?

6 MR. BENJAMIN: If he didn't put it there he
7 shouldn't be testifying to it, Your Honor.

8 MS. ALTARAS: Your Honor, Mr. Lamey is certainly
9 qualified to testify regarding his wife's handwriting.

10 JUDGE THOMPSON: Okay. You can lay foundation,
11 I'll sustain the objection, you can lay a foundation for it.

12 BY MS. ALTARAS:

13 Q: Are you familiar with the handwriting that's on
14 that side of those photographs?

15 A: Yes.

16 Q: And how are you familiar with it?

17 A: 'Cause I've been married to her for about 35 years,
18 my wife.

19 Q: And have you seen other things that your wife has
20 written, other handwriting samples from her?

21 A: Yes -- yes, Ma'am.

22 Q: And does the handwriting on the outside of that
23 photograph match the handwriting -- your wife's handwriting
24 that you've seen in the past?

25 A: Yes.

1 Q: Thank you. Is that a fair and accurate copy of the
2 work that Mr. Moimoi did? Or a fair and accurate
3 description of the work?

4 A: Sure is.

5 Q: (Inaudible).

6 A: Sure is.

7 MS. ALTARAS: Your Honor, at this time the State
8 offers Exhibit 5.

9 MR. BENJAMIN: I object, Your Honor, and I'd like
10 to do it on sidebar if I may.

11 (SIDEBAR WITH JUDGE AND COUNSEL - NOT RECORDED)

12 JUDGE THOMPSON: Okay, I'll allow Defense to make
13 the objection on the record please.

14 MR. BENJAMIN: Your Honor, we would argue that
15 this picture is more prejudicial than probative under the
16 court rules. As well as being contrary to the 3.5 ruling.

17 JUDGE THOMPSON: Okay. The Court will admit
18 Exhibit 5 with the instruction that the jury is to observe
19 only as to whether or not work was done on the property and
20 not as to any judgment as to the quality of that work one
21 way or the other.

22 MS. ALTARAS: Thank you. Your Honor, at this time
23 the State would ask to publish Exhibit 5 to the jury.

24 JUDGE THOMPSON: Court will admit Exhibit 5.

25 ///

1 (Whereupon, State's Exhibit No. 5
2 was admitted into evidence).

3 MS. ALTARAS: And Your Honor, while the jury is
4 looking at that photograph I have another photograph
5 (inaudible) that has another exhibit number and I would like
6 to lay foundation for before I (inaudible) without
7 interrupting the jury.

8 JUDGE THOMPSON: Okay.

9 BY MS. ALTARAS:

10 Q: Mr. Lamey, I'm handing you what's been marked as
11 State's Exhibit 6, do you recognize that?

12 A: Yes.

13 Q: How do you recognize it?

14 A: 'Cause I -- I took the picture and it's -- actually
15 the back wall or the wall that would face the west on my --
16 on my property.

17 Q: And is that work that Mr. Moimoi did?

18 A: Yes, Ma'am.

19 Q: There's some writing on the edge of that
20 photograph, do you recognize that writing?

21 A: Yes.

22 Q: Whose handwriting is it?

23 A: My -- my wife's, Judith Lamey.

24 Q: And how are you familiar with her handwriting?

25 A: 'Cause I seen it for many, many years so it's my

1 wife's anyway.

2 Q: And who took that photograph?

3 A: I did.

4 Q: Is that a fairly accurate depiction of the work
5 that Mr. Moimoi did on your garage?

6 A: Yes.

7 MS. ALTARAS: Your Honor, at this time the State
8 offers Exhibit 6 into evidence.

9 MR. BENJAMIN: I'd like to see it. Your Honor, I
10 would have the same objections and another objection to this
11 picture. I'd like to do it in sidebar.

12 (SIDEBAR WITH JUDGE AND COUNSEL - NOT RECORDED)

13 BY MS. ALTARAS:

14 Q: Mr. Lamey, I'm handing you what's been marked as
15 State's Exhibit 7, do you recognize that photograph or that
16 -- that copy?

17 A: Yes.

18 Q: How do you recognize it?

19 A: 'Cause it's a picture I took of the -- that would
20 actually be the southeast corner of the garage where the 16
21 foot door would go to the front of the garage.

22 Q: Is that work that Mr. Moimoi did?

23 A: Yes, Ma'am.

24 Q: There's some writing on that photograph, do you
25 recognize that writing?

1 A: Yes, that's my wife's.

2 Q: And how do you know that's your wife's handwriting?

3 A: I've seen it for many, many years.

4 Q: Is that photograph a fair and accurate copy or
5 depiction of work that Mr. Moimoi did at your residence?

6 A: Yes.

7 MS. ALTARAS: Your Honor, the State offers Exhibit
8 7 into evidence.

9 MR. BENJAMIN: Your Honor, I'd object its No. 1,
10 irrelevant and even if relevant --

11 JUDGE THOMPSON: Have you seen that one?

12 MR. BENJAMIN: I have seen it.

13 JUDGE THOMPSON: Okay.

14 MR. BENJAMIN: It's more prejudicial than propiate
15 (phonetic) and reasons I stated previously at sidebar.

16 JUDGE THOMPSON: Okay. The Court will admit
17 Exhibit 7 with the instruction that they are -- the jury is
18 to use this exhibit only for the purposes of determining
19 whether or not work was performed not the quality of that
20 work.

21 (Whereupon, State's Exhibit No. 7
22 was admitted into evidence).

23 JUDGE THOMPSON: And it's a little wet so you
24 might want to wait.

25 MS. ALTARAS: (Inaudible) that is still wet.

1 JUDGE THOMPSON: Okay.

2 MS. ALTARAS: Your Honor, at this time the State
3 moves to publish this exhibit to the jury.

4 MR. BENJAMIN: Well, I think we can wait until its
5 dry.

6 JUDGE THOMPSON: I -- I think we should wait --
7 well, we can probably set it at a later (inaudible).

8 MS. ALTARAS: Sure. Your Honor, the State has no
9 further questions.

10 JUDGE THOMPSON: Okay. Cross examination?

11 MR. BENJAMIN: Thank you, Your Honor.

12

13 CROSS EXAMINATION

14 BY MR. BENJAMIN:

15 Q: Good afternoon, Mr. Lamey.

16 A: Pardon?

17 Q: Good afternoon.

18 A: Good afternoon.

19 Q: I tried to sneak out (inaudible). Mr. Lamey, did
20 you ever put it in writing what it was that Mr. Moimoi was
21 going to do for you?

22 A: No.

23 Q: You never set a contract?

24 A: No, other than the check.

25 Q: All right. And you never had any -- any written

1 estimate provided by Mr. Moimoi?

2 A: No.

3 Q: And when Mr. Moimoi came to your house and when you
4 at that time -- was that the first time you ever met him?

5 A: Yes.

6 Q: Mr. Lamey, what is your occupation?

7 A: I'm a truck driver.

8 MR. BENJAMIN: I don't have anything further, Your
9 Honor.

10 JUDGE THOMPSON: Okay. Okay, any redirect?

11 MS. ALTARAS: No redirect, Your Honor.

12 JUDGE THOMPSON: Okay. Thank you, you may step
13 down.

14 MS. ALTARAS: And Your Honor, at this time the
15 State calls Judy Lamey.

16 JUDGE THOMPSON: Okay.

17 UNKNOWN SPEAKER: (Inaudible).

18 MS. ALTARAS: Yes, yes (inaudible).

19 JUDGE THOMPSON: Could you step up here please?
20 Please raise your right hand.

21 Do you swear to tell the truth in this matter so help
22 you God?

23 MS. LAMEY: I do.

24 JUDGE THOMPSON: Thank you, please sit down right
25 there, please.

1 *****

2 MS. JUDY LAMEY having been first duly sworn
3 under oath, testified as follows:

4
5 DIRECT EXAMINATION

6 BY MS. ALTARAS:

7 Q: Ms. Lamey, please state your full name and spell
8 your last name for the record.

9 A: Judith Lynn Lamey, L-A-M-E-Y.

10 Q: Where do you live?

11 A: 116 Third Avenue Northwest, Pacific, Washington.

12 Q: Is that in King County?

13 A: Yes.

14 Q: Were you living at that address in April of 1999?

15 A: Yes.

16 Q: Were you living there on April 30th of 1999?

17 A: Yes.

18 Q: In April did you come into contact with anyone in
19 this courtroom?

20 A: Yes.

21 Q: Please tell the Court where that person is now
22 sitting?

23 A: He's sitting at the table wearing the green jacket.

24 MS. ALTARAS: Let the record reflect that the
25 witness has identified the Defendant.

1 BY MS. ALTARAS:

2 Q: Where did that contact occur?

3 A: At my home.

4 Q: Is that the same address that you stated earlier?

5 A: Yes.

6 Q: And how did you come into contact with the
7 Defendant, Mr. Moimoi, (inaudible)?

8 A: My husband had hired him to do our garage slab, the
9 footings and the foundation.

10 Q: Did you observe Mr. Moimoi do that work?

11 A: I observed him out at the job site, I didn't
12 actually see him working.

13 Q: Was he there with anyone else?

14 A: There were several other workers there.

15 Q: You mentioned that your husband contracted with Mr.
16 Moimoi, did you ever see any documentation regarding that
17 contract?

18 A: Yes.

19 Q: What kind of documentation did you see?

20 A: There was a little receipt that he had my husband -
21 - that he signed and my husband filled out for the -- the
22 job estimate.

23 Q: I'm handing you what's been marked as State's
24 Exhibit 4, do you recognize that?

25 A: Yes.

1 Q: What is it?

2 A: This is the receipt for the work that was supposed
3 to be done.

4 Q: And do you recognize the handwriting on that
5 document?

6 A: Yes.

7 Q: Whose handwriting is it?

8 A: This is my husband's handwriting.

9 Q: And how do you recognize his handwriting?

10 A: We've been married for 36 years so I recognize his
11 signature.

12 Q: Have you happen to have a chance to witness his
13 handwriting over the 35 years that you've been married?

14 A: Oh yes, mm-hmm.

15 Q: And does that handwriting on that document match
16 what you know to be your husband's handwriting?

17 A: It does.

18 Q: You said that was a receipt, what is that receipt
19 for?

20 MR. BENJAMIN: I'd object, Your Honor, it's not
21 been admitted into evidence.

22 MS. ALTARAS: I'll -- I'll recede the question.

23 BY MS. ALTARAS:

24 Q: Has that (inaudible) a copy of what you call to be
25 a receipt that Mr. Moimoi (inaudible)?

1 A: Mm-hmm, yes it is.

2 At this time the State offers Exhibit 4 into
3 evidence.

4 MR. BENJAMIN: I would object to lack of
5 foundation, Your Honor. She didn't do this and we don't
6 have the original and we (inaudible) an original is not in
7 the envelope.

8 MS. LAMEY: I have the original if you need it.

9 MS. ALTARAS: Your Honor, we could offer the
10 original if you like, the State does not have the original
11 in their possession only a copy (inaudible).

12 JUDGE THOMPSON: Would you like the original?

13 MR. BENJAMIN: Absolutely, Your Honor.

14 JUDGE THOMPSON: Okay. We'll allow the witness to
15 go retrieve the original, please.

16 MS. ALTARAS: Your Honor, I have in my possession
17 the original of that document, would you like me to have it
18 marked as the same exhibit, Exhibit 4 as it --

19 JUDGE THOMPSON: It is still marked as Exhibit 4
20 it just hasn't been admitted.

21 MS. ALTARAS: Thank you. (Inaudible). Your
22 Honor, at this time the State offers Exhibit 4.

23 MR. BENJAMIN: I didn't see Exhibit 4.

24 MS. ALTARAS: I apologize (Inaudible).

25 MR. BENJAMIN: Excuse me. And Your Honor, we

1 would object again this is not prepared by her. And the
2 person who prepared -- did prepare it cannot be called. So
3 we would object to it being admitted.

4 MS. ALTARAS: Your Honor, the witness testified
5 regarding the handwriting on the document and her
6 recollection of seeing the document. Her husband did not
7 recall the document. As Your Honor knows this incident
8 occurred in 1999 it's been seven years. I believe that a
9 sufficient foundation has been laid.

10 JUDGE THOMPSON: The witness does appear to have
11 independent recollection of the document and its -- and its
12 origination and so I will allow the document to be admitted
13 as Exhibit 8, 4, I'm sorry.

14 (Whereupon, State's Exhibit No. 4
15 was admitted into evidence).

16 MS. ALTARAS: Thank you.

17 BY MS. ALTARAS:

18 Q: Ms. Lamey, I'm handing you back what's been marked
19 as State's Exhibit 4, the receipt for the work. And in the
20 bottom left hand side of the receipt what does it say as the
21 amount of the account?

22 A: Twenty-five hundred dollars.

23 Q: And does -- does that reflect the amount that --
24 doe the receipt reflect that amount that your husband paid
25 to Mr. Moimoi?

1 A: No, that was the quote for doing the job and he
2 paid \$1,800.00 by check and then the balance due was \$700.00
3 upon completion.

4 Q: Is the amount that your husband paid reflected on
5 this receipt?

6 A: Yes.

7 Q: Where does it reflect it?

8 A: On the line that states amount paid \$1,800.00.

9 Q: Thank you. And there's a signature underneath the
10 line with the writing out -- or right next to the amount
11 paid, do you recognize that signature?

12 A: I believe -- I -- I don't really. This signature?

13 Q: Yes.

14 MS. ALTARAS: Your Honor, I'll -- I'll the State
15 will retry the question and at this time ask if the State
16 can obtain Exhibit 1 from the Court? Not Exhibit 1, Your
17 Honor, I believe it was actually Exhibit 3, the license and
18 a copy of Mr. Moimoi's (inaudible).

19 BY MS. ALTARAS:

20 Q: Ms. Lamey, I'm handing you what's been marked as
21 State's Exhibit No. 3, do you recognize the photograph on
22 that document?

23 A: Oh, yes.

24 Q: And looking at the signature on the bottom of the -
25 - of the license --

1 JUDGE THOMPSON: Sustained.

2 MR. BENJAMIN: Yeah.

3 MS. ALTARAS: Your Honor, the State will recall
4 the -- it won't continue questioning.

5 JUDGE THOMPSON: Okay, thank you.

6 UNKNOWN SPEAKER: (Inaudible).

7 MS. ALTARAS: Your Honor, at this time the State
8 moves to publish State's Exhibit 4 to the jury.

9 JUDGE THOMPSON: No objection?

10 MR. BENJAMIN: No problem.

11 JUDGE THOMPSON: Okay, Exhibit 4 may be published.

12 MS. ALTARAS: Thank you. And Your Honor, this
13 receipt is not actually marked, do I need attach it to the
14 copy that was marked as State's Exhibit 4?

15 MR. BENJAMIN: I --

16 JUDGE THOMPSON: Do you want the original
17 substituted?

18 MR. BENJAMIN: Yeah, I don't care they can be
19 attached somehow if they don't want to put the number
20 Exhibit 4.

21 MS. ALTARAS: Or stapled.

22 JUDGE THOMPSON: Okay.

23 MR. BENJAMIN: Or if they want to put a sticky
24 number on it.

25 JUDGE THOMPSON: We'll just staple it to Exhibit

1 4, which is the copy of the original exhibit, the original
2 is just stapled.

3 MR. BENJAMIN: That's fine.

4 BY MS. ALTARAS:

5 A: May I add something? I didn't recognize the
6 signature but my husband gave me the receipt and told me it
7 was from Moimoi.

8 MR. BENJAMIN: I would object, Your Honor, there's
9 no question before.

10 MS. ALTARAS: Thank you.

11 MR. BENJAMIN: And I would ask that the --

12 JUDGE THOMPSON: I'll sustain the objection and
13 the jury will disregard because you -- you can only answer
14 questions.

15 MS. LAMEY: Okay. Okay, sorry.

16 MS. ALTARAS: And Your Honor, in the interest of
17 time while the jury continues to review that document I'll
18 continue questioning.

19 JUDGE THOMPSON: Please do.

20 BY MS. ALTARAS:

21 Q: Ms. Lamey, did you ever talk to Mr. Moimoi
22 directly?

23 A: Oh yes.

24 Q: What was the substance of your conversation?

25 A: He came and asked for another \$4,600.00 or

1 \$4,300.00, well, another over \$4,000.00 more --

2 MR. BENJAMIN: And I would object, Your Honor,
3 it's irrelevant to the --

4 JUDGE THOMPSON: And what was the objection?

5 MR. BENJAMIN: It's irrelevant, Your Honor.

6 JUDGE THOMPSON: Okay, address that?

7 MS. ALTARAS: Your Honor, I'm addressing the work
8 that Mr. Moimoi did for the Lamey's and (inaudible) that he
9 was indeed asking for more money to (inaudible).

10 JUDGE THOMPSON: Okay. Court will allow testimony
11 as to the funds requested as it is evidence as to whether or
12 not there was an agreement.

13 MS. ALTARAS: Thank you.

14 JUDGE THOMPSON: Overruled.

15 BY MS. ALTARAS:

16 Q: Did Mr. Moimoi tell you what the money that he
17 requested was for?

18 MR. BENJAMIN: Same objection, Your Honor,
19 irrelevant.

20 JUDGE THOMPSON: Overruled.

21 BY MS. ALTARAS:

22 A: He said the \$2,500.00 was for material and he
23 wanted another like \$4,600.00 for labor. And I -- I
24 actually asked him to produce some receipts because he
25 didn't do anything (inaudible).

1 MR. BENJAMIN: I would object, Your Honor, it's --
2 as beyond the scope.

3 JUDGE THOMPSON: Sustained, jury will disregard.
4 BY MS. ALTARAS:

5 Q: After -- when he told you that he wanted an
6 additional \$4,600.00 what did you tell him?

7 MR. BENJAMIN: I'd object, Your Honor, that's
8 hearsay and irrelevant.

9 JUDGE THOMPSON: Overruled.

10 MS. ALTARAS: Thank you.

11 BY MS. ALTARAS:

12 Q: You many answer.

13 A: I told him to show me some receipts for the money
14 he said he spent for the \$2,500.00 that he initially told us
15 he was going to do the complete job for, told my husband,
16 pardon me.

17 Q: And did he show you any receipts?

18 A: No, no he kept asking for more money.

19 Q: Did Mr. Moimoi continue working on the property
20 after he asked for the \$4,600.00?

21 A: No, my husband told him to leave.

22 MR. BENJAMIN: I'd object as hearsay, Your Honor.

23 JUDGE THOMPSON: Sustained, jury will disregard.

24 BY MS. ALTARAS:

25 Q: And while Mr. Moimoi was working on the property,

1 you mentioned that you saw him, was he doing -- was he in
2 doing or attempting to do any -- did you hire him to do any
3 work besides the garage?

4 A: No, just he foundation was basically what he was
5 supposed to be doing.

6 Q: Did you pay Mr. Moimoi or did you pay anyone else
7 besides Mr. Moimoi (inaudible) to do work on your garage?

8 A: Not at the time he was working but when he left we
9 had to have someone come in and do all the work.

10 MR. BENJAMIN: I would object, Your Honor, it's
11 irrelevant.

12 JUDGE THOMPSON: Okay sustained.

13 BY MS. ALTARAS:

14 Q: And Ms. Lamey, I'll -- I'll re-ask the question and
15 if you'll just answer yes or no.

16 A: Okay.

17 Q: During the month of April while Mr. Moimoi was
18 working on your home did you pay anyone else to work on your
19 home?

20 A: No.

21 MS. ALTARAS: No further questions.

22 JUDGE THOMPSON: Okay.

23 MS. ALTARAS: But, Your Honor, perhaps this would
24 be a good time to publish Exhibit 7 to the jury (inaudible)
25 it has dried.

1 JUDGE THOMPSON: Okay.

2 MS. ALTARAS: Okay. Thank you, Your Honor and the
3 State rests now.

4 JUDGE THOMPSON: Cross examination?

5 MR. BENJAMIN: No, Your Honor.

6 JUDGE THOMPSON: Thank you, you may step down.
7 I'm missing Exhibit 6.

8 MR. BENJAMIN: Exhibit 6 was not admitted.

9 JUDGE THOMPSON: It was not.

10 MS. ALTARAS: Your Honor, Exhibit 6 is why we
11 (inaudible) photograph, it was marked by not admitted
12 (inaudible).

13 JUDGE THOMPSON: Okay, I'm sorry. Did I
14 understand you to say that you were offering it or not?

15 MS. ALTARAS: Your Honor, I already attempted to
16 offer Exhibit 6 and it was not admitted under objection by
17 Defense Counsel. I -- I will not continue to attempt to
18 admit it.

19 JUDGE THOMPSON: Oh, okay, okay. Okay --

20 MS. ALTARAS: And Your Honor, the State will not
21 call any further witnesses, I rest at this time.

22 JUDGE THOMPSON: Okay.

23 MR. BENJAMIN: Your Honor, it's Defense intentions
24 to call Mr. Moimoi. I just recognize that the Court day is
25 one minute away.

1 JUDGE THOMPSON: I -- I had intended to go to five
2 but I don't believe we're going to finish by five either.
3 So, given -- given the lateness of the hour -- okay, we're
4 just going to go -- have to go ahead until tomorrow
5 afternoon. I have a -- another obligation in the morning so
6 it will be 1:30 tomorrow afternoon and then we'll resume
7 with defense testimony. And hopefully -- and hopefully
8 you'll have (inaudible) later.

9 Okay, so for the day we are going to allow you to take
10 a little rest and we will resume tomorrow at 1:30.
11 Unfortunately, I am unable to resume in the morning I have
12 other obligations, so we'll see you back tomorrow at 1:30
13 please.

14 Again, please to not discuss the case with anyone. If
15 any of your friends or family members ask you to discuss it,
16 please refrain from doing so. Don't listen to any news
17 media reports on similar subject matter.

18 UNKNOWN FEMALE SPEAKER: Please rise.

19

20

21

22

(End of taped Court session.)

23

24

25

1

2 IN RE: SOW v. Laki Moimoi

3 CAUSE NO. Y0-SD0013

4 COA: 08-1-07953-4

5

6

AFFIDAVIT

7 I, Anna Hirsch, do certify that the audio recording provided

8 to me of the proceedings held before the Honorable Judge

9 Linda Thompson in The District Court Of Seattle for King,

10 Washington, was transcribed by me to the best of my ability.

11

12

13

14

15

Anna Hirsch

16

Anna Hirsch,
Transcriptionist

17

18

19

20

21

22

23

24

25

 ORIGINAL

VOL. II

FILED
KING COUNTY, WASHINGTON
JUN 12 2009
SUPERIOR COURT CLERK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE DISTRICT COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,)	
)	
Petitioner,)	Cause No. Y0-SD0013
)	
v.)	
)	COA No. 08-1-07953-4
LAKI MOIMOI,)	
)	
Defendant.)	

Official record of proceedings
Held before the Honorable
Judge Linda Thompson
Held on February 15, 2007
In Seattle, Washington

Anna Hirsch, Transcriptionist
Flygare & Associates, Inc.
1715 South 324th Place, Suite 250
Federal Way, WA 98003

 ORIGINAL

APPEARANCES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FOR THE PETITIONER:

Leah Altaras, Attorney at Law
516 3rd Avenue
Seattle, WA 98104-2385
(206) 296-9000

FOR THE DEFENDANT:

Rodney Benjamin, Attorney at Law
PUBLIC DEFENDER ASSOCIATION
810 3rd Avenue, Suite 800
Seattle, WA 98104-1656
(206) 447-3900

ALSO PRESENT:

Fatima Taimi-Aho, Tongan Interpreter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

WITNESS	EXAMINATION	PAGE
LAKI MOIMOI		
	Direct Examination by Mr. Benjamin	14
	Cross Examination by Ms. Altaras	18
	Redirect Examination by Mr. Benjamin	21
	Recross Examination by Ms. Altaras	21

1 JUDGE THOMPSON: Thank you, please be seated.

2 Okay, we apparently have the jury back, is there anything we
3 need to address before we begin?

4 MS. ALTARAS: Yes, Your Honor, Leah Altaras
5 (inaudible) for the State of Washington, I do have a legal
6 issue that it'd be wise to address at this time regarding
7 Mr. Moimoi's testimony. It is the State's understanding
8 that Mr. Moimoi will testify once the jury comes in and the
9 State intends to cross examine Mr. Moimoi regarding his --
10 the history of the case, specifically his failure to appear
11 for trial. This case was filed in the year 2000 and is just
12 going to trial in 2007 it's been seven years.

13 There have been some issues with testimony,
14 specifically Mr. Lamey could not remember certain things and
15 I think that the jury deserves an explanation of why it has
16 taken so long for this case to go to trial. As such the
17 City, pardon me, the State does intend to question Mr.
18 Moimoi regarding his failures to appear and his (inaudible)
19 for a period of --

20 MR. BENJAMIN: Make sure you're translating
21 everything, every single word.

22 MS. ALTARAS: -- four years.

23 JUDGE THOMPSON: I'm sorry, I didn't catch that
24 earlier. So, could you back up a little, I want to make
25 sure that this is interpreted to Mr. Moimoi.

1 MS. ALTARAS: Certainly. And actually I -- I
2 brought a case on point for the Court and for opposing
3 counsel as authority for the prosecution's attempt to
4 question Mr. Moimoi regarding his failure's to appear for
5 trial in the past and (inaudible). And the reason that the
6 State will do that or attempt to do that is not only to show
7 evidence of guilt, this case in it's (inaudible) entitled
8 failure to appear for trial as evidence of guilt. Not only
9 that, but also to explain to the jury why it's taken so long
10 for this matter to come to trial.

11 The State did have issues with its witness's memories
12 of the incident, specifically dates and occupants earlier in
13 the trial. And the State would like to explain those --
14 explain the pendency of this case to the jury and I would
15 like to do so through the testimony of Mr. Moimoi and I
16 would like to mention the fact that Mr. Moimoi failed to
17 appear (inaudible) years and it was (inaudible) to appear
18 again for a period of months.

19 MR. BENJAMIN: Your Honor, Rod Benjamin. This is
20 not timely. We had presented our strategy in our opening
21 statements and everything based upon my getting Mr. Moimoi
22 to testify. This may change his -- whether or not he wishes
23 to testify obviously. (Inaudible) he may have presented our
24 case. So I think this is not timely, this is the first time
25 I've heard of it at all (inaudible) in raising this issue.

1 I don't think that they've established in any case that his
2 failure to appear in this case has something to do with his
3 -- related to his guilt. I -- I think that -- I think most
4 of it suggested very not timely to present this at this
5 point just when Mr. Moimoi is going to testify after they're
6 done with their case, after we've presented our -- our
7 (inaudible) to the jury. So we strongly object to Mr.
8 Moimoi being questioned on the times he didn't appear. Many
9 times this has been continued because there's no
10 interpreter, so I -- I think it's very improper. Thank you.

11 MS. ALTARAS: And Your Honor, if the State could
12 respond?

13 JUDGE THOMPSON: Mm-hmm.

14 MS. ALTARAS: The State was not aware that Mr.
15 Moimoi would testify, I didn't know until yesterday. And
16 clearly as the trial develops the trial (inaudible) the
17 State reserves the right to have motions -- motions in
18 limine throughout trial in their trial brief and just --
19 after testimony after seeing that witnesses were affected by
20 the time lapse since the commission of this incident and the
21 trial the State does feel that it is relevant and proper to
22 question Mr. Moimoi regarding his failures to appear.
23 Granted this case has been continued many times due to lack
24 of an interpreter and other matters. However, the majority
25 of the years that this has been delayed has been due to Mr.

1 Moimoi's failure to appear, specifically Mr. Moimoi failed
2 to appear in -- in September of 2000 and he did not appear
3 again until 2004 when he was picked up on a bench warrant.

4 Again, in May of 2005, trial was set for May of 2005
5 within a year and Mr. Moimoi again failed to appear in 2005
6 and a warrant was issued and it was not until September of
7 2005, four months later, that Mr. Moimoi was picked up on
8 warrant. Again in December of 2005 at a pretrial hearing
9 Mr. Moimoi failed to appear and it was not until April 2006
10 that Mr. Moimoi was picked up.

11 Your Honor, this case is being prosecuted at trial six
12 years, close to seven years after it was filed and the jury
13 deserves an explanation of that. 'Case law is -- 'is 'clear on
14 this point in State v. Cobb (phonetic) Washington, the
15 Washington Court of Appeals (inaudible) to held that it is
16 permissible and proper for the State to elicit testimony or
17 to present testimony regarding the Defendant's failure to
18 (inaudible) for the purpose of explaining to the jury why
19 the case was so long getting to trial. And its also
20 (inaudible) to evidence of flight which under the
21 circumstance (inaudible) it's a reaction to a consciousness
22 of guilt.

23 Your Honor, the case law in Washington State is clear
24 that evidence of flight is admissible to show consciousness
25 of guilt. And the case law's also clear that those who

1 (inaudible) are admissible in the (inaudible) matter as
2 evidence and are also admissible to explain delays in coming
3 to trial.

4 MR. BENJAMIN: I'd like to quickly respond. Your
5 Honor, the State has to be prepared for the defendant to
6 testify they can't now say, "Oh, we didn't know he was going
7 to testify." I think this is just untimely.

8 JUDGE THOMPSON: Court is in agreement that this
9 motion is untimely. The State certainly could have put
10 everybody on notice that if the defendant did testify that
11 he did intend to bring this up and he could have done that
12 at the outset. It wasn't necessary for defense to announce
13 that the defendant was testifying for you to put them on
14 notice that you would bring it up. So I don't find that it
15 was timely.

16 MS. ALTARAS: Thank you.

17 JUDGE THOMPSON: And I will not allow that
18 testimony. Okay, before we bring the jurors in has -- have
19 you had a chance to look at the proposed jury instructions?

20 MR. BENJAMIN: I have, Your Honor. And I would
21 suggest just one change and handing forward a sighted and
22 unsighted to the reasonable doubt instruction, give a copy
23 to the State. And then there are a couple others in the
24 proposed instructions that I -- I don't feel are necessary
25 at this point.

1 MS. ALTARAS: I apologize -- I apologize, I -- I
2 was making a note and I -- this does look like the jury
3 instruction that was offered by the State and I would ask
4 again what Mr. Benjamin had said.

5 JUDGE THOMPSON: Are you talking about 4.01?

6 MR. BENJAMIN: Yes.

7 JUDGE THOMPSON: I believe you offered 4.01A.

8 MR. BENJAMIN: Yeah. And I would -- I would ask
9 for 4.01. I think 4.01 is the most recent -- they're very
10 similar but the 4.01 is -- the new 4.01 is the most recent.

11 MS. ALTARAS: Your Honor, if the State could just
12 have a moment to review and put in the (inaudible) the jury
13 instruction that the State presented to the Court are from a
14 prior jury instructions using a similar case that may be
15 (inaudible). And Your Honor, the State would inquire of the
16 Court. Mr. Benjamin stated that 4.01 is more recent update
17 of the -- of the (inaudible) and the State would inquire if
18 WK74.011A is still in effect?

19 JUDGE THOMPSON: I believe there is a choice in
20 WPIC's.

21 MR. BENJAMIN: I would agree with the Court, Your
22 Honor, some courts have used the new 4.01, which State has
23 presented --

24 JUDGE THOMPSON: Actually I think the 4.01 is the
25 one that has been around forever.

1 MR. BENJAMIN: It -- it was the 4.01 that's been
2 around forever and then even that was changed slightly.

3 JUDGE THOMPSON: But what changed in the 4.01 from
4 the original 4.01?

5 MR. BENJAMIN: I think --

6 JUDGE THOMPSON: And then the 4.01A came out after
7 4.01 because --

8 MR. BENJAMIN: Yeah.

9 JUDGE THOMPSON: -- for years there was no 4.01A.

10 MR. BENJAMIN: I -- I think there -- I thought the
11 4.01 even that was changed slightly came out in 2005 but I
12 could be wrong but in either case.

13 JUDGE THOMPSON: Okay.

14 MR. BENJAMIN: I -- I think -- I think in the
15 third paragraph the second sentence as I recall it was
16 different from the original 4.01.

17 JUDGE THOMPSON: Hmm.

18 MS. ALTARAS: And Your Honor, the State would ask
19 that WPIC 4.01A be presented to the jury as (inaudible).
20 The main difference is the information of a reasonable doubt
21 WPIC 4.01A goes into more detail in explaining what exactly
22 what a reasonable doubt is. 4.01 is a little vague and not
23 as (inaudible).

24 MR. BENJAMIN: And I think it's easier to
25 understand and it is the more recent -- more recent version.

1 JUDGE THOMPSON: Okay. I guess I'm kind of old
2 fashioned I'll have to fall back on the old one that I'm
3 familiar with so I'm going to -- I don't really have a
4 justification either direction, I think they're both correct
5 statements of law however, the Court is more familiar with
6 4.01 and so for that reason I'm going to give that one.

7 MR. BENJAMIN: Thank you. And then going to the
8 State's instructions, Your Honor, WPIC 6.31 just states the
9 defendant to testify and so that would not be --

10 JUDGE THOMPSON: Right --

11 MR. BENJAMIN: -- necessary.

12 JUDGE THOMPSON: -- so we'll need to remove that
13 one.

14 MS. ALTARAS: And the State (inaudible).

15 MR. BENJAMIN: The next one is the direct or
16 circumstantial WPIC 5.01, I'm not really certain if there
17 were circumstantial evidence in this case. It seemed like
18 pretty much everything was direct in either documented or
19 from the testimony of the people. I don't think that there
20 was a lot to infer in this case. So I'm not sure whether,
21 you know, I'd be -- I'd have to keep it in if the State can
22 point to some circumstantial evidence that they feel is --
23 is part of this case.

24 MS. ALTARAS: Your Honor, I believe the
25 circumstantial evidence is something that the jury can

1 determine what and what was not circumstantial evidence.
2 Specifically inferring where the -- in case -- in case what
3 it is or is not that's -- that's the majority of the case if
4 that's (inaudible).

5 JUDGE THOMPSON: Okay, I am going to give it, I
6 think that the jury's entitled to if they -- if they didn't
7 particularly hear a fact stated but can all reach a
8 conclusion based on circumstantial evidence I think they are
9 still entitled to do that and should be instructed as such.

10 MR. BENJAMIN: I'm just making an objection
11 (inaudible).

12 JUDGE THOMPSON: So noted.

13 MR. BENJAMIN: And then lastly, Your Honor, WPIC
14 6.51 expert testimony, arguably Mr. Jackson could be
15 considered an expert witness but I don't think he really
16 gave expert testimony. I think his -- his primary purpose
17 was to present the documentation from the State. I don't
18 think he ever testified as to a, you know, the -- the work
19 done or anything like that I think even though he -- and
20 under different circumstances he might be considered an
21 expert in his field, I don't think he provided any expert or
22 -- or special testimony and so I would say that should not
23 be part of the (inaudible).

24 MS. ALTARAS: And Your Honor, that's -- WPIC 6.5-1
25 does point to (inaudible) evidence and -- and to the juries

1 interpretation (inaudible). The State will concede that Mr.
2 Jackson (inaudible) state his opinion he simple (inaudible)
3 the facts that he received (inaudible).

4 JUDGE THOMPSON: Okay. So we'll reverse 6.5-1
5 (inaudible).

6 MR. BENJAMIN: I don't believe I have any other
7 objections.

8 JUDGE THOMPSON: Okay and so --

9 MS. ALTARAS: And Your Honor, the State would ask
10 for a copy of WPIC 4.0-1, unless Your Honor intends to give
11 us copies of the jury instructions (inaudible).

12 JUDGE THOMPSON: I will, I'll (inaudible) copies
13 when I finalize the jury instructions we'll make copies for
14 you both.

15 MR. BENJAMIN: (Inaudible) copy?

16 MS. ALTARAS: Yes.

17 MR. BENJAMIN: I can give you a blank one.

18 MS. ALTARAS: Thank you.

19 MR. BENJAMIN: (Inaudible). Okay.

20 JUDGE THOMPSON: Okay, we've completed that is
21 there anything else we need to address before the juror's
22 come in?

23 MR. BENJAMIN: I don't think so, Your Honor.

24 JUDGE THOMPSON: Okay, please bring them in,
25 please.

1 UNKNOWN FEMALE SPEAKER: Please rise.

2 JUDGE THOMPSON: Thank you, please be seated.

3 Okay, State has rested and Defense you may call your
4 witness.

5 MR. BENJAMIN: Yeah, the Defense would call Laki
6 Moimoi to the stand.

7 JUDGE THOMPSON: Mr. Moimoi, if you would step up
8 here, please. Please raise your right hand. If you'll step
9 up beside him please. No, just (inaudible) his right hand.
10 Just Mr. Moimoi you can put your hand down.

11 THE INTERPRETER: Okay.

12 JUDGE THOMPSON: Mr. Moimoi, do you swear to tell
13 the truth in this matter so help you God?

14 MR. MOIMOI: Yeah.

15 JUDGE THOMPSON: Okay. if you'll step up here,
16 please.

17 *****

18 MR. LAKI MOIMOI having been first duly sworn
19 under oath, testified as follows:

20

21 DIRECT EXAMINATION

22 BY MR. BENJAMIN:

23 Q: Would you please state your name?

24 A: My name is Laki Moimoi.

25 Q: Can you spell your last name?

1 A: M-O-I-M-O-I.

2 Q: And Mr. Moimoi, what business were you in in April
3 of 1999?

4 A: Seattle Landscape and Construction.

5 Q: And did you have a business license to be in that
6 occupation?

7 A: Yes.

8 Q: And how was it that you first came into contact
9 with Mr. and Mrs. Lamey?

10 A: A lady called me.

11 Q: And do you know how she got your number?

12 A: I don't know if it was from an ad or a -- I don't
13 remember how he get my number.

14 Q: And what did he want you to do?

15 A: He want me to do some landscaping job at his house.

16 Q: And did you go out to his house?

17 A: Yes.

18 Q: And did you and Mr. and Mrs. Lamey agree to what
19 you were going to do when you were out there?

20 A: Yeah, yeah.

21 Q: And what was it that you were going to do for him?

22 A: Pull out like weeds and take out roots, you know,
23 trees and cut the bushes on the side. And also the -- and
24 they (inaudible) some holes along the sides of the
25 (inaudible).

1 Q: And did you and Mr. and Mrs. Lamey agree on a price
2 to do this?

3 A: Yes.

4 Q: Okay. So you were going to pull up trees, weed,
5 trim trees and bushes and dig holes?

6 A: Also labor.

7 Q: Okay, the labor to do those things?

8 A: Yes.

9 Q: And were you -- for the money he was -- they were
10 going to pay you did you -- were you responsible for doing
11 anything else?

12 A: The money that was given to me was not given to me.
13 The money that was supposed to come to me was not given to
14 me.

15 Q: Who got the money?

16 A: It was given to another woman. It was given to a
17 woman that was the wife of my cousin.

18 Q: And was it your understanding that a portion of
19 that money was to be for you?

20 A: Yes.

21 Q: Did you at any time agree to put in a foundation
22 for a garage?

23 A: No.

24 Q: Did you ever do any work towards putting in a
25 garage foundation?

1 A: No.

2 Q: Did you ever have any dispute with the Lamey's over
3 money not paid?

4 A: I don't remember if we disputed or not.

5 Q: Okay. Had you finished all the things that the --
6 that they wanted you to do?

7 A: Landscaping was completed as agreed on the
8 \$1,800.00. All together it was supposed to be for
9 \$2,500.00, \$1,800.00 where given to me and also asking to
10 get panel, you know, to form the -- rebar and also like wire
11 mesh also like little wire cage to tie up the -- two by four
12 lumber or wood. Oh, like materials etcetera.

13 Q: Okay. So part of the money you were to provide
14 some of the materials?

15 A: Yeah, the money that was given (inaudible) the
16 money that was given to me it was only for the landscaping
17 portion only. And additional to that -- and I have to buy
18 the material for him and then he will pay me my money back.

19 Q: Now there were some pictures presented earlier
20 showing some forms put in (inaudible). Did you or your
21 workers put in those forms?

22 A: No, I didn't touch anything.

23 Q: Did you have an agreement with them that you were
24 going to do that?

25 A: The only thing that we agreed upon is to purchase

1 the material.

2 MR. BENJAMIN: I don't have anything further, Your
3 Honor.

4 JUDGE THOMPSON: Okay. Cross examination?

5 MS. ALTARAS: Yes. Can we have -- I just
6 (inaudible) requesting exhibits.

7

8 CROSS EXAMINATION

9 BY MS. ALTARAS:

10 Q: Mr. Moimoi, your business is called Seattle
11 Landscaping and Construction, is that right?

12 A: Yes.

13 Q: And your business is not registered with the
14 Department of Labor and Industries?

15 A: I don't know.

16 Q: You don't know? But it is your business?

17 A: My business was registered here in the City of
18 Seattle.

19 Q: But it was not registered with the Washington State
20 Department of Labor and Industries?

21 A: I have no idea.

22 Q: No idea. You had a business license, is that
23 right?

24 A: Yes.

25 Q: Great. And your business placed advertisements?

1 A: Yes.

2 Q: Mr. Moimoi, Caroline Moimoi is your wife, is that
3 right?

4 A: No.

5 Q: The money that was given to you by the Moimoi's --
6 well let me restate. You provided forms, rebar and wiring
7 mesh for the Moimoi's, is that right?

8 A: Yeah, I purchase those material to the owner of the
9 -- of the home Mr. Lamey.

10 Q: But he didn't pay you for those?

11 A: No, he did not.

12 Q: He paid you \$1,800.00?

13 A: Yes.

14 Q: And you provided those forms and the rebar?

15 A: The material that the -- the money that was given
16 to me I use it for the material, the panel, three pieces of
17 panels, two by -- three quarter inches thick.

18 Q: So you did buy the materials with the money that
19 Mr. Moimoi gave you?

20 A: And also trimmed the bushes around the house and
21 also the clean up and also the labor. They pay me \$1,800.00
22 but the estimates that we agreed upon was \$2,500.00. And
23 also to dig some holes around the house. And Mr. Lamey did
24 not tell me the truth he lied to me and I was not aware that
25 he was going to build a -- and he told me to -- to do the

1 foundation. And I ask him to pay me \$700.00 and I would
2 help him -- the \$700.00 was the remaining portion to -- out
3 of the \$2,500.00 that was -- that were agreed upon.

4 Q: Okay. And Mr. Lamey did pay you to lay the
5 foundation for the garage?

6 A: No.

7 Q: But he asked you to lay the foundation for the
8 garage?

9 A: Yes.

10 Q: And he paid -- he -- he paid you -- the money that
11 he paid he paid to you, is that right? The \$1,800.00?

12 A: No.

13 Q: He gave you check for \$1,800.00?

14 A: On that day, you know, we agreed upon and then he
15 gave the check, you know, to somebody -- to the person that
16 the check was written to.

17 Q: Mr. Moimoi, I'm handing you what's been marked as
18 State's Exhibit 3. Is that your signature on the bottom of
19 that Washington State (inaudible)?

20 A: Yes.

21 Q: Thank you.

22 MS. ALTARAS: No further questions.

23 JUDGE THOMPSON: Re-direct?

24 MR. BENJAMIN: Just briefly.

25

1 REDIRECT EXAMINATION

2 BY MR. BENJAMIN:

3 Q: Mr. Moimoi, I want to make it clear, was there ever
4 an agreement for you to build the foundation for the garage?

5 A: No.

6 Q: Did you ever do any work towards the building of a
7 foundation?8 A: No, but I have no idea who was doing the work at
9 the garage (inaudible) pouring concrete, you know, at the
10 garage.

11 Q: Okay.

12 A: And I don't know which company, which concrete
13 company.14 Q: Okay. This is just going to be yes and no. Did he
15 ever pay you to work on the foundation for the garage?

16 A: No.

17 MR. BENJAMIN: I don't have anything further.

18 JUDGE THOMPSON: Okay. Cross examination
19 (inaudible) additional questions.

20 MS. ALTARAS: Briefly.

21
22 RECROSS EXAMINATION

23 BY MS. ALTARAS:

24 Q: Mr. Lamey asked you about working on the foundation
25 of his garage?

1 A: We only talked about landscaping. But he told me
2 he's going to build a garage, he told me that.

3 Q: And you provided the materials for that garage, you
4 provided the rebar, the pipes, the forms, is that right?

5 A: They asked me to purchase those because I have a
6 vehicle and I know where to buy those materials from.

7 Q: Where do you buy those materials from, Mr. Moimoi?

8 A: From the hardware that had those.

9 Q: The hardware store?

10 A: Hardware store.

11 MS. ALTARAS: No further questions.

12 MR. BENJAMIN: Nothing else, thank you.

13 JUDGE THOMPSON: Thank you. You may step down,
14 Mr. Moimoi. Okay, any further witnesses for defense?

15 MR. BENJAMIN: No, Your Honor, the Defense rests.

16 JUDGE THOMPSON: Thank you. Any rebuttal
17 witnesses?

18 MS. ALTARAS: No, Your Honor.

19 JUDGE THOMPSON: Okay. You have heard all of the
20 testimony and we will be finalizing jury instructions. We
21 will instruct you and you will hear closing arguments. At
22 this time we'll have you taken into the jury room while we
23 finalize those instructions.

24 UNKNOWN FEMALE SPEAKER: Please rise.

25 ///

1 (COURT IN RECESS)

2 (COURT BACK ON RECORD)

3 JUDGE THOMPSON: Okay. I'll have you check those
4 over to make sure that I haven't left anything in or taken
5 anything out inappropriately. Okay, we'll bring the jurors
6 back in.

7 UNKNOWN FEMALE SPEAKER: Please rise.

8 JUDGE THOMPSON: Thank you, please be seated.
9 Okay. And I just realized I forgot to number these so I'm
10 just going to read them through to you and if you want to
11 write the numbers at the top as you go if that would be
12 helpful to you if the attorney's refer to those
13 instructions.

14 It is your duty to determine which facts have been
15 proved in this case from the evidence produced in court. It
16 also is your duty to accept the law from the Court
17 regardless of what you personally believe the law is or
18 ought to be. You're to apply the law to the facts and in
19 this way decide the case. The order in which these
20 instructions are given has no significance as to their
21 relative importance. The attorney's may properly discuss
22 any specific instructions they think are particularly
23 significant. You should consider the instructions as a
24 whole, you should not place any undue emphasis on particular
25 instruction or part thereof.

1 The charges have been made by the prosecuting attorney
2 by a filing document called a complaint informing the
3 defendant of the charge. You're not to consider the filing
4 of the complaint or its contents as proof of the matters
5 charged. The only evidence you are to consider consists of
6 the testimony of witnesses and the exhibits admitted into
7 evidence. It has been my duty to rule on the admissibility
8 of evidence. You must not concern yourselves with the
9 reasons for these rulings. You will disregard any evidence
10 that either was not admitted or that was stricken by the
11 Court. You will not be provided with a written copy of
12 testimony during your deliberations. Any exhibits admitted
13 into evidence will go to the jury room with you during your
14 deliberations.

15 In determining whether a proposition has been proved,
16 you should consider all of the evidence introduced by all
17 parties bearing on the question.

18 UNKNOWN FEMALE SPEAKER: Your Honor, one page is
19 missing.

20 JUDGE THOMPSON: Okay, thanks, sorry. Glad you
21 caught that.

22 MR. BENJAMIN: Page 2.

23 JUDGE THOMPSON: It is Page 2. And again, you
24 will not be provided with a written copy of testimony during
25 your deliberations and the exhibits admitted into evidence

1 will go to the jury room with you during your deliberations.

2 In determining whether any propositions has been proved
3 you should consider all the evidence introduced into --
4 introduced by all the parties bearing on the question.
5 Every party is entitled to the benefit of the evidence
6 whether produced by that party or by another party.

7 You are the sole judges of the credibility of the
8 witnesses and to what weight is to be given to the testimony
9 of each. In considering the testimony of any witness you
10 may take into account the opportunity and the ability of the
11 witness to observe the witnesses memory and manner while
12 testifying. Any interest, bias or prejudice the witness
13 may have, the reasonableness of the testimony the witness
14 considered in light of all the evidence and any other
15 factors of their unbelievability and weight.

16 The attorney's remarks, statements and arguments are
17 intended to help you understand the evidence and apply the
18 law. They are not evidence. Disregard any remarks,
19 statement or argument that's not supported by the evidence
20 or the law as stated by the Court.

21 The attorney's have the right and they duty to make any
22 objections that they deem appropriate. These objections
23 should not influence you and you should make no assumptions
24 because of objections by the attorneys.

25 The law does not permit a judge to comment on the

1 evidence in any way. A judge comments on the evidence if
2 the judge indicates by words or conduct of personal
3 (inaudible) or believability of the testimony of a witness
4 or of other evidence. Although I have not intentionally
5 done so, if it appears to you that I have made a comment
6 either during the trial or in the beginning of these
7 instructions you must disregard the apparent comment
8 entirely.

9 You have nothing whatsoever to do with any punishment
10 that may be imposed in case of a violation of the law. The
11 fact that punishment may follow conviction cannot be
12 considered by you except insofar as they tend to make you
13 careful.

14 You are officers of the Court and you must act
15 impartially with an earnest desire to determine and declare a
16 proper verdict. Throughout your deliberations you will
17 permit neither sympathy nor prejudice to influence your
18 verdict.

19 The Defendant has entered a plea of not guilty. That
20 plea puts at issue every element of the crime charged. The
21 State is the Plaintiff and has the burden of proving each
22 element of the crime beyond a reasonable doubt.

23 The Defendant has no burden of proving that a
24 reasonable doubt exists. The Defendant is presumed
25 innocent, this presumption continues throughout the entire

1 trial unless during your deliberations you find it has been
2 overcome by the evidence beyond a reasonable doubt. A
3 reasonable doubt is one for which a reason exists and it may
4 arise from the evidence or from the lack of evidence. It is
5 such a doubt as would exist in the reasonable mind -- in the
6 mind of a reasonable person after fully, fairly and
7 carefully considering all of the evidence or lack of
8 evidence. If from such consideration you have an abiding
9 belief in the truth of the charge you are satisfied beyond a
10 reasonable doubt.

11 Evidence may be either direct or circumstantial.
12 Direct evidence is that given by a witness who testifies
13 concerning facts that he or she has directly observed or
14 perceived through the senses. Circumstantial evidence is
15 evidence of facts or circumstances (inaudible) existence or
16 non-existence of other facts may be reasonably inferred from
17 common experience. The law makes no distinction between
18 weight to be given to either direct or circumstantial
19 evidence, one is not necessarily more or less valuable than
20 the other.

21 A person commits the crime of unregistered contracting
22 when he or she advertises, offers to do work, submits a bid,
23 or performs any work as a contractor without being
24 registered as such with the Department of Labor and
25 Industries. To convict the Defendant of a crime of

1 unregistered contracting as charged, the State must prove
2 the following elements beyond a reasonable doubt.

3 One, in a continuous course of conduct beginning on or
4 about April 24th, 1999 and ending on or about April 29th,
5 1999.

6 Two, the Defendant did one or more of the following: A:
7 advertised to perform work as a contractor, B: submitted a
8 bid to perform work as a contractor, C: offered to perform
9 work as a contractor, or D: did perform work as a
10 contractor.

11 Three, at a time when the Defendant was not registered
12 as a contractor with the Department of Labor and Industries.

13 And Four, the acts occurred in King County, Washington.

14 If -- if you find from the evidence that each of these
15 elements has been proved beyond a reasonable doubt, then it
16 is your duty to return a verdict of guilty as charged. If
17 on the other hand after weighing all of the evidence you
18 have reasonable doubt as to any one of these elements, then
19 it is your duty to return a verdict of not guilty as
20 charged.

21 A contractor is any person who in the pursuit of an
22 independent business undertakes to or offers to undertake or
23 submits a bid to construct, alter, repair, add to, subtract
24 from, improve, move, wreck or demolish for another any
25 building, highway, road, railroad, excavation or other

1 structure, project, development or improvement attached to a
2 real estate.

3 As jurors, you have a duty to discuss the case with one
4 another and to deliberate in an effort to reach an unanimous
5 verdict. Each of you must decide the case for yourself but
6 only after you consider the evidence impartially with your
7 fellow jurors. During your deliberations you should not
8 hesitate to reexamine your own views and change your opinion
9 if you've become convinced that it was wrong. However, you
10 should not change your honest belief as to the weight or
11 effect of the evidence solely because of the opinions of
12 your fellow jurors or for the mere purpose of returning a
13 verdict.

14 Upon retiring to the jury room for your deliberation of
15 this case your first duty is to select a presiding juror.
16 It is his or her duty to see the discussion is carried on in
17 a sensible and orderly fashion, that the issues submitted
18 for your decision are fully and fairly discussed and that
19 every juror has an opportunity to be heard and to
20 participate in the deliberations upon which question before
21 the jury.

22 You will be -- you will be furnished with all the
23 exhibits admitted into evidence, these instructions and the
24 verdict form. You must fill in the blank provided in the
25 verdict form the words "not guilty" or the word "guilty"

1 according to the decision that you reach.

2 Since this is a criminal case each of you must agree
3 for you to return a verdict. When all of you have so agreed
4 fill out the verdict form to express your decision. The
5 presiding juror will then sign it and notify the bailiff who
6 will conduct you into the Court to declare your verdict.

7 Okay, if you will please give your attention to Ms.
8 Altaras, she'll give you the closing argument on behalf of
9 the State.

10 MS. ALTARAS: Thank you. And Your Honor, would
11 you like to put time limits on the closing?

12 JUDGE THOMPSON: Pardon me?

13 MS. ALTARAS: Would you like to put a time limit
14 on the closing argument?

15 JUDGE THOMPSON: How much time do you need?

16 MS. ALTARAS: I believe I've got (inaudible) need
17 15 minutes for closing and rebut to reserve five minutes
18 (inaudible).

19 JUDGE THOMPSON: So a total of 20?

20 MS. ALTARAS: Total of 20.

21 JUDGE THOMPSON: Okay. Is that sufficient,
22 Counsel?

23 MR. BENJAMIN: Twenty's sufficient, Your Honor.

24 JUDGE THOMPSON: So total of 20, thank you.

25 MS. ALTARAS: Thank you.

1 Mr. Moimoi broke the law. He contracted at a time that
2 he was not registered with the Department of Labor and
3 Industries and that is required. Washington State requires
4 that anyone who contracts to do work is registered with the
5 Department of Labor and Industries. They're requirement is
6 set forth to protect consumers, consumers like Dennis and
7 Judy Lamey. That registration requirement is linked with
8 several -- several other requirements, for instance the
9 requirement is to (inaudible) insurance (inaudible) --

10 MR. BENJAMIN: I'd have to object, Your Honor,
11 this isn't facts (inaudible) in evidence. She's playing to
12 the prejudice of the jury, Your Honor, that this is somehow
13 to protect the public is (inaudible) testimony and that
14 (inaudible).

15 JUDGE THOMPSON: Okay. Overruled. Go ahead.

16 MS. ALTARAS: Mr. Moimoi broke the law. There are
17 several important things that I'd like to point out in the
18 jury instructions. If you would turn with me to jury
19 instruction -- oh, let me see if I can -- I just lost my
20 (inaudible). If you would turn with me to jury instruction
21 No. 4. (Inaudible) turn with me to jury instruction No. 6.
22 Its important that you understand what exactly a contractor
23 is in order to determine whether or not Mr. Moimoi was
24 indeed contracting. A contractor is anyone who in the
25 pursuit of independent business undertakes to or offers to

1 undertake to or submits a bid to construct, alter, repair,
2 add to, subtract from, improve, etcetera you can read I
3 won't -- I will not (inaudible) read everything for you.
4 Any structure, project, development or improvement attached
5 to real estate -- the pursuit of independent business, what
6 is that? Well, Mr. Moimoi admits he is in business, his
7 business is called Seattle Landscaping and Construction.
8 Ladies and gentlemen you don't need to discard all of your
9 common sense in determining whether or not Mr. Moimoi was
10 (inaudible). In fact the name of his business alone infers
11 that he's in the business of contracting, landscaping and
12 construction, building.

13 Now if you'd -- if you -- if you would turn one -- back
14 one page with me to Jury Instruction No. 5, there are four
15 elements that the State must prove beyond a reasonable doubt
16 to show that Mr. Moimoi did indeed break the law. In a
17 continuous course of conduct beginning on or about April
18 24th, 1999 and ending on our about April 29th, 1999. Ladies
19 and gentlemen, the Defendant does not disagree that he had
20 communication and worked for the Lamey's in April of 1999.
21 Both Dennis and Judy Lamey testified that Mr. Moimoi did
22 work for them in the month of April of 1999. That element
23 is proven beyond a reasonable doubt. And if you're not sure
24 about the Lamey's you can look at the evidence, their own
25 checks, their own receipts for the work.

1 The second element, this is possibly the most important
2 element of the crime. That the defendant did one or more of
3 the follow. This is a very important -- this is a very
4 important sentence, one or more of the following. The State
5 does not have to prove to you beyond a reasonable doubt that
6 Mr. Lamey, pardon me, Mr. Moimoi did all of the following
7 things to be guilty. In fact, if he only did one of the
8 following you should find him guilty of unregistered
9 contracting.

10 In this case however the State has proven all elements
11 beyond a reasonable doubt. First, that Mr. Moimoi
12 advertised to -- to perform work as a contractor. Mr.
13 Moimoi himself admitted that he advertised he had his
14 company advertised, his company called Seattle Landscaping
15 and Construction, put advertisements up and as Mr. Moimoi
16 inserted at that time Mr. Lamey found him through the
17 advertisements.

18 Second, when Mr. Moimoi submitted a bid to perform work
19 as a contractor -- a bid does not have to be in writing. In
20 this case both Judy and Dennis Lamey testified that Mr.
21 Moimoi and Dennis Lamey had a conversation and Mr. Moimoi
22 agreed to provide services in (inaudible) laying foundation
23 for the concrete slab, build a garage and Mr. Moimoi told
24 Mr. Lamey that the total job would cost \$2,500.00.

25 Ladies and gentlemen, we have evidence of that bid.

1 Mr. Lamey agreed to the bid and in fact paid Mr. Moimoi
2 \$1,800.00. (Inaudible) that the Defendant offered to
3 perform work as a contractor. While Mr. Moimoi told Mr.
4 Lamey that he could do the work that Mr. Lamey needed, that
5 he could put in the forms for the garage and that he could
6 lay the -- lay the cement for the garage.

7 Mr. Lamey paid Mr. Moimoi \$1,800.00 in the form of a
8 check and on the check you'll notice that there's a license
9 number written on that check. Mr. Lamey testified that he
10 checked Mr. Moimoi's I.D. card to make sure that he was
11 writing a check -- just to insure that Mr. Moimoi -- that he
12 knew who Mr. Moimoi was. He did write Mr. Moimoi's I.D.
13 number on the check. Mr. Moimoi states that -- well, just
14 consider a couple things. First, he states that Mr. Lamey
15 gave him a check and then he stated that Mr. Lamey didn't
16 give him a check. However we know that Mr. Lamey gave Mr.
17 Moimoi a check. How do we know that? Mr. Moimoi provided
18 Mr. Lamey with a receipt for his payment. As you'll notice
19 the receipt is dated April 24th, the same day that the check
20 is dated.

21 Now how do we know that Mr. Moimoi is the one who took
22 the check and signed the receipt? Well, we have a copy of
23 Mr. Moimoi's driver's license. Now if you look at his
24 driver's license you'll notice not only a picture of Mr.
25 Moimoi but his license number, which matches the number

1 written on the check and his signature. Now I don't expect
2 that anyone in the courtroom is an expert on handwriting,
3 but if you look at the signature on the bottom of that
4 license (inaudible) and then you examine the signature on
5 the receipt given to Mr. Lamey for the \$1,800.00 that he
6 paid, you'll notice that it's the exact same signature.

7 Now how do we know what kind of work that Mr. Moimoi
8 was contracted to perform or retained to perform? Mr.
9 Moimoi states he did some landscaping work, that's it.
10 Well, he also buys some pipes and some -- and some rebar.
11 But that's because Mr. Lamey didn't know where to buy those
12 things himself according to (inaudible). Common sense tells
13 you that anyone knows where a hardware store is.

14 Okay, well we still (inaudible) still how do we know
15 for sure that -- that Mr. Lamey paid Mr. Moimoi to build
16 their garage? Ladies and gentlemen it's written on the
17 check. You look at the check that Mr. Lamey provided Mr.
18 Moimoi. On the bottom -- the bottom-line it states garage
19 foundation. Now common sense tell you that Mr. Lamey was
20 paying Mr. Moimoi for landscaping he would have written
21 landscaping on the bottom of that check, but he didn't.

22 That takes us to the fourth element. That the
23 Defendant did perform work as a contractor. Both Denny and
24 Judy Lamey testified that Mr. Moimoi arrived at the -- at
25 the property two days after he signed the contract -- a

1 couple days after he signed the contract. It had been a
2 while but they remembered it was a couple days after they
3 paid him the down payment and started working on the garage.
4 He put in forms, the forms that Mr. Moimoi admits he bought
5 but denied that he (inaudible) for. He put in the forms and
6 began to form the garage.

7 Ladies and gentlemen, we have photographs of the work
8 that Mr. Moimoi did. These photographs were taken by Denny
9 Lamey to show what Mr. Moimoi did and as you can see on the
10 date of the photographs in this case that they were taken in
11 May of 1999, only a couple days after Mr. Moimoi left the
12 Lamey's residence. So ladies and gentlemen, Mr. Moimoi did
13 perform work as a contractor.

14 Now the third element, this element is also very
15 important to the crime also. That Mr. Moimoi did any of
16 these things, it could be one or it could be all, at a time
17 when he was not registered as a contractor with the
18 Department of Labor and Industries. Mr. Moimoi testified
19 that he has a business license with the City of Seattle.
20 Well that draws an important distinction, a business license
21 is not registration as a contractor with the Washington
22 State Department of Labor and Industries. As I stated
23 earlier, registration as a contractor requires several
24 different things that licensing does not require, those
25 things are meant to protect consumers for instance --

1 MR. BENJAMIN: Your Honor, I would object again to
2 this testimony. It's only to appeal to the prejudices of
3 the jury, Your Honor and it's -- it's not in evidence.

4 JUDGE THOMPSON: Okay. Sustained.

5 MS. ALTARAS: Ladies and gentlemen, the Defendant
6 was not registered as a contractor with the Department of
7 Labor and Industries. How do we know that? We have a
8 document from the Department of Labor and Industries stating
9 in the bottom paragraph that at no time in 1999 was Mr.
10 Moimoi registered as a contractor with L and I.

11 There's one last element that the State has to prove
12 beyond a reasonable doubt, that the acts occurred in King
13 County Washington. There's no dispute regarding that fact.
14 The Lamey's both testified that their homes in Pacific,
15 Washington in King County. Mr. Jackson testified that he
16 visited their home in Pacific, Washington.

17 The State has shown to you beyond a reasonable doubt
18 that Mr. Moimoi did indeed commit the crime of unlicensed
19 contracting. And when you return to the jury room and look
20 at all the evidence the State is confident that you will
21 find that (inaudible) Moimoi committed a crime for which he
22 is charged. Thank you.

23 JUDGE THOMPSON: Okay. Please give your attention
24 to Mr. Benjamin on behalf of Mr. Moimoi.

25 MS. ALTARAS: And Your Honor, the State would

1 just, you know, (inaudible) that the jury still has the
2 exhibits (inaudible).

3 JUDGE THOMPSON: Thank you.

4 MR. BENJAMIN: Ladies and gentlemen, Mr. Moimoi is
5 not guilty of this crime because he is not acting as a
6 contractor for the Lamey's in April of 1999. And that
7 really is (inaudible) whether or not he's -- they're really
8 two questions, what did he do for them? And second of all,
9 is whether he (inaudible). Don't be fooled by the name. He
10 had a business he was registered. This is why the City of
11 Seattle provides (inaudible) instruction, not for
12 contractors, that's something very different. You working
13 in construction, you have a contractor, they contract for
14 you and you can do the work under that umbrella of that
15 contractor. That's not the issue, don't be fooled by that.
16 And you're allowed to do landscaping without having to
17 (inaudible).

18 So, when Mr. Moimoi was paid \$1,800.00 either directly
19 or indirectly, again I'm not really sure if that matters,
20 the expectation is that he would get \$700.00 more.
21 (Inaudible) well he was -- he was (inaudible) trimming
22 bushes and trees, digging holes (inaudible). And he was
23 providing the materials for a garage (inaudible). And
24 that's not too surprising for him to get those things for
25 Mr. Lamey.

1 I'm not sure if there was a misunderstanding as to what
2 was being done at that time, Mr. Moimoi obviously has some
3 English skills, but its not his first language and I don't
4 know how good his English skills were in 1999. Certainly
5 the work he did plus to lay a garage foundation (inaudible).
6 There's no way that that's possible. More likely the money
7 that was paid more matches what Mr. Moimoi testified to and
8 was doing, not laying a foundation for a garage, which was
9 certainly (inaudible) than that.

10 But more than that what was he doing (inaudible) in
11 this case? On a contract, on a written bid how about
12 something that was printed in detail in particular what it
13 was that's expected. And if you were having a garage done
14 (inaudible) foundation and walls of a garage wouldn't you at
15 least take the time to get that done? (Inaudible) process
16 as (inaudible) he was a truck driver and I'm sure he had to
17 deal with lots of paperwork, he's familiar with paperwork.
18 But if you have something that complicated, something that
19 important, something that expensive and just (inaudible).
20 If you look at the price I think the work closely
21 corresponds to what Mr. Moimoi did. And what he anticipated
22 he was suppose to do (inaudible).

23 And it's also important in this case to understand that
24 the State has the burden in this case. And I think that
25 (inaudible) or can expect to produce ask yourself if that

1 creates some reasonable doubt in your mind. We have no
2 obligation to show there's a reasonable doubt the State has
3 the obligation to overcome that.

4 In Instruction No. 2 we'll (inaudible) that reasonable
5 doubt is a doubt a person has after fairly, fully and
6 carefully considering all the evidence and lack of evidence.
7 In other words if you're a reasonable person and you've been
8 here the whole time and listened to all the evidence and you
9 have a doubt, well there's a reasonable doubt. I think the
10 lack of evidence, what was expected, a lot of money paid,
11 Mr. Moimoi's testimony as to what was done certainly shows
12 that there's a doubt.

13 Mr. Moimoi didn't have to testify, he (inaudible) but
14 chose to testify to set the record straight. (Inaudible).
15 Nobody remembering what happened in 1999 is perfect, not the
16 Lamey's or even Mr. Moimoi. But I think this incident even
17 to this point certainly etched in your mind the important
18 details (inaudible) what Mr. Moimoi did in this case. And
19 you know there's, correct me if I'm wrong, but there wasn't
20 a lot of testimony (inaudible) saw Mr. Moimoi do that -- on
21 -- on these days, right?

22 They never testified that he did X-Y-Z they just saw a
23 (inaudible).

24 UNKNOWN SPEAKER: I just can't hear you.

25 MR. BENJAMIN: And I'm sorry I'm still just a

1 little (inaudible) I apologize. (Inaudible) why don't you -
2 - why don't you -- I'd like to close with two things, one is
3 the high standard of beyond a reasonable doubt the State has
4 to prove. A reasonable doubt is the standard we don't use
5 (inaudible) reason. If you even support the decisions by
6 how (inaudible) your doubt, a reasonable doubt is basically
7 Mr. Moimoi's only opportunity. If you come back tomorrow
8 and say (inaudible) that's a reasonable doubt (inaudible)
9 for a reason, 'cause it's the only opportunity (inaudible).

10 And second of all this is the last time I get the
11 opportunity to come up and talk to you. The State will have
12 one more chance to come up and talk, try to counter anything
13 that I might have said. While they do that though I'd like
14 -- because I don't have a chance to talk I want you to think
15 about what I might have said to counter (inaudible). I
16 think if you do that, you'll look at what evidence was
17 presented and more importantly what wasn't presented I think
18 you'll return the only proper verdict, that of not guilty.
19 Thank you.

20 JUDGE THOMPSON: Thank you. Counsel?

21 MS. ALTARAS: The Defense points to the fact there
22 was no written -- no written contract in this case. Ladies
23 and gentlemen, contracts and bids can be oral. There is no
24 law requiring a written bid in every case. Now if you would
25 look at your jury instructions you'll not find any

1 instructions stating that a bid must be in writing.

2 Now how do -- how do we know what this bid was for?

3 See again, ladies and gentlemen, look at the check. Mr.
4 Lamey may have been trusting enough and good hearted enough
5 to believe that Mr. Moimoi could in fact do the work on the
6 garage, but Mr. Moimoi told Dennis Lamey that he could do
7 (inaudible). Let's -- let's (inaudible) Dennis Lamey was
8 conscious enough to write down Mr. Moimoi's license number
9 on the check and to write on the bottom of the check what
10 the payment was for, it was for the garage foundation.

11 Now again, Mr. Moimoi's attorney pointed to the fact
12 that rate -- he said the Lamey's really -- didn't really
13 talk much about Mr. Moimoi and what work he was doing on the
14 property. Ladies and gentlemen, both Danny and Judy Lamey
15 specifically told you that they did not pay Mr. Moimoi to do
16 landscaping (inaudible). They didn't pay him to do anything
17 except work on the garage. Not only that but they saw Mr.
18 Moimoi on their property working on the garage. Mr. Moimoi
19 did actually do some work on the garage (inaudible) forms,
20 pour a little concrete -- and he took photos of that. The
21 photos were taken on May 1st of 1999, Mr. Moimoi tells you
22 that he did buy the forms, he bought the rebar for Mr. Lamey
23 in late April but won't admit that he actually worked on the
24 garage. Well, there was work done a couple days later. The
25 Lamey's did not take pictures of landscaping work, they did

1 not write him a check for landscaping.

2 Mr. Moimoi in his testimony exhibited a lawyer's
3 behavior. First he said that he was paid only for
4 landscaping nothing else. And then he said that well
5 actually that he -- he gave them a bid to clear the -- the
6 (inaudible) for the garage, but they only paid (inaudible).
7 And then he said, "Well, Mr. Lamey, lied to me and said
8 something about a foundation." And then he said no, there
9 was nothing said about the foundation someone else worked on
10 the foundation.

11 Ladies and gentlemen, common sense tells you that
12 whoever is doing the work on the garage shouldn't buy the
13 materials for the garage. Mr. Moimoi also said that he
14 didn't take the check, he wasn't paid for anything he said.
15 After he said that he was paid for something.

16 Mr. Moimoi's counsel points to the fact that Mr. Moimoi
17 speaks Tongan in the courtroom today and perhaps there was a
18 misunderstanding. The outstanding fact that you have proof
19 beyond a reasonable doubt that Mr. Moimoi did work on the
20 garage, Mr. Moimoi has an interpreter present today and even
21 today he could not give you a straight answer as to whether
22 (inaudible) what he received, whether he received the money
23 for, what kind of work he did.

24 I would like to point you to two very important jury
25 instructions. If you would turn with me to jury instruction

1 No. 3, evidence may be either direct or circumstantial.
2 Direct evidence is (inaudible) by the (inaudible) testifies
3 concerning facts that he or she has directly observed or
4 perceived through the senses. Ladies and gentlemen, that
5 direct evidence was presented to you throughout the course
6 of this trial by Mr. and Mrs. Lamey, two photographs, the
7 check, the receipt, a statement from the Department of Labor
8 and Industries.

9 Now you can also take into account circumstantial
10 evidence. Circumstantial evidence is evidence of facts or
11 circumstances that actually existed along with (inaudible)
12 of other facts may be reasonably inferred through common
13 sense. You can take into account things like the name of
14 Mr. Moimoi's business, you can put two and two together, you
15 can look at the check and receipt, the photographs. You can
16 tie things together using circumstantial evidence. Common
17 experience, you don't have to throw common sense to the wind
18 when you decided whether or not Mr. Moimoi's guilty of the
19 crime of which he is charged. The law makes no distinction
20 between the weight given to direct or circumstantial
21 evidence, one is not necessarily more or less valuable than
22 the other.

23 And finally, reasonable doubt. Reasonable doubt is
24 outlined in Jury Instruction No. 2 and Mr. Moimoi's counsel
25 talked to you a little bit about reasonable doubt and I'd

1 like to tell you a little bit more about reasonable doubt.
2 Proof beyond a reasonable doubt is proof that leaves you
3 firmly convinced of Mr. Moimoi's guilt. Now there are very
4 few things in this world that we know with absolute
5 certainty. And the law does not require that we (inaudible)
6 every possibility, even the most (inaudible). (Inaudible)
7 are your consideration of the evidence, you are firmly
8 convinced, taking into account direct and circumstantial
9 evidence, using your common sense, but were firmly convinced
10 that the defendant is guilty of the crime charged you must
11 find him guilty.

12 Ladies and gentlemen, when you return to the jury room
13 and you weigh the evidence, it can be circumstantial
14 evidence or it can be direct evidence and you use your
15 common sense, you will find that Mr. Moimoi is guilty of the
16 crime of unregistered contracting beyond a reasonable doubt.
17 Thank you.

18 JUDGE THOMPSON: Thank you. You will now be
19 conducted into the jury room to begin your deliberations.
20 You will start be electing a presiding juror.

21 UNKNOWN FEMALE SPEAKER: Please rise.

22 MR. BENJAMIN: Your Honor, Rod Benjamin. I've put
23 on objections to Exhibits 5 and 7 at sidebar and I just
24 wanted to make sure that for the record that they were
25 clearly stated and the Court's ruling. I objected to them

1 because I felt that they were number one, not relevant and
2 second, if they were relevant they were more prejudicial
3 than probative documents. Exhibits 5 and 7 clearly show
4 that the quality of work done in this case is below standard
5 and I believe that the Court correctly ruled in pretrial
6 motions that the quality of work was not an issue in this
7 case, it's not an element of the crime and therefore though,
8 those are the reasons for my objections to Exhibits 5 and 7.

9 JUDGE THOMPSON: Okay. The Court notes those
10 objections and the Court did previously rule that any
11 testimony related to the quality of the work allegedly
12 performed would not be offered and the photos involved were
13 offered and admitted for the purpose of demonstrating that
14 there was work performed. The Court gave the cautionary
15 instruction or limiting instruction to the jurors that the
16 photos were be -- to be considered only as to whether or not
17 work was performed and they were to make no -- draw no
18 conclusions as to the quality of the work performed.

19 MS. ALTARAS: Thank you.

20 JUDGE THOMPSON: Thank you.

21 (COURT IN RECESS)

22 (COURT BACK ON RECORD)

23 JUDGE THOMPSON: (Inaudible) jurors in.

24 UNKNOWN FEMALE SPEAKER: Please rise.

25 JUDGE THOMPSON: Okay. Please be seated. And we

1 the jury find the Defendant, Laki Moimoi, guilty of the
2 crime of unregistered contracting. Does anyone wish to poll
3 the jurors?

4 MR. BENJAMIN: Yes, Your Honor.

5 JUDGE THOMPSON: Okay. The juror list.

6 UNKNOWN FEMALE SPEAKER: (Inaudible).

7 JUDGE THOMPSON: The juror list, the list of
8 names.

9 UNKNOWN FEMALE SPEAKER: The names?

10 JUDGE THOMPSON: Yeah, you know, the -- the one I
11 marked up.

12 UNKNOWN FEMALE SPEAKER: (Inaudible).

13 JUDGE THOMPSON: Thank you.

14 UNKNOWN FEMALE SPEAKER: (Inaudible).

15 JUDGE THOMPSON: Okay. Thank you. Okay, Mr.
16 Johnson, is that the verdict of the -- is that your verdict?

17 MR. JOHNSON: Yes.

18 JUDGE THOMPSON: And is it the verdict of the jury
19 as a whole?

20 MR. JOHNSON: Yes.

21 JUDGE THOMPSON: And Ms. Higginbotham, I'm sorry.

22 MS. HIGGINBOTHAM: Yeah.

23 JUDGE THOMPSON: Ms. Higginbotham, right? Is that
24 your verdict?

25 MS. HIGGINBOTHAM: Yes.

1 JUDGE THOMPSON: And is it the verdict of the jury
2 as a whole?

3 MS. HIGGINBOTHAM: Yes.

4 JUDGE THOMPSON: Ms. Kolodji, is that your
5 verdict?

6 MS. KOLODJI: Yes.

7 JUDGE THOMPSON: And is it the verdict of the jury
8 as a whole?

9 MS. KOLODJI: Yes.

10 JUDGE THOMPSON: Thank you. Mr. Pike, is that
11 your verdict?

12 MR. PIKE: Yes.

13 JUDGE THOMPSON: And is it the verdict of the jury
14 as a whole?

15 MR. PIKE: Yes.

16 JUDGE THOMPSON: Ms. Mattingly, is that your
17 verdict?

18 MS. MATTINGLY: Yes.

19 JUDGE THOMPSON: And is it the verdict of the jury
20 as a whole?

21 MS. MATTINGLY: Yes.

22 JUDGE THOMPSON: Ms. Li, is that your verdict?

23 MS. LI: Yes.

24 JUDGE THOMPSON: And is it the verdict of the jury
25 as a whole?

1 MS. LI: Yes.

2 JUDGE THOMPSON: Thank you. Okay, thank you for
3 your service with us this week. You are now excused from
4 jury duty and you are free to discuss the case with anyone
5 with whom you choose to discuss it. And we greatly
6 appreciate you serving this week, we know that it is a
7 hardship for you to get down here and to -- to take time
8 that would otherwise be devoted to your jobs or your
9 families or all the many, many things that you have to do on
10 a daily basis. So we very much appreciate your willingness
11 to serve the county in this way. Thank you.

12 UNKNOWN FEMALE SPEAKER: Please rise.

13 JUDGE THOMPSON: Okay. I think we'll set this
14 over for sentencing given the late hour.

15 MR. BENJAMIN: I think that's both people's
16 request.

17 MS. ALTARAS: Yes, Your Honor.

18 JUDGE THOMPSON: Okay. I guess when the clerk
19 gets back she'll give you another date to appear, Mr.
20 Moimoi, for sentencing.

21 MR. BENJAMIN: You're going to get a date for
22 sentencing that you have to come back for.

23 UNKNOWN FEMALE SPEAKER: When's the sentencing
24 date, do you already have it?

25 MS. ALTARAS: Not yet.

1 UNKNOWN FEMALE SPEAKER: How about March? Does he
2 want to come sooner like March 21st?

3 MR. BENJAMIN: March what?

4 UNKNOWN FEMALE SPEAKER: Twenty-first.

5 MR. BENJAMIN: Fine.

6 MS. ALTARAS: And what time would that be?

7 UNKNOWN FEMALE SPEAKER: That would be 1:30.

8 MS. ALTARAS: In which courtroom?

9 UNKNOWN FEMALE SPEAKER: It will be in this
10 courtroom.

11 JUDGE THOMPSON: Thank you.

12 MR. BENJAMIN: Okay. Thank you, Your Honor.

13 MS. ALTARAS: Thank you, Your Honor.

14 MR. BENJAMIN: March 21st at 1:30 right down here.

15 MR. MOIMOI: March 21st at 1:30?

16 MR. BENJAMIN: Yeah, March 21st, 1:30, this
17 courtroom.

18
19
20
21 *****

22 (End of taped Court session.)
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN RE: SOW v. Laki Moimoi

CAUSE NO. Y0-SD0013

COA: 08-1-07953-4

AFFIDAVIT

I, Anna Hirsch, do certify that the audio recording provided to me of the proceedings held before the Honorable Judge Linda Thompson in The District Court Of Seattle for King, Washington, was transcribed by me to the best of my ability.

Anna Hirsch

Anna Hirsch,
Transcriptionist

 ORIGINAL

APPENDIX E

No. 5

To convict the defendant of the crime of Unregistered Contracting as charged, the State must prove the following elements beyond a reasonable doubt:

- (1) In a continuous course of conduct beginning on or about APRIL 24, 1999, and ending on or about APRIL 29, 1999;
- (2) The defendant did one or more of the following:
 - (a) advertised to perform work as a contractor;
 - (b) submitted a bid to perform work as a contractor;
 - (c) offered to perform work as a contractor; or
 - (d) did perform work as a contractor;
- (3) At a time when the defendant was not registered as a contractor with the Department of Labor and Industries; and
- (4) The acts occurred in King County, Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it is your duty to return a verdict of guilty as charged.

If, on the other hand, after weighing all of the evidence, you have reasonable doubt as to any one of these elements, then it is your duty to return a verdict of not guilty as charged.
