

1 like that, or was it covered?

2 A Let me set this for you. This is the  
3 washer and dryer, sitting like this. This is the  
4 front of it, so it's laying like this as you enter the  
5 doorway. So that is facing the front of the washer.

6 Q So that would be obvious when you walk in  
7 there? There was nothing covering the--

8 A Not when I walked in there, sir. That is  
9 exactly how it was.

10 MR. FEY: Thank you. No further questions.

11 THE COURT: All right. Mr. Stanton, any  
12 redirect?

13 MR. STANTON: No, Your Honor.

14 THE COURT: Thank you, detective. You are  
15 excused.

16 Is he free to go?

17 MR. STANTON: From the State's perspective, yes.

18 MR. FEY: No objection.

19 THE COURT: All right. Call your next witness.

20 MR. STANTON: The State would next call Sateki  
21 Taukiuvea.

22 THE COURT: Sir, if you will come up to my  
23 right, I will swear you in.

24 (The Court administered the oath  
25 to the prospective witness.)

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1 THE COURT: All right. Please be seated.

2  
3 SATEKI TAUKIUVEA,  
4 produced as a witness herein, having  
5 been first duly sworn, was examined  
6 and testified as follows:

7  
8 DIRECT EXAMINATION

9 BY MR. STANTON:

10 Q Sir, could you state your full and complete  
11 name, and could you spell your last name for the court  
12 reporter.

13 A Sateki, S-a-t-e-k-i, last name Taukiuvea,  
14 T-a-u-k-i-u-v-e-a.

15 Q And do you have a name or nickname that you  
16 go by?

17 A Teki.

18 Q Teki?

19 A Yeah.

20 Q Okay. And, sir, were you interviewed by  
21 the Reno Police Department on Wednesday, January 19th,  
22 1998?

23 A Yeah.

24 Q Okay. Was it Detectives Dreher and  
25 Depczynski?

MERIT REPORTING (702) 323-4715

AA02203

325  
2JDC03638

1 A Yes.

2 Q Do you recall that?

3 A Yes.

4 Q To your right at that table is a gentleman  
5 in the middle with the red jump suit. Do you know  
6 him?

7 A Yes.

8 Q What do you know him by? What name do you  
9 know him by?

10 A Pe.

11 Q Pardon me?

12 A Pe.

13 Q Do you know him by any other names?

14 A No.

15 Q Do you know what his formal name is?

16 A Well, yeah.

17 Q What is his formal name?

18 A Siaosi Vanisi.

19 Q Okay. And how do you know him?

20 A I just met him when he came down from LA.

21 Q When was that?

22 A I'm not sure.

23 Q Well, if I were to represent to you that  
24 you were interviewed by the police on Wednesday,  
25 January 19th, 1998, how many days prior to the police

MERIT REPORTING (702) 323-4715

AA02204

326

2JDC03639

SVan1s12JDC03639

1 talking to you had you first met the defendant?

2 A Probably about five days before or so.

3 Q Okay. And how is it that you knew him or  
4 came to be introduced to him?

5 A By a friend named Renee Peaua.

6 Q What is Renee's last name?

7 A Peaua.

8 Q How do you spell her last name?

9 A P-e-a-u-a.

10 Q Who is Renee Peaua to you?

11 A My girlfriend.

12 Q Are you married?

13 A No.

14 Q Where is Renee now?

15 A She is in Tonga.

16 Q In Tonga?

17 A Yeah.

18 Q What is she doing in Tonga?

19 A She is in school.

20 Q Where physically were you when you first  
21 met the defendant?

22 A At her house.

23 Q And where is that located?

24 A On Sterling Way.

25 Q Okay. And how did he first appear to you?

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AA02205

257

2JDC03640

SVan1s12JDC03640



1 How was he-- What did he look like?

2 A He had his wig, that long hair, and he had  
3 a jacket and pants.

4 Q Okay. Now, when you talk about the wig,  
5 describe the wig for me in a little more detail.

6 A It was just straight. It was like straight  
7 hair.

8 Q Do you know the term dreadlocks?

9 A Yeah.

10 Q Were they dreadlocks?

11 A No.

12 Q Okay. And you said there was-- the hair  
13 was attached to what?

14 A Like a grungy looking thing.

15 Q Like a beanie?

16 A Yeah.

17 Q You pull it over your head?

18 A Yeah.

19 Q What about his shirt sleeves?

20 A Shirt sleeves in--

21 Q Yeah.

22 A They were cut off.

23 Q What color was his shirt?

24 A Black.

25 Q And do you remember what day it was that

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AA02206

216

2JDC03641

SVan1s12JDC03641

1 you first saw him?

2 A No.

3 Q If I once again represent to you that you  
4 talked to the police on Wednesday, using that as a  
5 reference point, can you tell me what day it would  
6 have been when you first met him?

7 A Thursday.

8 Q Thursday the week before?

9 A Yeah.

10 Q Okay. Now, besides the wig and his shirt  
11 sleeves that were cut off, do you remember anything  
12 else about his appearance?

13 A No.

14 Q How about his beard?

15 A He had a beard.

16 Q Was it a full beard, or was it--

17 A It was full.

18 MR. STANTON: Can I have the booking photo, Your  
19 Honor?

20 THE COURT: (Hanging.)

21 BY MR. STANTON:

22 Q Let me show you Exhibit 1. Did he look  
23 like that when you first saw him, the beard?

24 A Yeah, the beard did.

25 Q Okay. The hair was different because of

MERIT REPORTING (702) 323-4715

AA02207

556

2JDC03642

SVan1s12JDC03642

1 the wig?

2 A Yeah.

3 Q Now, did there come a time after you first  
4 saw him the next day that you saw him at Losa's house?

5 A Yeah.

6 Q What is Losa's name?

7 A Losa Louis.

8 Q Okay. And did you see her outside of court  
9 before you came in?

10 A Yes.

11 Q And where does she live?

12 A Rock Boulevard.

13 Q Do you know the address?

14 A 1098 Rock Boulevard, Apartment A.

15 Q And do you live there?

16 A No.

17 Q Where do you live?

18 A 230 Booth Street.

19 Q And when you saw him at Losa's house on  
20 North Rock Boulevard the next day, what was he wearing  
21 then?

22 A Same thing.

23 Q Same thing as you just described?

24 A Yeah.

25 Q Did he have any objects with him?

MERIT REPORTING (702) 323-4715

AA02208

33.

2JDC03643

SVan1s12JDC03643

SVan1s12JDC03644  
1 A No.

2 Q Do you remember telling the detectives that  
3 you saw him with a little axe?

4 A Yes.

5 Q Okay. Do you see the axe in the middle of  
6 that photograph-- what has been marked as State's  
7 Exhibit 3-C?

8 A Yes.

9 Q Did you see the defendant with that axe at  
10 Losa's house the next day?

11 A Yeah.

12 Q Where did he have it?

13 A He had it in his hand.

14 Q What was he doing with it?

15 A Holding it.

16 Q Where was he carrying it when he wasn't  
17 holding it?

18 A On his side.

19 Q Where on his side?

20 A Left side.

21 Q His pocket? In his hip? Where?

22 A Like in his pants.

23 Q Okay. In his pocket?

24 A Like between his pants and his-- between  
25 him and his pants, you know.

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AA02209

23.

2JDC03644

1 Q So right in here next to where you put a  
2 gun belt or-- a gun in a holster, inside?

3 A Yeah.

4 Q Did he say anything at that residence about  
5 what he was going to do with that hatchet?

6 A No.

7 Q You don't remember that?

8 A Yeah.

9 Q Okay. What did he tell you?

10 A He said he was going to kill somebody.

11 Q Okay. Who was he going to kill?

12 A I don't know. He didn't tell me.

13 Q He didn't tell you?

14 A (The witness shakes his head.)

15 Q If I were to show you your transcript of  
16 your interview with the police department, would that  
17 refresh your recollection?

18 A Yeah.

19 MR. STANTON: Counsel, referring to page 26,  
20 lines 39, carrying over to page 27, through lines 18.  
21 BY MR. STANTON:

22 Q Sir, I want you to look at this transcript.  
23 This is you obviously. This is a police officer.

24 And I would like you to read, beginning at line  
25 39 when this police officer asks you the question

MERIT REPORTING (702) 323-4715

1 right here, then I want you to read up until line 18,  
2 and see if that doesn't refresh your memory. Just  
3 read it to yourself.

4 A (Reading.)

5 Q Does that refresh your memory?

6 A Yeah.

7 Q So let me try this again. Did he tell you  
8 what he wanted to do with that hatchet?

9 A Yes.

10 Q What was it that he told you?

11 A He said he wanted to kill a cop.

12 Q And did he tell you why he wanted to kill a  
13 cop?

14 A No.

15 MR. STANTON: Counsel, page 27, lines 22 through  
16 24.

17 BY MR. STANTON:

18 Q Okay. The question here at line 20, read  
19 this to yourself. That is the question by the police  
20 officer. Read your answer at lines 22 through 24.

21 A (Reading.)

22 Q Does that refresh your memory?

23 A Yeah.

24 Q What did he tell you about why he wanted to  
25 kill a cop?

MERIT REPORTING (702) 323-4715

AA02211

253

2JDC03646

SVan1s12JDC03646

1 A He said he could get his like radio and  
2 badge.

3 Q Okay. Did he tell you where he got the  
4 hatchet from?

5 A Yeah.

6 Q Where?

7 A Wal-Mart.

8 Q Did he tell you who was with him when he  
9 bought the hatchet at Wal-Mart?

10 A No.

11 Q You don't remember it was three girls?

12 A Yeah.

13 Q Okay. What were the three girls' names  
14 that were present with him when he bought the hatchet?

15 A I think it was-- I don't remember.

16 Q You don't remember?

17 A (The witness shakes his head.)

18 Q Makaleta, Ms. Reporter, M-a-k-a-l-e-t-a,  
19 Kavapalu, K-a-v-a-p-a-l-u, Nanina Kofu, N-a-n-i-n-a,  
20 K-o-f-u, and Mele Maveini, M-e-l-e, M-a-v-e-i-n-i.

21 Do you recall that?

22 A Yeah.

23 Q Is that the people that he told you that  
24 were present?

25 A Yes.

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AA02212

330

2JDC03647

SVan1s12JDC03647

1 Q Now, on Monday-- Once again as a frame of  
2 reference, Teki, the interview with the police occurs  
3 on Wednesday. The Monday before that, were you at  
4 Losa's house at ten a.m. in the morning?

5 A Yes.

6 Q Who else was at Losa's house at ten a.m.?

7 A Me, Losa, Corina, Bill, Masi, Laki.

8 THE COURT: Laki?

9 THE WITNESS: Yeah. And that is all I can  
10 remember.

11 BY MR. STANTON:

12 Q Okay. And did Pe have the hatchet with him  
13 at that time?

14 A Yes.

15 Q Go ahead. Answer out loud.

16 A Yes.

17 Q Now, the night before, Sunday night, did  
18 you go to Bully's?

19 A Yes.

20 Q Was the defendant with you?

21 A Yes.

22 Q Did he carry anything with him?

23 A No.

24 MR. STANTON: Counsel, page 44--

25 Court's indulgence.

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AA02213

335

2JDC03648



1 THE COURT: All right.

2 MR. STANTON: (Looking.)

3 BY MR. STANTON:

4 Q On Sunday evening when you went to Bully's  
5 to shoot pool, did the defendant have a hatchet with  
6 him?

7 A No.

8 Q Did you see the defendant on Monday any  
9 time after ten a.m. at Losa's house?

10 A I'm not sure.

11 Q Did you see him the next morning? That  
12 would be Tuesday morning.

13 A Tuesday?

14 Q Yes.

15 A Again I'm not sure.

16 MR. STANTON: Counsel, page 53, lines 7 through  
17 22.

18 BY MR. STANTON:

19 Q If you could read from lines 7 through 22  
20 to yourself.

21 A (Reading.)

22 Q Does that refresh your memory?

23 A Yes.

24 Q Did you see him Tuesday morning?

25 A Yes, I did.

MERIT REPORTING (702) 323-4715

AA02214

336

2JDC03649

SVan1s12JDC03649

SVan1s12JDC03650

1 Q Did you see him with a gun?

2 A With the gun?

3 Q Yes.

4 A No.

5 Q You didn't?

6 A I saw him later on that day, I did.

7 Q Okay. What time in the day on Tuesday did

8 you see the gun?

9 A Probably about 10:30, 11.

10 Q Did you ask him, the defendant, how he got

11 the gun?

12 A No.

13 Q Are you certain?

14 A I'm not sure.

15 Q Okay. Why don't you take a moment to think

16 whether or not you asked the defendant how he got the

17 gun.

18 A Yes, I did.

19 Q Okay. What did he tell you?

20 A He said that he got it from a cop.

21 Q Did you ask him specifically point blank

22 or straight forward whether or not he had killed a

23 police officer at the University of Nevada-Reno

24 campus?

25 A No.

MERIT REPORTING (702) 323-4715

AA02215

335

2JDC03650

1 Q You don't remember asking him that?

2 A I don't remember.

3 MR. STANTON: Counsel, pages 55 and 56, starting  
4 on 55, line 29, through page 56, lines 1 through 7.

5 BY MR. STANTON:

6 Q This is page 55. Start right here, line  
7 29, and read the rest of that page down to about half  
8 way down that page.

9 A (Reading.)

10 Q Does that refresh your memory?

11 A Yes.

12 Q Let me ask you a question again, Teki.

13 Did you ask him straight out whether or not he  
14 killed the police officer?

15 A Yes, I did.

16 Q What was his answer to your question?

17 A He said he did.

18 Q Did he tell you how he got to North Rock  
19 Boulevard to Losa's house?

20 A That is the same place.

21 Q Yeah, I know. How did he get to Losa's  
22 house? Did he tell you?

23 A Unh-unh.

24 Q Okay. Do you remember telling the police  
25 that he got-- that he got a ride by Mano (spelled

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AA02216

338

2JDC03651

SVan1s12JDC03651

phonetically)?

A Yes.

Q Who is Mano?

A Renee's brother.

Q Okay. And do you remember telling the police that the defendant told you that he got over to the North Rock address with you on Tuesday morning by Mano?

A Yes.

Q When he arrived at that address, did you see him carrying anything?

A A plastic bag.

Q Let me show you State's Exhibit 4-A. Does that look like the plastic bag he was carrying?

A Yes.

Q State's Exhibit 2, do you know who the gentleman in the center of that photograph is?

A Yes, it's Pe.

Q Pe.

A (The witness nods his head.)

Q What was in the plastic bag on Tuesday morning that you saw the defendant carry?

A I don't know.

Q Do you remember what color the items were inside?

MERIT REPORTING (702) 323-4715

AA02217

259

2JDC03652

SVan1s12JDC03652

SVan1s12JDC03653

1           A     No. I was asleep. I just woke up for a  
2 couple minutes, I glanced over, and just saw the  
3 plastic bag.

4           Q     Would it surprise you if I told you that  
5 you told the police that it was something dark colored  
6 inside the bag?

7           A     Yeah, I did tell them that.

8           Q     Is that true?

9           A     Yes.

10          Q     So you don't know what was in it, but it  
11 was dark?

12          A     Yes.

13          Q     Now, the night before Sunday night into  
14 Monday morning did you have occasion to be driving a  
15 car with the defendant?

16          A     Yes.

17          Q     What did the defendant ask you that was  
18 unusual while you were driving?

19          A     That he wanted to go kill a cop.

20          Q     He wanted to go kill a cop?

21          A     Uh-huh.

22          Q     And when he told you that, did it surprise  
23 you?

24          A     Yes.

25          Q     Did you want to go kill a cop?

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AA02218

34C

2JDC03653

SVan1s12JDC03654  
1 A No.

2 Q Did you see a police officer as you were  
3 driving around?

4 A I don't remember.

5 Q You don't remember?

6 MR. STANTON: Counsel, page 110-- Strike that.  
7 111-- 112.

8 BY MR. STANTON:

9 Q Could you read that page.

10 A (Reading.)

11 Q Do you remember now?

12 A Yes.

13 Q What is the answer?

14 A What was the question?

15 Q Did you see a police officer when you were  
16 driving around with the defendant?

17 A Yes, we did.

18 Q Where did you see the police officer? And  
19 I can leave this sheet of paper in front of you, if  
20 you--

21 A It was El Rancho Drive.

22 Q Okay. And what type of police officer did  
23 you see?

24 A Sparks.

25 Q And describe how you saw the police

MERIT REPORTING (702) 323-4715

AA02219

341

2JDC03654

SV201312010003655  
1 officer.

2 A He was just driving.

3 Q In a-- In what?

4 A In a police car.

5 Q Okay. And did you see the police officer  
6 that was driving?

7 A No. I just glanced at him.

8 Q You can't remember specifically what he  
9 looked like?

10 A Yeah.

11 Q Can you tell me whether he was white or  
12 not?

13 A He was.

14 Q Okay. What did the defendant say after he  
15 saw the police vehicle?

16 A To follow him.

17 Q Okay. And what did you say after he told  
18 you to do that?

19 A I said I didn't want to.

20 Q You didn't want to be a part of this?

21 A Yeah.

22 Q Now, the plan to go kill a police officer  
23 that night, was that before or after you got into the  
24 car?

25 A After.

MERIT REPORTING (702) 323-4715

AA02220

342  
2JDC03655

1 Q Are you certain about that?

2 A No.

3 Q I will ask you the question again.

4 When you were with the defendant on Sunday  
5 night, when did the defendant say that he wanted to go  
6 kill a cop, before or after you got in the car?

7 A I'm not sure.

8 Q Could it have been before?

9 A It could have been after.

10 Q Okay. You are not certain?

11 A Yeah.

12 Q On Monday night, the next night, did you  
13 drop the defendant off anywhere?

14 A Yes, I did.

15 Q What time of day was it or evening, and  
16 where did you drop him off?

17 A I dropped him off at Sterling-- at the  
18 house on Sterling Way.

19 Q Did you know the address on Sterling Way?

20 A No.

21 Q Do you know who lives at the address on  
22 Sterling Way where you dropped him off?

23 A Yeah.

24 Q Who lives there?

25 A My girlfriend's family.

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AA02221

242

2JDC03656

SVan1s12JDC03656



1 Q Renee?

2 A Yeah.

3 Q And how was the defendant dressed when you  
4 dropped him off at 10:30?

5 A He was wearing the same clothes, brown  
6 pants, black shirt.

7 Q The wig?

8 A Yeah.

9 Q Did he have the hatchet with him?

10 A I'm not sure.

11 Q Okay. Did he always carry the hatchet with  
12 him?

13 A Yes.

14 Q That morning after you dropped him off--  
15 You dropped him off at 10:30, early the next morning.

16 Do you remember seeing the defendant walk into  
17 the apartment on North Rock where you were at?

18 A This is Tuesday, right?

19 Q Yes, it would be early Tuesday morning.

20 A Kind of.

21 Q This is where he's carrying the bag?

22 A Yeah.

23 Q Did he ask you for anything?

24 A My car keys.

25 Q And did you give it to him?

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AA02222

244

2JDC03657

SVan1s12JDC03657

SVan1s12JDC03658  
1 A Yes, I did.

2 Q All right. Do you know if he drove your  
3 car anywhere?

4 A He didn't.

5 Q Why?

6 A Because my car was empty. He would have  
7 ran out of gas if he did.

8 Q What did you think he did with your car  
9 keys?

10 A Probably just sat inside my car.

11 Q Slept in it?

12 A Yeah.

13 Q State's Exhibit 4-B. Did you ever see the  
14 defendant in possession of any of those items?

15 A No.

16 Q And did you ever have these items?

17 A No.

18 Q Are you certain?

19 A Yes.

20 Q You never had them in a white plastic bag?

21 A No.

22 Q Okay. That white plastic bag, did the  
23 defendant at any point ask you to hold that bag for  
24 him?

25 A No.

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AA02223

3VS

2JDC03658

1 Q Are you certain?

2 A Yes.

3 MR. STANTON: Okay. Thank you. No further  
4 questions.

5 THE COURT: All right, Mr. Fey, any questions?

6 MR. FEY: No questions.

7 THE COURT: All right. Thank you, Teki. You  
8 are excused.

9 Call your next witness.

10 MR. STANTON: The State would next call Maria  
11 Louis.

12 THE COURT: Ma'am, if you would come up to my  
13 right, behind my court reporter, I will swear you in.

14 Please raise your right hand and be sworn.

15 (The Court administered the oath  
16 to the prospective witness.)

17 THE COURT: Please be seated.

18

19 MARIA LOUIS,

20 produced as a witness herein, having  
21 been first duly sworn, was examined  
22 and testified as follows:

23 ///

24 ///

25 ///

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AA02224

346

2JDC03659

SVan1s12JDC03659

## DIRECT EXAMINATION

BY MR. STANTON:

Q Ma'am, could you state your complete name and spell your first and last name.

A Maria Louis, M-a-r-i-a, L-o-u-i-s.

Q Do you have a nickname that people, friends and associates call you?

A Losa.

Q Losa?

A Yes.

Q Losa, do you know the man sitting at that table in the red jump suit?

A Yeah.

Q And who is he?

A My uncle.

Q Your uncle?

A Uh-huh.

Q Would it be a fair statement that you don't want to be here today, that you prefer not to be here today?

A Yeah.

MR. STANTON: Okay. Your Honor, I would ask, although I don't think it will be necessary--

MR. SPECCHIO: We will stipulate to whatever he wants us to stipulate to, Your Honor.

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AA02225

347

2JDC03660

SVan1s12JDC03660

1 THE COURT: You are going to ask that she be  
2 considered an adverse witness, hostile witness?

3 MR. STANTON: Just for the purpose of-- I think  
4 it would expedite things if I can ask leading  
5 questions.

6 MR. SPECCHIO: We haven't stopped him yet, have  
7 we?

8 THE COURT: No, you haven't. I appreciate that.  
9 All right. Thank you.

10 Go ahead, Mr. Stanton.

11 MR. STANTON: Thank you.

12 BY MR. STANTON:

13 Q When was the last time that you saw the  
14 defendant from your testimony here today?

15 A At church during practice.

16 Q Okay. I will make a representation to you  
17 that--

18 Do you recall talking to the detectives in the  
19 Reno Police Department the first time?

20 A When I went home?

21 Q Yes.

22 A Yes.

23 Q I will represent to you that was January  
24 13th, 1998.

25 From that date when was the first time that you

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AA02226

348

2JDC03661

SVan1s12JDC03661

1 saw the defendant? How many days prior to that?

2 A I don't remember.

3 Q You don't remember?

4 A Unh-unh.

5 Q When was the last-- When you arrived--

6 Did the defendant arrive or you see him in January of  
7 1998?

8 A Yeah, I saw him in January, 1998.

9 Q Prior to that how often had you seen him?

10 A He came over Saturday, Sunday, the weekend.

11 Q Okay. And had you seen your uncle on  
12 numerous occasions before that when he came up to Reno  
13 that time?

14 A No, just that one night, Saturday night, at  
15 the dance.

16 Q Okay. How often would you see your uncle?

17 A Not that often.

18 Q Would he come to Reno regularly?

19 A Oh, that is the first time I seen him in  
20 Reno.

21 Q Okay. When was the first time that you  
22 were or the last time you had saw him before he came  
23 to Reno? How long had it been?

24 A At a wedding, '96-- last year.

25 Q Where do you reside?

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AA02227 349

2JDC03662

SVan1s12JDC03662

SVan1s12JDC03663

1 A Here in Reno-- in Sparks.

2 Q What is the address?

3 A 1098 North Rock Boulevard, Apartment A.

4 Q Who lives there with you?

5 A I do, my sisters and brothers.

6 Q What is your sister and brothers' names?

7 A Corina, Bill and Masi.

8 Q And Masi is M-a-s-i?

9 A Uh-huh.

10 Q Do you recall--

11 You said you saw your uncle at a dance?

12 A For the first time when he came to Reno,

13 yeah.

14 Q How was he dressed when you saw him at the

15 dance?

16 A He had a beanie with a wig and jacket,

17 leather jacket.

18 Q How long was the hair on his wig?

19 A Same height as mine now.

20 Q Down past your shoulders, is that fair?

21 A Shoulder length.

22 Q What color was the hair?

23 A Brown.

24 Q Did you give consent to the police on

25 January 13th to search your apartment home on North

MERIT REPORTING (702) 323-4715

AA02228

350

2JDC03663

SVan1s12JDC03664  
1 Rock?

2 A Yes, I did.

3 Q Okay. Exhibit 3-C. Do you see that  
4 hatchet there?

5 A Uh-huh.

6 Q Is that the same kind of hatchet that your  
7 uncle carried with him?

8 A Yes, it is.

9 Q Is that the hatchet that was found inside  
10 your home?

11 A Yes, it is.

12 Q Do you know how that hatchet got there?

13 A He brought it.

14 Q Your uncle?

15 A My uncle.

16 Q When you first saw him, your uncle, did he  
17 have a full beard, or was it shaved?

18 A Full.

19 Q And did that change while he was staying in  
20 Reno?

21 A Yeah.

22 Q Were you present when his beard was shaved?

23 A I wasn't there, but he was using the  
24 bathroom.

25 Q Okay. And after he came out of the

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AA02229

351

2JDC03664



1 bathroom his beard had been shaved?

2 A Uh-huh.

3 Q Do you know who shaved his beard?

4 A Shamari.

5 Q Is Shamari's name Shamari Roberts?

6 A Uh-huh.

7 Q Were you able to--

8 State's Exhibit 2. Do you know who is in that  
9 photograph?

10 A Yes.

11 Q Who?

12 A That is Pe.

13 Q Your uncle?

14 A Yes.

15 Q Did there come a time where your uncle told  
16 you that he wanted to harm somebody?

17 A As in?

18 Q Anybody.

19 A Well, in other words, I mean, he was joking  
20 around. Okay.

21 Q What did he say?

22 A He was going to kill a police.

23 Q Based upon what happened it wasn't a joke,  
24 was it?

25 A I guess not.

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AA02230

352

2JDC03665

SVan1s12JDC03665

1 Q Okay. How many times did you hear him say  
2 he wanted to kill a cop?

3 A Twice.

4 Q When you saw him at the dance, did he have  
5 the hatchet?

6 A No.

7 Q Did he tell you on Tuesday morning how he  
8 got to your home?

9 A He said he walked.

10 Q From where?

11 A I didn't ask.

12 Q How was he dressed?

13 A With the same clothes he went out with I  
14 guess. I was asleep when he left.

15 Q Okay. In 3-A, 3-B, do you recognize those  
16 items of clothing, specifically the jacket and the  
17 gloves?

18 A Uh-huh.

19 Q Whose are those?

20 A Pe's.

21 Q Your uncle's, the defendant's?

22 A Yes.

23 Q And you saw him wearing them?

24 A Not when he left. When he came home, he  
25 was wearing it.

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AA02231

353

2JDC03666

SVan1s12JDC03666

1 Q When he came home?

2 A Uh-huh.

3 Q On Tuesday morning?

4 A Yeah.

5 Q And this is inside your house?

6 A Yes, it is.

7 MR. STANTON: Your Honor, I know it's 11:30, but  
8 I just have a couple other questions. I know Mr.  
9 Specchio needs to go.

10 MR. SPECCHIO: Go ahead.

11 THE COURT: Can he do the last two questions?

12 MR. SPECCHIO: Go ahead.

13 THE COURT: Okay. Go ahead.

14 BY MR. STANTON:

15 Q Did there come a time where a white plastic  
16 bag was found inside your residence?

17 A Yes, there was.

18 Q This is after the police had searched it?

19 A After searching it.

20 Q Who found that bag?

21 A I did.

22 Q Where was it?

23 A In my toaster cabinet.

24 Q And do you know how it got there?

25 A No, I don't.

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AA02232

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2JDC03667

SVan1s12JDC03667

- 1 Q What was in the bag?
- 2 A All I saw was the radio, the-- Yeah.
- 3 Q Police radio?
- 4 A Yeah.
- 5 Q Did you look at any of the other stuff
- 6 inside?
- 7 A No.
- 8 Q Exhibit 4-A. Is that the bag?
- 9 A Yes, it is.
- 10 Q And you have no idea how it got into your
- 11 house?
- 12 A No, I don't.
- 13 Q Did you ever see the defendant with that
- 14 bag?
- 15 A No.
- 16 Q Had anybody been in that closet to your
- 17 knowledge since the police had been in your home?
- 18 A No, no one was at the house.
- 19 Q And did Detective Duncan pick up that bag
- 20 from you?
- 21 A Yeah, I think that is his name.
- 22 Q You think that is his name?
- 23 A Yeah. I forgot his name. There were so
- 24 many.
- 25 Q When the defendant told you that he wanted

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AA02233

355

2JDC03668

SVan1s12JDC03668

1 to kill a cop, who else was present when he said that?

2 A Renee and Becky and Corina, Laki, and I  
3 think that was it.

4 Q You thought he was just kidding?

5 A Yeah, he was-- He was always a jokester.

6 MR. STANTON: All right. Thank you. Nothing  
7 further.

8 THE COURT: Then, Mr. Fey, do you have any  
9 questions of this witness?

10 MR. FEY: No.

11 THE COURT: Then we won't need to have you come  
12 back after lunch, Ms. Louis.

13 Let's reconvene at 10 after one in Courtroom E,  
14 the other end of the building. Okay.

15 (At 11:40 a.m. a break was taken  
16 until 1:10 p.m. of the same day.)

17 --o0o--

18  
19  
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21  
22  
23  
24  
25  
MERIT REPORTING (702) 323-4715

AA02234

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2JDC03669

SVan1s12JDC03669

RENO, NEVADA; FRIDAY, FEBRUARY 20, 1998; 1:10 P.M

--o0o--

THE COURT: Good afternoon. Please be seated.

All right. We will go back on the record in  
State versus Vanisi, case number RJC 89,820.

Mr. Stanton, I think it's time for you to call  
your next witness.

MR. STANTON: Thank you, Your Honor. The State  
will call Priscilla Endemann.

THE COURT: Ms. Endemann, will you come up to my  
left, and I will swear you in.

MR. SPECCHIO: Your Honor, I would like to thank  
the Court for your indulgence with regard to changing  
the schedule.

THE COURT: Okay.

(A discussion was held between the  
Court and counsel off the record.)

(The Court administered the oath  
to the prospective witness.)

THE COURT: Please be seated.

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2JDC03670

SVanisi12JDC03670

PRISCILLA L. ENDEMANN,

produced as a witness herein, having  
been first duly sworn, was examined  
and testified as follows:

DIRECT EXAMINATION

BY MR. STANTON:

Q Ma'am, could you please state your full and  
complete name.

A Priscilla Lupe Endemann, E-n-d-e-m-a-n-n.

Q Ma'am, how old are you?

A 20.

Q Do you live here in Reno?

A Yes, I do.

Q What is your address that you live here at  
Reno?

A 930 Manhattan Street, apartment 3, Reno,  
Nevada, 89--

Q I'm sorry?

A I was just saying the zip code. 89512.

Q Go ahead. I apologize for talking over  
you.

How long have you lived at that address?

A About a year and a half.

Q Are you Tongan?

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AA02236

358

2JDC03671

SVan1s12JDC03671

1 A No, Samoan.

2 Q And do you know the individual seated at  
3 the table to my left in the red jump suit?

4 A Yes, I do.

5 Q Who is that?

6 A Pe.

7 Q That is how you know him?

8 A Yes.

9 Q Do you know him by any other names?

10 A No.

11 Q Ever heard the name George?

12 A No.

13 Q How about Siaosi Vanisi?

14 A Yeah.

15 Q Okay. How do you know him?

16 A A friend of mine.

17 Q Who is that?

18 A Losa. One of his relatives also.

19 Q Losa?

20 A Yeah.

21 Q When did you first meet the defendant?

22 A It was Saturday at a dance.

23 Q Saturday of--

24 Do you know the date?

25 A Of last month. No, I don't.

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AA02237

35-9

2JDC03672

SVanIs12JDC03672



1 Q If I were to tell you that-- Well, strike  
2 that.

3 Do you remember talking to police detectives?

4 A Yes.

5 Q If I were to represent to you that that was  
6 January 13th when you talked to police detectives at  
7 about 10, almost 11:00 at night, can you give a frame  
8 of reference from that date as to when you first met  
9 the defendant?

10 A Well, when I first talked to him was at her  
11 house.

12 Q At Losa's house?

13 A Yes.

14 Q How many days prior to when the police  
15 talked to you did you first meet him?

16 A Well, the week before.

17 Q Okay. Seven days before that?

18 A Yes.

19 Q Okay. And is that who introduced you,  
20 Losa?

21 A Yes.

22 Q Now, do you have a boyfriend, or did you at  
23 that time?

24 A Yes, I did.

25 Q Who was that?

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AA02238

366

2JDC03673

SVan1s12JDC03673

SVan1s12JDC03674

1 A Laki.

2 Q Okay. What is Laki's full name?

3 A Metussela Tauveli.

4 Q Do you know how to spell his name?

5 A Metussela Tauveli.

6 Q He is known as Laki, L-a-k-i?

7 A Yes.

8 Q And when you met the defendant for the

9 first time, was that on North Rock at Losa's house on

10 North Rock Boulevard?

11 A Yes.

12 Q Do you remember the apartment number?

13 A A.

14 Q And how was the defendant dressed when you

15 first saw him there?

16 A I don't remember.

17 Q You don't remember?

18 A No.

19 Q Does he look like he does here in court

20 today?

21 A Yes.

22 Q Did he have a wig on?

23 A No.

24 Q Did you see him at a dance?

25 A Yes.

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AA02239

241

2JDC03674

SVan1s12JDC03675

1 Q When was the dance?

2 A Saturday evening, around nine.

3 Q The Saturday before the police talked to

4 him?

5 A Yes.

6 Q Where was the dance held?

7 A Paradise Park.

8 Q What kind of dance was it?

9 A It was for our church.

10 Q What church was that?

11 A Church of Jesus Christ of Latter Day

12 Saints.

13 Q The Mormon Church?

14 A Yes.

15 Q Where is that church located?

16 A I'm not so familiar with the streets here.

17 Q Okay. But the dance was at Paradise Park?

18 A Yes.

19 Q And what time did you see the defendant at

20 that dance?

21 A Between nine and ten.

22 Q In the evening?

23 A Yes.

24 Q And how was he dressed then?

25 A Blue jeans or black jeans. He had like a

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AA02240 362

2JDC03675

1 flannel tied around his waist, and I guess a T-shirt  
2 or sweater.

3 Q When you say flannel, you mean shirt or  
4 sweater?

5 A Yeah, shirt.

6 Q How about his face and head?

7 A He had a wig on, and there was like a band  
8 holding the wig down I guess.

9 Q Describe the band that was holding the wig  
10 down.

11 A Black. That is all I remember.

12 Q Do you remember anything about what that  
13 band looked like?

14 A It was dark colored.

15 Q Okay. And describe the wig for me.

16 A Straight black hair.

17 Q How long?

18 A Shoulder length.

19 Q Do you know what dreadlocks are?

20 A Yes, I do.

21 Q Did it look like that?

22 A No.

23 Q Okay. Did you see him at the dance, the  
24 defendant, with an object while he was dancing?

25 A Yes, I did.

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AA02241 363

2JDC03676

SVan1s12JDC03676

1 Q And what was that?

2 A It was a hatchet.

3 Q Can you describe the hatchet for me.

4 A It had a black handle. It was silver I  
5 guess.

6 Q Showing you what is in evidence as State's  
7 Exhibit 3-C, do you recognize that?

8 A Yes, I do.

9 Q Is that the hatchet you just described?

10 A Yes.

11 Q Could you tell the Court what the defendant  
12 was doing with the hatchet while you saw him at the  
13 dance?

14 A Just holding it in his hand and dancing.

15 Q Okay. He wasn't trying to hide it from  
16 anybody?

17 A No.

18 Q What was he doing with the hatchet while he  
19 was dancing?

20 A I guess it was part of his costume.

21 Q Okay. Was he swinging the hatchet around?

22 A No.

23 Q Okay. And did you see him over a period of  
24 a couple of days off and on?

25 A The next day I seen him at church. He was

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AA02242

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2JDC03677

SVan1s12JDC03677

SVan1s12JDC03678  
1 at church.

2 Q Okay. Did he have the hatchet then?

3 A No.

4 Q Where did he carry the hatchet?

5 A In his hand. He just holds the hatchet in  
6 his hand.

7 Q Did you ever see it put anywhere else on  
8 his body?

9 A No.

10 Q Did there come a time on the Sunday that--  
11 the Sunday before you talked to the detectives on the  
12 13th where he made a statement about wanting to hurt  
13 somebody?

14 A Yes.

15 Q Could you tell the Court as best as you can  
16 remember using the defendant's words what he said?

17 A "I want to kill a cop."

18 Q Okay. How many times did he say that?

19 A He repeated it off and on a few times.

20 Q More than three?

21 A More than three.

22 Q More than ten?

23 A About ten times, I guess, yeah.

24 Q Were there other people there besides  
25 yourself present when he said that?

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AA02243

365

2JDC03678

SVan1s12JDC03679  
1 A Yes.

2 Q And did he say anything else when he was  
3 saying he wanted to kill a cop?

4 A No, he was just talking about other things,  
5 and then just jumped right into that phrase.

6 Q Okay. Now, what was his demeanor like when  
7 he was making the statement about killing the cop?

8 A He just said it like out of the blue, just  
9 said it.

10 Q Okay. Was he excited, somber, soft spoken?

11 A Soft spoken.

12 Q Did you think he was serious?

13 A No.

14 Q Did there come a time when after church on  
15 the Sunday before you talked to the police where he  
16 told you a specific time that he wanted to catch this  
17 cop to kill him?

18 A No.

19 Q Would referring to your statement that you  
20 gave to the police refresh your memory about my  
21 question to you?

22 A (The witness nods her head.)

23 Q You have to answer out loud.

24 A Yes.

25 MR. STANTON: Counsel, do you have it?

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AA02244

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2JDC03679

(Counsel conferred briefly.)

BY MR. STANTON:

Q Ma'am, I would like you to take a look at the transcript of the interview you gave with the police, page 10.

This is the detectives that are asking questions. This is your answer. If you can kind of read from line 34 to 39 just to yourself and tell me when you are done.

A (Reading.)

Q Have you had time to read?

A Yeah.

Q Does that refresh your recollection?

A Yes.

Q Did he tell you a particular fashion or method that he wanted to catch a cop?

A Yeah, like when one was on his coffee break or something.

Q During the course of the events after Monday, the 12th, did you have occasion, Ms. Endemann, to see any television coverage regarding the murder of the police officer?

A Yes.

Q Do you recall where you were and what day it was when you saw the first television coverage?

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AA02245

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2JDC03680

SVan1s12JDC03680



1 A I don't remember what day, but it was at my  
2 house.

3 Q Okay. And during that broadcast did you  
4 see a composite?

5 A Yes, I seen a sketch.

6 Q And that was what was broadcast on  
7 television?

8 A Yes.

9 Q Did that look like anybody to you?

10 A Yes.

11 Q Who did it look like?

12 A Pe.

13 Q And when you saw that composite, was it  
14 immediate, or did you have to think about it for a  
15 while?

16 A Immediate.

17 Q Was there a distinction between from the  
18 first time you saw the defendant to the last time  
19 about how his beard appeared to you?

20 A Yes.

21 Q Tell me about that.

22 A It covered his whole face around here.

23 Q Is that the way it originally was?

24 A Yes.

25 Q And how did it change?

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AA02246

318

2JDC03681

SVan1s12JDC03681

SVan1s12JDC03682  
1 A I didn't see the change.

2 Q It was always like that to the best of your  
3 knowledge?

4 A Yes.

5 Q Did you ever remember seeing him with what  
6 you describe as Elvis sideburns?

7 A Yes.

8 Q Okay. When was that?

9 A That Sunday.

10 Q The Sunday you saw him?

11 A Yeah.

12 Q You are sure of that?

13 A No, I'm not sure.

14 Q If I were to tell you that the police  
15 officer in question was murdered just before or just  
16 after midnight from Sunday into Monday, would that  
17 refresh your recollection about when his beard-- I'm  
18 sorry, from Monday into Tuesday, would that refresh  
19 your recollection as to when you saw his beard change?

20 A Yes.

21 Q Okay. Was it after the police officer was  
22 killed that you saw his beard change?

23 A Yes.

24 Q When did you-- or do you know how his beard  
25 was changed or shaved off?

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AA02247 2 / 9

2JDC03682

SVan1s12JDC03683

1 A No.

2 Q Were you there when it happened?

3 A No.

4 Q Did there come a time after the police  
5 officer's murder where you were with the defendant  
6 driving back towards the University of Nevada campus?

7 A Yes.

8 Q Where were you going and who was with you?

9 A We were going to the church, me, Corina,  
10 Laki and Pe.

11 Q And the church-- Where is the church that  
12 you were going to in relationship to the general  
13 university campus?

14 A The Mormon Church?

15 Q Yes.

16 A I'm not so familiar with the streets. I  
17 don't know.

18 Q Okay. Without going into the streets, is  
19 the Mormon Church that you were driving to near the  
20 university campus?

21 A Yes.

22 Q Do you know the west side of the campus--  
23 where the west side of the campus is?

24 A No.

25 Q Okay. If I were to represent to you the

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AA02248

31  
2JDC03683

SVan1s12JDC03684

1 Mormon Church that you were driving to was on the west  
2 side of the campus where you were driving from, would  
3 you have to go through the university campus to get to  
4 the Mormon Church?

5 A Yes.

6 Q And where were you driving from, what  
7 address?

8 A Losa's house.

9 Q And that is on what street?

10 A Rock.

11 Q Now, you said the defendant was in the  
12 vehicle with you, correct?

13 A Yes.

14 Q What happened when you were approaching the  
15 university campus?

16 A Pe said that it was closed off because of  
17 what had happened, and I told him it wasn't.

18 Q Okay. And did his behavior change the  
19 closer you got to the campus?

20 A He looked paranoid.

21 Q And do you know what time of day it was  
22 when this was happening?

23 A Little before seven.

24 Q Seven p.m.?

25 A Yes.

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AA02249

371

2JDC03684

1 Q Did the defendant have his wig on at this  
2 time?

3 A No.

4 Q Did he have the hatchet with him?

5 A No.

6 Q Did you ever see the defendant with the  
7 hatchet from Tuesday morning on?

8 A No.

9 Q Did you ever see a police officer's belt  
10 and a flashlight, radio, things like that?

11 A Days after.

12 Q Okay. And where did you see that?

13 A In Losa's apartment.

14 Q Okay. And what was-- Where was it in the  
15 apartment?

16 A In the cupboard underneath the sink.

17 Q Now, on Tuesday morning were you at Losa's  
18 house on North Rock?

19 A Yes.

20 Q Do you remember the defendant coming back  
21 to that residence with a hatchet?

22 A No.

23 Q You never saw that?

24 A No.

25 Q Did you see any of the children in Losa's

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AA02250

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2JDC03685

SVan1s12JDC03685

## I N D E X

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## STATE'S EXHIBITS

## IDENTIFICATION

## EVIDENCE

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2, Photograph 4 31

3, Photographs (A, B, C) 4 31

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RENO, NEVADA; FRIDAY, FEBRUARY 20, 1998; 9:00 A.M.

--o0o--

(State's Exhibits 1 through 12 were  
previously marked off the record.)

THE COURT: Good morning. Please be seated.

This is the time set for the preliminary hearing  
in State versus Vanisi. It's case RJC 89,820.

We have a couple of preliminary matters we need  
to deal with first before we get started with the  
hearing.

There has been an amended complaint filed, and I  
need to arraign Mr. Vanisi on that complaint.

Mr. Gammick, Mr. Stanton, do you want to tell me  
what the difference is between the original and this  
one?

MR. STANTON: Yes, Your Honor. The amended  
complaint will have an additional count, which is  
reflected in Count V.

And in addition there is some language changes  
in Count I and Count III relative to the-- Strike  
that-- Count II regarding the mechanism and method of  
death.

THE COURT: All right. I did arraign Mr. Vanisi

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AA02123

245  
2JDC03558

1 in January on these charges.

2 MR. SPECCHIO: We will waive the reading, Your  
3 Honor.

4 THE COURT: He does understand the additional  
5 count of Grand Larceny?

6 MR. SPECCHIO: Yes, Your Honor.

7 THE COURT: One other preliminary matter.

8 Normally I don't use this courtroom. It's kind of a  
9 problem for my court reporter to take down testimony  
10 sitting there, and so as witnesses testify I would ask  
11 counsel to please not stand in front of my court  
12 reporter, if they can avoid that, so she will be able  
13 to hear the questions and answers.

14 Okay. Now, Mr. Gammick, you are representing  
15 the State in this case?

16 MR. GAMMICK: Myself and Chief Deputy District  
17 Attorney, Dave Stanton, Your Honor.

18 THE COURT: All right. And, Mr. Specchio--

19 MR. SPECCHIO: Mr. Fey is representing Mr.  
20 Vanisi, Your Honor. I'm just here trying to learn  
21 something.

22 THE COURT: Okay. How many witnesses do we have  
23 to call this morning, Mr. Gammick?

24 MR. GAMMICK: Your Honor, present we anticipate  
25 calling approximately 20 witnesses, depending on how

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AA02124

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2JDC03559

SVanisi12JDC03559



1 the evidence and testimony go. We may be able to not  
2 call some of those people.

3 THE COURT: They are all in court this morning?

4 MR. GAMMICK: To the best of my ability with  
5 this many witnesses, Your Honor.

6 I would ask-- I know we normally swear everyone  
7 at one time, but maybe at this time it would be best  
8 to swear each witness individually, because we have  
9 people coming and going. So I want to make sure we  
10 don't miss anyone.

11 THE COURT: I just wanted to do it for the sake  
12 of time, but I think that is probably a good idea. We  
13 will go ahead and begin then.

14 Mr. Gammick, if you will call your first  
15 witness.

16 MR. GAMMICK: Your Honor, if I may, pursuant to  
17 stipulation between the State and the defense, for the  
18 purposes of this preliminary hearing only I am  
19 presenting the Court with what has been marked as  
20 State's Exhibit 5. That is a DNA Report from the  
21 Washoe County Lab. It's a two-page report. It shows  
22 the presumptive testing for DNA.

23 I would call the Court's attention to the second  
24 page, right below the graph that is on that page. The  
25 first sentence I believe reflects information that DNA

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AA02125

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2JDC03560

SVan1s12JDC03560

1 testing was done. It concerns a jacket that--  
2 Evidence will be produced as to that jacket during the  
3 course of the prelim, that it was presumptively  
4 positive for the defendant's or, excuse me, the  
5 victim's blood, George Sullivan's.

6 It also shows a hatchet that is involved in this  
7 case, which tested presumptively for George Sullivan's  
8 blood, and it also shows a UNR PD vehicle. All those  
9 are part of case.

10 We have stipulated to admit that for purposes of  
11 the prelim.

12 Is that correct, Mr. Fey?

13 MR. FEY: That is correct. For purposes of the  
14 preliminary examination we are stipulating to the  
15 admission of Exhibit 5.

16 THE COURT: All right. Then Exhibit 5 is  
17 admitted.

18 (State's Exhibit 5 was admitted.)

19 THE COURT: Go ahead. Call your first witness.

20 MR. STANTON: Your Honor, before the State calls  
21 its first witness I assume the defense will invoke the  
22 rule of exclusion.

23 MR. FEY: Yes, Your Honor.

24 THE COURT: The rule of exclusion has been  
25 invoked. The rule requires that I exclude all those

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persons who are going to testify this morning from the courtroom until they are called to testify either Mr. Stanton or Mr. Gammick or Mr. Fey.

I would ask each of you not to discuss the case among yourselves or with any other person until you are called to testify.

And with that, if you will call your first witness, I would ask the other persons to please wait outside in the hall until they are called.

MR. STANTON: Pursuant to the previous order, the State will not be identifying the witness'es full, complete name, so the State would first call Mr. David K. to the stand.

THE COURT: Mr. David, last initial K., please come up to the stand. And the other witnesses please wait outside until you are called.

Sir, if you will come up to my right, I will swear you in, just behind my court reporter.

Please raise your right hand and be sworn.

(The Court administered the oath  
to the prospective witness.)

THE COURT: All right. Please be seated.

///

///

///

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2JDC03562

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DAVID K.,

produced as a witness herein, having  
been first duly sworn, was examined  
and testified as follows:

MR. SPECCHIO: Your Honor, may we approach?

THE COURT: Sure.

(The Court and counsel briefly  
conferred at the bench.)

THE COURT: Mr. Specchio asks that I make this  
part of the record, and that is that the Public  
Defender's Office knows the identity of David K., and  
the PD has agreed with the District Attorney's Office  
that the last name of this witness not be used for  
security purposes, and that both parties know who this  
person is.

MR. STANTON: That would also apply to the  
State's second witness, whose name is Vainga K. The  
first name is spelled V-a-i-n-g-a.

THE COURT: So both of those persons-- the  
identity of both of those persons is known to the  
Public Defender, and the Public Defender has agreed  
that the last name not be used.

MR. SPECCHIO: That is fine, Your Honor.

MR. STANTON: They do have their statements that

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AA02128

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2JDC03563

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1 have previously been given.

2 THE COURT: Okay.

3  
4 DIRECT EXAMINATION

5 BY MR. STANTON:

6 Q Sir, your first name is David?

7 A Yes.

8 Q The last name again begins with a K.?

9 A Yes.

10 Q Sir, you were interviewed in Salt Lake City  
11 by Detectives Jenkins, Douglas and Duncan from the  
12 Reno Police Department on January 23rd, were you not?

13 A Yes.

14 Q Do you see the individual sitting at  
15 counsel's table here to my left in the red jump suit?

16 A Yes.

17 Q And, sir, do you know that person?

18 A Yes.

19 Q Who is he, sir?

20 A He's my relative.

21 Q I'm sorry?

22 A Siaosi Vanisi.

23 Q I'm sorry, sir. Could you say that again  
24 so the court reporter can hear.

25 A He's my relative, Siaosi Vanisi.

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1 Q And when you say he's your relative, what  
2 type of relationship is he to you, sir?

3 A He's a cousin on my father's side.

4 Q Cousin on your father's side?

5 A Yes.

6 Q David, do you live in Salt Lake City, Utah?

7 A Yes, I do.

8 Q And you have a large family there?

9 A Yes.

10 Q And it is a close-knit family?

11 A Excuse me?

12 Q Close-knit family?

13 A Yes.

14 Q Can you tell the Court how often you had  
15 seen the defendant in the past 10, 15 years.

16 A In the beginning of the '80s, mid '80s, we  
17 would get together for family gatherings. And then  
18 when I served a full-time mission for the LDS Church  
19 in Los Angeles, I came across Pe again, who was living  
20 in Manhattan Beach.

21 Q You used a name just a minute ago when you  
22 answered that question. You said "Pe"?

23 A Yes.

24 Q How is that spelled?

25 A P-e.

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AA02130

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2JDC03565

SVan1s12JDC03565

1 Q And is that a Tongan nickname?

2 A It's just a nickname that we have called  
3 him.

4 Q That you have called Mr. Vanisi?

5 A Yes.

6 Q Any other names that you know that he has  
7 gone by within the family?

8 A No.

9 Q Ever heard the name George?

10 A It's English for Siaosi, yes.

11 Q So that is the English name for the  
12 defendant that has been used on occasion?

13 A Yes.

14 Q What is it--

15 How do you normally call the defendant. What?

16 A Excuse me?

17 Q What name do you usually call him by when  
18 you address the defendant?

19 A Just call by him by Pe or just my cousin.

20 Q And you saw him in California when you were  
21 on your mission--

22 A Yes.

23 Q --what year was that?

24 A 1994.

25 Q And how often say on a weekly basis did you

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AA02131

253

2JDC03566

SVanIs12JDC03566

SVan1s12JDC03567  
1 see Pe?

2 A I visit him quite frequently, but I haven't  
3 seen him for a while, so probably about three to four  
4 times a week.

5 Q And was he living with somebody at that  
6 time?

7 A Yes, he was.

8 Q Who was that?

9 A A young lady by the name of Deana.

10 Q Did ultimately Deana become his wife as you  
11 knew?

12 A Yes.

13 Q Come January 14th of 1998 did you have  
14 occasion to see your cousin Pe in Salt Lake City?

15 A Yes, I did.

16 Q Was that a surprise to you, that you saw  
17 him then?

18 A Yes.

19 Q It wasn't a planned get-together?

20 A No.

21 Q Where did you first see Pe in Salt Lake  
22 City?

23 A In my living room when I returned home from  
24 school.

25 Q And where did you reside at that time?

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AA02132

254

2JDC03567



SVan1s12JDC03568

1 A 1665 South Riverside Drive, Number 116.  
2 Q And who lived with you at that location,  
3 sir?

4 A Me and my brother.

5 Q And your brother's first name?

6 A Vainga.

7 Q Could you spell that.

8 A V-a-i-n-g-a.

9 Q And anybody else?

10 A I'm a foster parent, so I had a young  
11 child, 14 years old, Jeremiah Tally (spelled  
12 phonetically).

13 Q Okay. And he was also living at your home  
14 through Utah's version of the DCFF or the Division of  
15 Child and Family Services?

16 A Yes.

17 Q Could you describe how you first observed  
18 your cousin Pe, what his appearance was, and what  
19 clothing he was wearing.

20 A I walked in the apartment, and he greeted  
21 me with a big hug as usual. I noticed that he had--  
22 he was a little bit messier than usual, because he's a  
23 very clean, well-groomed person. He was wearing some  
24 light tan utility boots with some dark Levi's. He had  
25 a dark sweater around his waist and a cut-off shirt.

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AA02133

255  
2JDC03568

1 Q When you say a cut-off shirt, can you tell  
2 me the color of that shirt and where it was cut off.

3 A He wore a dark, faded blue shirt cut off on  
4 the shoulders area.

5 Q So the sleeves were what was cut off?

6 A Yes.

7 Q And what was his demeanor or behavior like?  
8 Can you describe--

9 A He was very excited to see me and my  
10 brother. He was-- He is a very intelligent person,  
11 so he did expound on a lot of different subjects, but  
12 he just was curious on how the family members were  
13 doing in Salt Lake City, specific names he gave. They  
14 were just many, many cousins that he asked about their  
15 status and what they were doing.

16 Q And at the time that you hugged your cousin  
17 did you smell an odor about his person that you  
18 recognized?

19 A I wasn't quite sure what the smell was, it  
20 could be cigarettes, it could be marijuana, but it was  
21 a weird smell.

22 Q Okay. And who was present in your home  
23 when you first saw Pe?

24 A Just me and my brother.

25 Q Okay. Your brother Vainga?

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AA02134 256

2JDC03569

SVan1s12JDC03569

1 A Yes.

2 Q Soon after you greeted your cousin, the  
3 defendant in this proceeding, did there come a time  
4 where the defendant went to the bathroom?

5 A Yes, he went to use the restroom.

6 Q And during that time period did Vainga  
7 comment to you or speak to you in some fashion about  
8 Pe?

9 A He didn't really know who Pe was previous  
10 to his visit for the reason he had never lived in Salt  
11 Lake a lot, but he asked me if he's like that all the  
12 time, meaning does he talk like that all the time.

13 I said, Yeah, he likes to talk a lot. And he  
14 said, You know, he might be in some trouble. And then  
15 I didn't understand what he meant. And then soon  
16 after he came back from the bathroom.

17 Q Did he mention something to you about a  
18 weapon? Did Vainga mention something to you about a  
19 weapon?

20 A Not at this time.

21 Q Not at that time?

22 After the defendant came out of the bathroom did  
23 there soon come an occasion where you went to a cousin  
24 by the name of Miles' home?

25 A Yes.

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AA02135 257

2JDC03570

SVan1s12JDC03570

1 Q Who's went to Mile's home?

2 A Me, my brother, Pe.

3 Q Okay. Vainga?

4 A Yes.

5 Q And through the course of your testimony  
6 here when you say your brother, it would be a  
7 reference to Vainga, although you have another  
8 brother, but he's not involved in what happened?

9 A Yes.

10 Q After you went over to Miles' house do you  
11 remember what time of day it was when you first saw  
12 Pe? And then the second question would be do you  
13 recall what time of day it was that he went to Miles'  
14 house?

15 A I returned home from school about 1:30,  
16 approximately, 2:00.

17 Q Would that be in the afternoon?

18 A Yes.

19 Q And do you recall approximately what time  
20 you went to Miles' home?

21 A Probably just a little while later, because  
22 we had lunch, and then we drove to Miles' home  
23 probably half hour after that.

24 Q And who is it once again that went to  
25 Miles' home?

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AA02136 258

2JDC03571

SVan1s12JDC03571

1 A Me and my brother and Pe.

2 Q And are you in the same car?

3 A Yes.

4 Q When you went to Miles', your cousin's,  
5 home, did you have occasion at that location to see a  
6 vehicle that your cousin, the defendant, said he had  
7 arrived in Salt Lake City in?

8 A No.

9 Q State's Exhibit 1, is that your cousin?

10 A Yes.

11 Q Is that how he appeared to you when you saw  
12 him on the first occasion that you just described at  
13 your home on January 14th, 1998?

14 A His beard has been altered a little bit.

15 Q How has his beard been altered?

16 A I don't remember.

17 Q Okay. It just looks different to you?

18 A (The witness nods his head.)

19 Q What did you do at Miles' house?

20 A I talked with Miles, who returned from work  
21 recently before we walked in. I asked Miles what time  
22 or when Pe had come over, and, Why is he here in salt  
23 lake? And Miles said, He just showed up. And I said,  
24 Well, let's go out-- let's go take him out.

25 And Miles had some plans with his wife, but he

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AA02137 259

2JDC03572

SVan1s12JDC03572

1 set those plans aside, as usual whenever Pe comes into  
2 town.

3 Q Was there some concern at this point when  
4 you talked to your cousin Miles that Pe might be in  
5 trouble?

6 A I told Miles that something was a little  
7 funny, that he might be in some trouble.

8 Q Now, based upon your understanding, your  
9 cousin, the defendant, had gone to Miles' first when  
10 he first came into Salt Lake City and prior to you  
11 seeing him at your home, is that correct?

12 A Yes.

13 Q So Miles already knew that Pe was in town?

14 A Yes.

15 Q Where did all of you go after you left  
16 Miles'?

17 A We went to a place to play pool.

18 Q Do you remember the name of the place that  
19 you went to play pool?

20 A A pool hall in West Valley City.

21 Q And who was going to the pool hall?

22 A Miles and his wife, me and my brother, and  
23 Pe.

24 Q And do you recall what time you get to the  
25 pool hall?

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AA02138

260

2JDC03573

SVan1s12JDC03573

1 A Probably close to 4:00.

2 Q Was there a time at the pool hall that the  
3 defendant left the pool hall by himself and went  
4 behind the building?

5 A Yes, there was. When we first got there,  
6 he said to give him a minute, he will be in. He went  
7 around back, and we went into the pool hall.

8 Q Did he go by himself?

9 A Yes.

10 Q Do you have an idea of what he was doing or  
11 why he went by himself?

12 A He is very respectful of our family,  
13 especially with Miles' wife there. He probably went  
14 around the building to get a smoke or something.

15 Q Okay. And after you left the pool hall did  
16 there come a time where you and your brother made up a  
17 story to tell to your cousin about where you were  
18 going and what you had to do?

19 A Yes.

20 Q Okay. Why did you--

21 A Couple questions regarding that, sir. Why did  
22 you make up a story about what you guys were going to  
23 do?

24 A My brother was supposed to be off work that  
25 day, and myself fearing that he would get in some more

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AA02139 261

2JDC03574

SVan1s12JDC03574

SVan1s12JDC03575

1 trouble from his previous history of the system, I  
2 told him that I would take him somewhere else while I  
3 go to school. I had classes that evening, January  
4 14th.

5 Q And your brother Vainga has been in trouble  
6 with the law before?

7 A Yes, he has.

8 Q And were you concerned about the condition  
9 that your cousin was in and whether or not he  
10 represented a danger to your family?

11 A Excuse me?

12 Q Did you have a concern at this point,  
13 David, that your cousin Pe represented a possible  
14 danger to you or members of your family?

15 A Yes.

16 Q And what was that concern? Why did you  
17 have that concern? What was it based on?

18 A It was my assessment during the few hours  
19 that we had been together already and the tip that my  
20 brother gave me that he might be in some trouble.

21 Q Was Pe acting like the Pe that you knew in  
22 1994 in Los Angeles?

23 A No, he wasn't.

24 Q Can you describe what was different about  
25 him and how he was behaving during this time period.

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SVan1s12JDC03576

1           A     For those who know Pe we know that he's a  
2 very intelligent person, very clean, well-groomed, a  
3 very active person. And to see him at my home it was  
4 shocking, especially when I asked him what's he doing  
5 here, and he just-- I felt like he just dropped  
6 everything, wherever he was at, and then just came  
7 with basically him and his clothes on his back to be  
8 with his family in Salt Lake City.

9           Q     Did there come a time where you knew or  
10 believed that your cousin had a gun on him?

11          A     At that time, no.

12          Q     Okay. That is the time when you are at the  
13 pool hall?

14          A     Yes.

15          Q     Now, after the pool hall did you go to  
16 Arby's to get something to eat?

17          A     Yes. We decided we weren't going to eat  
18 there, so we went to an Arby's near my home.

19          Q     And who went to the Arby's?

20          A     Miles' wife, me, and my brother Pe.

21          Q     And how was Pe acting at that time?

22          A     He was just overexcited to see all of us,  
23 talking a lot, as usual, asking about family members,  
24 and just jumping from one person to another to  
25 another, just really antsy and hyper.

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AA02141

265

2JDC03576

1 Q Okay. After being at Arby's did there come  
2 a time where you wanted to separate yourself from Pe  
3 so that he's not around you and your brother?

4 A I wanted to separate him from my boy, who  
5 was returning-- who would be home from school, and  
6 from my brother, who was like a magnet to trouble.

7 Q Okay. And that wasn't successful, was it?

8 A No.

9 Q Can you describe what happens next.

10 A We go home. I told Pe that my brother  
11 needs to go to work, and I need to go to school, and  
12 what he wanted to do. And we thought for a little  
13 while, and my brother said he needed to go home to  
14 take a shower and go to work.

15 So we went back to my home. And when we got  
16 there, my boy was there, Jeremiah. And then that is  
17 when I started to get a little bit afraid.

18 Q Okay. And what happens once you are home?  
19 What were the plans of the defendant Pe, Jeremiah, and  
20 yourself? What happens next?

21 A My boy goes to the local recreation center  
22 to play basketball everyday after school, so he  
23 offered to go play basketball. Pe was very excited to  
24 go play basketball as well. And so he went with my  
25 boy to the rec center to play basketball.

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AA02142 264

2JDC03577

SVan1s12JDC03577

1 Q Okay. And that concerned you?

2 A Yes, very much so.

3 Q Now, after they leave to the rec center did  
4 there come a time, sir, when you had communication  
5 with your cousin Miles in a discussion about the  
6 police?

7 A No. Miles called my home after he left us  
8 from Arby's and asked where my brother was and told me  
9 to be careful for my brother so he doesn't get into  
10 any more trouble.

11 Q Okay. And was there any mention of police  
12 in that phone conversation?

13 A No, there wasn't.

14 Q Okay. When did the police come into play?  
15 When did you find out about the police looking for  
16 your cousin?

17 A Before we left my apartment I was getting  
18 ready to go to school, and I got a telephone call from  
19 Miles' older brother.

20 Q And what is his first name, and could you  
21 spell it?

22 A Muli, M-u-l-i.

23 Q Okay. And can you tell us about what  
24 happens in that conversation.

25 A Muli just returned home to his mom's home

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AA02143 265

2JDC03578

SVan1s12JDC03578

1 to visit his mother. At the same time Sgt. Townsend  
2 came to the home with a photo ID that probably was  
3 faxed over with the identity of Pe.

4 It wasn't very clear, but the name was clear to  
5 them. And so he called me and asked me if I knew  
6 about it.

7 Q And at that point you didn't?

8 A And at that point I didn't.

9 Q And what happens next?

10 A He then-- I then asked Muli why is he--  
11 why did he come there for, and Muli said that he might  
12 be in some trouble in Reno.

13 Q And what happens next?

14 A I still wasn't sure, because Muli didn't  
15 see the picture very well.

16 Q You weren't sure that it was your cousin  
17 Pe?

18 A That it was Pe. And Muli asked me what he  
19 wanted me to do, and I told him that I knew where he  
20 was. I said he was playing basketball. And that was  
21 the end of that conversation.

22 Q Okay. Did there come a time after you  
23 talked with Muli that you were contacted by Townsend  
24 from the Salt Lake County Sheriff's Office?

25 A Yes, there was.

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AA02144 214

2JDC03579

SVan1s12JDC03579

1 Q And was that at your home?

2 A Yes, it was.

3 Q And what happened in that conversation?

4 A He asked me if I knew the name, and I said,  
5 The name sounds familiar.

6 Q What was the name that he gave you?

7 A The name was Siaosi Vanisi.

8 Q What happened next after he asked you about  
9 the name?

10 A He asked me if I remembered the name or if  
11 the name was familiar, and I said, Yes. I also told  
12 him that I had some relatives by that last name.

13 Q Okay. And what did Sgt. Townsend ask you  
14 next?

15 A He then came over.

16 Q To your home?

17 A Near my home.

18 Q Okay.

19 A And he gave me information. And I said,  
20 Why are you asking me about this person, and who-- and  
21 what did this person do.

22 Q What were you told?

23 A I was told that he was involved-- He was a  
24 suspect to a murder that took place in Reno, Nevada to  
25 a police officer, and that he might be involved in a

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AA02145 267

2JDC03580

SVan1s12JDC03580

1 few armed robberies.

2 Q And did there come a time where you were  
3 presented with information by Sgt. Townsend that  
4 confirmed the identity, that indeed it was Pe, your  
5 cousin, they were looking for?

6 A He continued to tell me more about this  
7 person, and I wasn't a hundred percent sure yet who  
8 this person was. And then he pulled out a--I think it  
9 was faxed--picture ID of this person. And, yes, I did  
10 identify him.

11 Q And that was indeed your cousin Pe?

12 A Yes.

13 Q And what happened after that identification  
14 with Sgt. Townsend? What did you and Sgt. Townsend  
15 do?

16 A He asked me-- He drove me around the  
17 neighborhood, and he asked me if I knew where George  
18 was.

19 Q And you knew George to be the English name  
20 for Pe?

21 A Right, Siaosi.

22 Q And what did you tell Sgt. Townsend as far  
23 as the possible location of Pe?

24 A Well, I informed Sgt. Townsend that he was  
25 playing basketball at the rec center with a foster

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AA02146 268

2JDC03581

SVan1s12JDC03581

1 child of mine.

2 Q It was determined that contacting Pe at the  
3 rec center wasn't an appropriate thing to do because  
4 of the number of people around. Is that a fair  
5 assessment?

6 A Yes.

7 Q What was your-- What did you do next?

8 A Sgt. Townsend said that he would-- he  
9 didn't think that the rec center was a safe place  
10 because of all the children who are around and  
11 especially he being with my boy.

12 Q And so what was ultimately the plan in  
13 order to contact your cousin Pe?

14 A Sgt. Townsend said he was going to contact  
15 some backup, and they were going to come to my  
16 apartment.

17 Q And he gave you specific instructions about  
18 what to do inside the apartment?

19 A Yes, he did.

20 Q When you returned--

21 You went to some other areas after the rec  
22 center with the Sergeant?

23 A No.

24 Q When you returned home, was your cousin Pe  
25 and your son, your foster child, home?

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AA02147 219

2JDC03582

SVan1s12JDC03582

SVan1s12JDC03583

1 A Yes.

2 Q And what was your plan, or what did you  
3 want to do according to Sgt. Townsend's instructions?

4 A First of all, I didn't want to follow his  
5 plan. Coming into the house and seeing Pe there and  
6 my boy was there, I feared for the safety of my boy,  
7 and I wanted him out of the picture.

8 Sgt. Townsend's plan was at 6:00 to send my boy  
9 out the door. Then I needed to immediately follow  
10 him.

11 Q Okay. What did happen?

12 A My boy left the house, and then instead of  
13 following Townsend's plan I sat down and spent time  
14 with him.

15 Q With your cousin?

16 A (The witness nods his head.)

17 Q What were you doing with your cousin?

18 A He wanted to see pictures of our family.

19 And knowing that Sgt. Townsend had a plan, I took  
20 about eight photo albums and sat next to him and went  
21 picture by picture.

22 Q And you knew that the police were-- or had  
23 a pretty good idea that the police were outside  
24 waiting for your cousin?

25 A Yes, I did.

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1 Q After you spent some time with your cousin  
2 in the home do you recall approximately what time you  
3 left the house?

4 A My boy left for good at 6:00. I stayed in  
5 there for another 45 minutes with him.

6 Q And did you leave one time and go back in?

7 A I started to walk out, and George jumped up  
8 and asked what I was doing. And I told him I was  
9 going to take the trash out, and he sat back down.  
10 And then I came back and sat down with him again.

11 Q What did you do with your cousin Pe the  
12 second-- that time?

13 A We have a two-seat couch, and I sat next to  
14 him, and I continued to go over the pictures of my  
15 family with him.

16 Q I show you what has previously been marked  
17 as State's Exhibit 12. Do you recognize what is  
18 depicted in that photograph?

19 A Yes.

20 Q And where is that photograph taken, if you  
21 know?

22 A In my kitchen.

23 Q Okay. In your home in Salt Lake City?

24 A Yes.

25 Q Does it accurately depict the condition of

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AA02149

271

2JDC03584

SVan1s12JDC03584

1 especially that one wall of your home on January 14th,  
2 1998?

3 A Yes.

4 MR. STANTON: Move for State's 12 into evidence.

5 MR. FEY: No objection.

6 MR. SPECCHIO: Your Honor, we won't object to  
7 any photographs so long as we get a copy of the  
8 photographs.

9 THE COURT: Okay. You mean after the hearing?

10 MR. SPECCHIO: Yes, Your Honor, or within a  
11 reasonable time thereafter.

12 THE COURT: Okay.

13 MR. SPECCHIO: That goes for all of the  
14 photographic exhibits. We have been shown them  
15 already.

16 MR. STANTON: For the record, that is State's  
17 Exhibits 1 through, I believe, 12.

18 THE COURT: All right.

19 (State's Exhibits 1, 2, 3, 4, 6,

20 7, 8, 9, 10 and 12 were admitted.)

21 BY MR. STANTON:

22 Q After you look through the photographs--  
23 the photo albums the second time, David, did you then  
24 leave the home?

25 A No, I didn't. I came back to my kitchen.

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SVan1s12JDC03586  
1 I was making some food, and I wanted to stay there a  
2 little bit longer.

3 Q Okay.

4 A I then received a call from Sgt. Townsend.

5 Q In your home?

6 A Yes. He wanted to know what I was doing in  
7 there.

8 Q And based upon that telephone call did  
9 you-- were you instructed or did you decide to leave  
10 your home at that point?

11 A At that time I felt almost I didn't have a  
12 choice to stay in there much longer. I had been in  
13 there about-- almost 50 minutes with him when I was  
14 supposed to leave.

15 Q You love your cousin, don't you?

16 A Yes.

17 Q Did you leave the home?

18 A Yes, I did.

19 Q And what was the last thing that you saw or  
20 heard your cousin do when you left the home?

21 A The last thing I remember he was still  
22 sitting on the couch, looking at the pictures of our  
23 family.

24 Q And when you left your home, was there a  
25 large police presence that had surrounded your home?

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2JDC03586

1 A Yes, there was.

2 Q And can you just in a general fashion,  
3 David, tell the Court--

4 Your home and a lot of your valuables were  
5 destroyed by a Swat operation that took place  
6 involving your cousin, correct?

7 A Yes.

8 MR. STANTON: Thank you. I have no further  
9 questions.

10 THE COURT: All right. Mr. Fey.

11 MR. FEY: Thank you.

12

13 CROSS-EXAMINATION

14 BY MR. FEY:

15 Q David, the first time you saw Pe on that  
16 day was approximately one, 2:00, something like that?

17 A One, 1:30.

18 Q Okay. And at that time you had returned  
19 from school from the morning session, right?

20 A Yes.

21 Q All right. You had something to eat--  
22 Your brother was also there at the house?

23 A I brought some lunch for us.

24 Q I'm sorry, sir?

25 A I brought some lunch.

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1 Q You were not aware that he was in the  
2 house, were you?

3 A No.

4 Q Your brother was there, you all had lunch  
5 together, is that correct?

6 A Yes.

7 Q That is when you went over to Miles' house?

8 A Yes.

9 Q Your best estimate on time would be that  
10 you went to Miles' house when?

11 A Approximately between three and 4:00.

12 Q So between three and 4:00 you are at Miles'  
13 house. It was you, your brother Vainga, and Pe.

14 Miles is there. His wife was there.

15 Do you know how long you stayed at Miles' house?

16 A No. Probably about 15 minutes.

17 Q That is when you went over bowling, right?

18 A I went to the bowling alley.

19 Q So that would be maybe you left there about  
20 4:15, 4:30, something like that?

21 A Approximately, yes.

22 Q To the best of your recollection. I know  
23 it's difficult to estimate times. Okay.

24 When you are at the bowling alley, I think you  
25 said you were in there for awhile, but then after a

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AA02153

2JDC03588

SVan1s12JDC03588

1 certain period of time you wanted to go home because  
2 Jeremiah was coming home from school?

3 A Excuse me. Can you repeat that?

4 Q I'm sorry. You were at the bowling alley  
5 for a period of time, and then it was your idea to go  
6 home because Jeremiah was going to be coming home, is  
7 that right?

8 A Yes.

9 Q And the best estimate you've got-- Is that  
10 like 5:00, do you know?

11 A It was probably about-- close to 4:30.

12 Q Okay. So you didn't stay very long at the  
13 bowling alley at all, did you?

14 A No. We had to stop before we went home,  
15 and that was to Arby's.

16 Q Okay. So you stopped-- On the way home  
17 you went to Arby's, and you then went home from--

18 Do you know approximately what time it was that  
19 Jeremiah and Pe went out to the rec center to play  
20 basketball?

21 A It was close to 5:00.

22 Q So that is close to 5:00. And then how  
23 soon after that did you get the phone call from Muli?

24 Did he call you?

25 A Muli called me approximately right before I

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AA02154

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2JDC03589

SVan1s12JDC03589

1 left the apartment before-- It had to be before 5:00.

2 Q So before 5:00. And Jeremiah is already at  
3 the rec center, is that right?

4 A Jeremiah and--

5 Q And Pe?

6 A --and Pe were walking.

7 Q So Muli called you and told you what  
8 Officer Townsend had talked to him about, is that  
9 right?

10 A Yes.

11 Q Now, you talked to Officer Townsend-- You  
12 left right away, or did you wait?

13 A No, I didn't.

14 Q What kind of delay? Can you estimate?

15 A Why the delay?

16 Q Yes. How much of a delay between the phone  
17 call and the time-- phone call from Muli and when you  
18 talked to Officer Townsend?

19 A Probably close to half an hour.

20 Q Okay. So did Officer Townsend actually  
21 come to your house? Is that right?

22 A No, he didn't.

23 Q Okay. Where did you talk to him?

24 A He called me at an uncle's house. We  
25 talked at my uncle's house.

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2JDC03590

SVan1s12JDC03590

1 Q And your uncle, what is his first name?

2 A Phil.

3 Q Phil.

4 And had you gone over there then after you had  
5 talked to Muli?

6 A Yes.

7 Q Okay. So this is all before 6:00, though,  
8 right?

9 A Yes.

10 Q So is it fair to say things were going  
11 fairly quickly that afternoon?

12 A Very quickly.

13 Q Ultimately you did talk to Officer  
14 Townsend. Officer Townsend then had this plan, and  
15 then you went back to your house--

16 A Yes.

17 Q --to help implement the plan?

18 A Yes.

19 Q I think you testified you were a little bit  
20 concerned about the plan, right?

21 A Yes, I was.

22 Q Okay. So the plan was that at 6:00 you  
23 were to send Jeremiah out, and then you were to follow  
24 him out, is that right?

25 A I was to follow immediately after him.

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AA02156

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2JDC03591

SVan1s12JDC03591



1 Q And then we had you sitting down with Pe to  
2 look at the pictures, is that right?

3 A Yes.

4 Q Okay. So to the best of your estimate,  
5 though, the first part of the plan where Jeremiah went  
6 out, that took place at 6:00, is that right?

7 A Yes. He did leave at 6:00.

8 MR. FEY: Okay. No further, Your Honor.

9 THE COURT: Any redirect?

10 MR. STANTON: No, Your Honor.

11 THE COURT: All right. Thank you, David. You  
12 are excused.

13 And who is your next witness, Mr. Stanton?

14 MR. STANTON: It would be Vainga K.

15 THE COURT: I will have my bailiff call Mr.  
16 Vainga in.

17 MR. GAMMICK: Your Honor, just so the record is  
18 clear, Mr. Specchio said they would have no objection  
19 to photographic evidence that had been shown, and if I  
20 may, that is exhibit number 1, which is the photograph  
21 of the defendant, which has already been used in the  
22 courtroom.

23 THE COURT: All right.

24 MR. GAMMICK: Photograph number 2, which is a  
25 surveillance photograph taken at a store that will be

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2JDC03592

SVan1s12JDC03592

covered.

And photograph number 3-A, which is a photograph of the inside of the apartment with a jacket, photograph 3-B is a closer photograph of that. Photograph 3-C is a photograph of a hatchet.

Photograph 4-A is a white plastic bag with a Sam Brown belt in it.

THE COURT: Sir, if you would just please wait over there by the witness box, I will swear you in in just a moment.

MR. STANTON: Photograph 4-B is a picture of the Sam Brown belt with all the equipment that was found. Photograph 4-C is the back of a radio, a Saber radio.

Photograph 6 is a photograph of a weapon, a Glock pistol in what looks like a laundry stack.

Photograph 7 is the front of a vehicle with the license plate showing.

Photograph 8 is a photograph of the scene.

And photograph 12 is the one that was just discussed, the house and Mr. K.

MR. SPECCHIO: I would like to have-- We already have copies of those, judge.

THE COURT: You just need all but 1 and 2?

MR. SPECCHIO: Yes.

MR. GAMMICK: I would indicate that defense

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2JDC03593

SVan1s12JDC03593

1 counsel has had the opportunity to review all the  
2 photographs we have at this time. We will be glad to  
3 furnish copies of those specific ones.

4 THE COURT: All right. Mr. Vainga, would you  
5 please stand, raise your right hand.

6 (The Court administered the oath  
7 to the prospective witness.)

8 THE COURT: All right. Please be seated.

9 And you need to speak up a little bit, so that  
10 my court reporter can hear what you are saying and  
11 also so that counsel can hear what your answers are to  
12 their questions.

13  
14 VAINGA K.,  
15 produced as a witness herein, having  
16 been first duly sworn, was examined  
17 and testified as follows:

18  
19 DIRECT EXAMINATION

20 BY MR. STANTON:

21 Q Sir, could you please state your full first  
22 and middle names, and spell both for the court  
23 reporter.

24 A Vainga Imoana, V-a-i-n-g-a, middle name,  
25 I-m-o-a-n-a.

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1 Q How old are you, sir?

2 A Twenty-three.

3 Q And do you know the gentleman sitting at  
4 that table in the red jump suit?

5 A Yes, sir.

6 Q How do you know him?

7 A He's a distant relative.

8 Q And prior to January of 1998 when was the  
9 last time that you saw the defendant?

10 A What was that?

11 Q Prior to January of this year when was the  
12 last time that you saw him?

13 A I never saw him after that.

14 Q I don't mean after that, before that.

15 A Oh, before that?

16 Q Right.

17 A Maybe 10 years, 12 years.

18 Q How do you know the defendant as far as  
19 name? What names do you know him by?

20 A Pe.

21 Q Okay.

22 A And George.

23 Q George. What is his formal name?

24 A Siaosi.

25 Q All right. And his last name?

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AA02160

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2JDC03595

SVan1s12JDC03595

SVan1s12JDC03596  
1 A Vanisi.

2 Q And on January 14th, 1998 did you see the  
3 defendant in Salt Lake City?

4 A Yes.

5 Q And where were you staying at that time  
6 when you saw the defendant?

7 A I was at 1665 South Riverside Drive, number  
8 116. That is in Salt Lake City.

9 Q You live there with your brother David?

10 A Yes.

11 Q And there was also a Jeremiah that was  
12 living there, too?

13 A Yes.

14 Q Sir, before I get into the contents of your  
15 testimony, have you suffered any felony convictions?

16 A Yes.

17 Q And how many?

18 A Four or five.

19 Q Okay. And what were the charges that you  
20 were convicted of?

21 A Aggravated Assault with a deadly weapon and  
22 Attempted Murder.

23 Q Some various different counts of both those  
24 offenses?

25 A Yes.

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AA02161

283

2JDC03596

- SVan1s12JDC03597
- 1 Q And was that in Texas?
- 2 A Yes.
- 3 Q How many years were you sentenced to off
- 4 those offenses in Texas?
- 5 A Four to five.
- 6 Q Four to five years?
- 7 A Yes.
- 8 Q And how much time did you actually serve?
- 9 A About three and a half, four years.
- 10 Q And are you on parole now?
- 11 A No.
- 12 Q You flattened your time?
- 13 A Yes.
- 14 Q Now, as part of your trouble in Texas were
- 15 you involved in gang activity in Texas?
- 16 A Yes.
- 17 Q And what gang were you a member of?
- 18 A Tongan Crypt Gang.
- 19 Q TCG?
- 20 A Yes.
- 21 Q In January of 1998, specifically on the
- 22 morning of January 14th, when was the first time that
- 23 you saw your cousin, the defendant?
- 24 A About 8:30 in the morning.
- 25 Q And what were you doing at that time?

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AA02162 *dfc*

2JDC03597

1 A I was just waking up.

2 Q Okay. Were you surprised to see him?

3 A Yes.

4 Q Did you have plans to see him, or did you  
5 know he was coming?

6 A No, not at all.

7 Q Did you recognize him?

8 A Not at first. It took awhile for me to  
9 recognize him.

10 Q How did you normally-- In the ten or so  
11 years before that how did you normally see the  
12 defendant? How did he appear to you?

13 A He was clean cut, skinnier, and, you know,  
14 no facial hair.

15 Q Okay. I show you State's Exhibit 1 in  
16 evidence. Is that how he looked when you saw him that  
17 morning?

18 A Yes.

19 Q Okay. What was the first thing he told you  
20 about why he was in town?

21 A He just said he was in town for some  
22 business-- to see his relatives.

23 Q Did he mention anything about seeing your  
24 cousin Miles?

25 A Yes.

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AA02163

2JDC03598

SVan1s12JDC03598

1 Q Was that before he had seen you?

2 A Yes.

3 Q And how did he get to your home?

4 A My cousin Miles dropped him off on his way  
5 to work.

6 Q Okay. And how did he appear? What was his  
7 behavior like as you were watching him at this time?

8 A Real happy, excited, cheerful.

9 Q And did there come a time soon after you  
10 first saw him that he told you that he had killed  
11 somebody?

12 A Yes.

13 Q How long after your first seeing the  
14 defendant did he tell you that?

15 A Maybe 10, 15 minutes.

16 Q Did you believe him?

17 A No.

18 Q Did there come a time where you went  
19 outside to smoke a cigarette?

20 A Yes.

21 Q Why did you go outside to smoke?

22 A Because my brother is real strong in the  
23 church, LDS Church. He doesn't allow smoking in the  
24 house.

25 Q And would it be fair to say that you are

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AA02164

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2JDC03599

SVan1s12JDC03599



1 kind of the black sheep of the family?

2 A Yes.

3 Q Okay. When you are out smoking, did the  
4 defendant, your cousin, follow you?

5 A Yes, we both went out.

6 Q And at some point when you were outside did  
7 he ask you about whether or not you wanted to smoke  
8 something?

9 A Yes.

10 Q Describe that.

11 A Well, he had some marijuana, and he offered  
12 it to me, and I told him that I didn't smoke it  
13 anymore. I lost the taste of marijuana.

14 Q And, Vainga, why were you living with David  
15 at this point? What was kind of going on in your life  
16 at this point?

17 A I just moved back to catch up with my  
18 family and my brothers and sisters. And my brother  
19 was-- They sent me to my brother so he could  
20 straighten me out.

21 Q Your brother David?

22 A Yes.

23 Q He's kind of the straight arrow of the  
24 family?

25 A Yes.

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AA02165

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2JDC03600

SVan1s12JDC03600

1 Q Very active in the church?

2 A Yes.

3 Q A very religious man?

4 A Uh-huh.

5 Q Now, when you were outside with your  
6 cousin, the defendant, did there come a time where he  
7 pulled out some money?

8 A Yes.

9 Q Can you describe that incident for us.

10 A Yeah, he had a wad of money, a wad of cash,  
11 and I noticed fives, and ones, and two-dollar bills.

12 Q You told the detectives from Reno that it  
13 looked like a certain type of money. Do you remember  
14 what term you used?

15 A I said, yes, it looked just like 7/Eleven  
16 money.

17 Q What does the term 7/Eleven money mean to  
18 you?

19 A I was involved with-- not involved, but I  
20 knew some people who had robbed a 7/Eleven. The money  
21 they had was exactly what it looked like.

22 Q Small denominations?

23 A (The witness nods his head.)

24 Q Did you go then back inside your home after  
25 smoking?

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AA02166

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2JDC03601

SVan1s12JDC03601

SVan1s12JDC03602

1 A Yes.

2 Q And what did you go when you went back in?

3 A We went back in and turned the t.v. on,  
4 started talking.

5 Q Okay. And what was the defendant, your  
6 cousin Pe, talking about?

7 A All kinds of stuff, family, wanting to go  
8 see all the family, getting together, all the boy  
9 cousins, so we can go play some hoops or something.

10 Q Okay. He was real interested in family?

11 A Yes.

12 Q Did he come back to the subject about  
13 killing somebody?

14 A Yes.

15 Q What did he say at this time?

16 A He said it was a police officer that he  
17 killed.

18 Q Okay. Did he say where that happened?

19 A Back in Reno.

20 Q And did he tell you anything more just at  
21 that time?

22 A No.

23 Q Who changed the subject?

24 A I think I did, because I still didn't  
25 believe it.

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AA02167

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2JDC03602

1 Q Did he change-- When changing subjects,  
2 did he talk about a robbery?

3 A Yes.

4 Q Okay. Now, is there a Tongan term that he  
5 used?

6 A Fahi kesi?

7 Q Yes. Could you spell that and say it one  
8 more time.

9 A F-a-h-i, K-e-s-i.

10 Q And what does that mean to you, sir?

11 A Fahi, which means break into; kesi, which  
12 means gas station.

13 Q And you speak Tongan fluently?

14 A Yeah.

15 Q Okay. So to translate for me, someone who  
16 doesn't speak Tongan, when someone says Fahi kesi,  
17 what does that mean to you?

18 A Robbing stores.

19 Q A particular type of store?

20 A Like gas stations.

21 Q Or convenience stores?

22 A Convenience stores.

23 Q Did he talk about his wife?

24 A Yes, at one time.

25 Q And was he upset about his wife when he was

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AA02168

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2JDC03603

SVan1s12JDC03603

1 talking?

2 A Sort of-- Not really.

3 Q Okay. Did there come a time where he told  
4 you--

5 I'm trying to walk you through chronologically  
6 what he was saying to you. What did it mean to you  
7 when he said 1998 was going to be a special year for  
8 him?

9 A Yes, 1998 was the year for him to be free  
10 and get out, and find his roots, family.

11 Q Did he mention anything about wanting blood  
12 relatives to follow him?

13 A Yes.

14 Q And what did you take that to mean when he  
15 was telling you that?

16 A I still thought it was a joke, okay.

17 Q But what was it that you felt he meant by  
18 follow him, to get his blood cousins or relatives to  
19 follow him?

20 A Get everybody together so we can go, you  
21 know, do crime.

22 Q Do crime?

23 A (The witness nods his head.)

24 Q Now, did there come a time where you saw a  
25 gun on your cousin's person?

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AA02169

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2JDC03604

SVan1s12JDC03604

1 A Yes.

2 Q Can you describe what happened then when  
3 you first saw it.

4 A I still thought it was a-- You know, I  
5 recognized the gun as being a Glock .45.

6 Q How did you know what a Glock .45 is?

7 A Because I have been around them. I've  
8 handled guns.

9 Q To include a Glock .45?

10 A Yes.

11 Q And you knew immediately it to be a Glock  
12 and a .45 caliber?

13 A Yes, it would either be a Glock .45 or  
14 Glock .40, which they look similar.

15 Q Let me show you State's Exhibit 6. I  
16 represent that is a gun found in your brother David's  
17 home. Did that look like a gun that your cousin had?

18 A Yes.

19 Q When he pulled out the gun, did you ask him  
20 who he killed?

21 A Yeah, I did.

22 Q And what was his response? And at this  
23 point, Vainga, could you please try to use the exact  
24 words your cousin said to you.

25 A He said something about killing a po po

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AA02170

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2JDC03605

SVan1s12JDC03605

SVan1s12JDC03606  
1 (spelled phonetically), which means police officer or  
2 law.

3 Q The term po po to you means police officer?

4 A Yes.

5 Q And that is the term that your cousin used?

6 A Yes.

7 Q Did you believe him?

8 A No, not at all.

9 Q There came a time where you did believe  
10 him?

11 A Yes.

12 Q What was happening that convinced you that  
13 what he was telling you was the truth?

14 A Well, I asked to see the gun. And I held  
15 the gun, and I took the clip out. And it was hollow  
16 point bullets in the clip. And from my knowledge I  
17 know that only police officers carry hollow point  
18 bullets.

19 Q So at that point you thought--

20 A Yeah, it clicked.

21 Q Did there come a time where your cousin,  
22 the defendant, told you about what went on in Reno in  
23 more detail?

24 A Yes.

25 Q I want to first start off with, Vainga, the

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AA02171

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2JDC03606

1 statements made by the defendant to you regarding the  
2 night before the murder. Do you remember that?

3 A He said he went with one of his homeys.

4 Q When you say the term homeys, what does  
5 that mean to you?

6 A Friend.

7 Q Okay. And what did he say when he went  
8 with one of his homeys? What happened?

9 A That his homey backed out on him.

10 Q Okay. What were they doing?

11 A They were I guess surveilling the area.

12 Q For what?

13 A For someone to kill or something.

14 Q Okay. Someone to kill?

15 A Yes.

16 Q Did he describe to you who specifically  
17 they were looking for the night before to kill?

18 A Police officer.

19 Q And was it a particular type of police  
20 officer that they were going to kill?

21 A White police officer.

22 Q What happened to the homeboy according to  
23 your cousin?

24 A Backed out.

25 Q Did he tell you why he wanted to kill a

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AA02172

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2JDC03607

SVan1s12JDC03607



1 police officer?

2 A Because he was white.

3 Q After the incident with his homey backing  
4 out did he tell you that he went and bought something?

5 A Yes.

6 Q What did he tell you he went and bought?

7 A An axe or hatchet.

8 Q Okay. As best you can, Vainga, can you  
9 tell this Court what term the defendant used as to  
10 what he bought? Was it an axe or hatchet, or do you  
11 know?

12 A I don't remember-- It was an axe or a  
13 hatchet.

14 Q Did there come a time where you saw or a  
15 vehicle was pointed out to you by the defendant at  
16 Miles' house about how he came or what he drove to  
17 Salt Lake City?

18 A Yes.

19 Q State's Exhibit 7. Is that the vehicle and  
20 how it looked when you saw it at your cousin Miles'?

21 A It was at a distance. I did see the tarp,  
22 though.

23 Q Does that look--

24 A Yes.

25 Q --pretty close to what he was pointing out

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AA02173 295

2JDC03608

SVan1s12JDC03608

SVan1s12JDC03609  
1 to you?

2 A Yes.

3 Q I want to make some time here, Vainga, to  
4 go as detailed as you can remember about what the  
5 defendant told you happened involving the murder of  
6 the police officer. Can you remember that?

7 A He said he saw him prior to the time.

8 Q What was he doing when he saw him prior to  
9 the time he killed him?

10 A I guess he saw him pulling somebody over.  
11 I can't recall.

12 Q As best you can remember.

13 A I'm not-- I'm drawing a blank.

14 Q Okay. Do you recall him telling you that  
15 he had saw the police officer that he ultimately  
16 killed pull somebody over?

17 A Yes.

18 Q Okay. What did he tell you he did after he  
19 saw that?

20 A He waited awhile and came back.

21 Q How much time did he say he waited?

22 A I think it was 10, 15 minutes.

23 Q And did he tell you how he came up to the  
24 police officer?

25 A Creeped on him.

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AA02174

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2JDC03609

1 THE COURT: What was that?

2 THE WITNESS: Creeped on him.

3 THE COURT: Creeped on him.

4 BY MR. GAMMICK:

5 Q What did that mean to you when he said  
6 that?

7 A Sneaking up.

8 Q And did he tell you what the police officer  
9 was doing as he was creeping up on him?

10 A He was doing some kind of paperwork.

11 Q And anything else?

12 A Drinking coffee of some sort.

13 Q What did the defendant tell you he did when  
14 he gets up to the police car?

15 A Knock on the window and said, What's up.

16 Q Now, who says "What's up"?

17 A The defendant.

18 Q Your cousin?

19 A Yes.

20 Q And what did he tell you the police officer  
21 did after he said, What's up, and knocks on the  
22 window?

23 A He said something like, "Can I help you".

24 Q And then what happens?

25 A And then it was on.

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AA02175

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2JDC03610

SVan1s12JDC03610

1 Q "It was on"?

2 A Yeah.

3 Q Okay. Did he describe to you what  
4 happened? Did he verbally tell you what happened, or  
5 did he demonstrate to you?

6 A It was, (The witness demonstrated).

7 Q Okay. Can you show us in court today what  
8 your cousin demonstrated to you?

9 A Like swinging overhead.

10 Q Now, you are left handed, right?

11 A Yes.

12 Q What hand was your cousin using?

13 A His right hand.

14 Q Okay. And, for the record, you were making  
15 a motion over your shoulder?

16 A Yes.

17 Q Is that what he was doing, swinging like  
18 this?

19 A Yes.

20 Q Did he say that the police officer fought  
21 back?

22 A Yes, he got in one.

23 THE COURT: What?

24 THE WITNESS: He got in one.

25 ///

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AA02176 298

2JDC03611

SVan1s12JDC03611

1 BY MR. GAMMICK:

2 Q He got in one? What did you take that to  
3 mean, or what did he say?

4 A I guess the police officer got a punch on--  
5 got a hit on.

6 Q That is what your cousin told you?

7 A Yes.

8 Q Once again, do you remember at this point  
9 him stating, as best you can, using your cousin's  
10 words, about how he described the beating?

11 A Am I allowed to--

12 THE COURT: Yeah.

13 THE WITNESS: --cuss?

14 THE COURT: Yeah, you can say anything.

15 THE WITNESS: "I beat his ass".

16 BY MR. STANTON:

17 Q "I beat his ass"?

18 A Yes.

19 Q Was there a statement about whether or not  
20 he knocked him out or not?

21 A Yes.

22 Q And after he knocked the police officer out  
23 what did he tell you he did next?

24 A I think he stomped on him.

25 Q Okay. And how was--

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AA02177

299

2JDC03612

SVan1s12JDC03612

1 Did he make a statement to you right after that  
2 about how he felt about doing that?

3 A It felt good, that it was like a rush.

4 Q Did he tell you it was fun?

5 A Yes.

6 Q Did he show any remorse when he was talking  
7 to you about this?

8 A Not at the moment, no. He was just  
9 excited.

10 Q The time that you were going to the rec  
11 center did he come up and whisper something to you  
12 again about this subject?

13 A He said it felt good, that, They are not  
14 even onto me.

15 Q The police?

16 A Yes.

17 Q Okay. Did he tell you anything about the  
18 police officer's belt?

19 A Yeah, he said he took it.

20 Q Did he use a certain term about what he did  
21 with the belt when he was walking home?

22 A Sporting it.

23 Q Sporting it?

24 A Yes.

25 Q What did that mean to you?

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AA02178

800

2JDC03613

SVan1s12JDC03613

SVan1s12JDC03614

1 A Wearing it.

2 Q Did he talk to you about robberies?

3 A Yes.

4 Q What did he tell you about robberies?

5 A He said how he controlled the whole scene.

6 Q Did he tell you what kind of places he

7 robbed?

8 A Gas station.

9 Q And when he said he controlled the whole

10 scene, can you talk in detail about what he tells you

11 about what happens inside the store on at least one

12 robbery?

13 A Yes, he said-- you know, was asking them

14 for the money with the people coming in. He says,

15 It's okay. Get what you want. I will be out of here

16 in a second.

17 Q Okay. So he indicated he was relatively

18 polite?

19 A Yes, he was.

20 Q Did he talk about a disguise?

21 A Yes.

22 Q And what did he say he looked like in that

23 disguise?

24 A Jamaican.

25 Q A Jamaican?

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AA02179

301

2JDC03614

1 A Yeah.

2 Q Describe the disguise as he told you.

3 A He had a fuller beard and Jamaican beanie  
4 with fake dreadlocks hanging from the, you know--  
5 attached to the beanie.

6 Q And how long were the dreadlocks?

7 A I don't recall.

8 Q Okay. What do you know dreadlocks to be as  
9 far as the length, Jamaican-type look?

10 A Yeah.

11 Q How long are the dreadlocks?

12 A They are usually-- They are long.

13 Q You are pointing down to your arms and  
14 upper shoulders.

15 A Yeah, they are different lengths. It takes  
16 a while to grow them.

17 Q Did he tell you about a time when he was  
18 watching while he was in Reno television news about  
19 the murder?

20 A Yes.

21 Q What did he tell you about him watching the  
22 news and why he was watching the news?

23 A To see if they were onto him.

24 Q Did he tell you that he had admitted it to  
25 anybody at the time of watching the news-- anybody

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AA02180

302

2JDC03615

SVan1s12JDC03615



1 around there?

2 A Some girl.

3 Q And what did he tell you that he told the  
4 girl?

5 A "That is what I did".

6 Q Speaking about the murder?

7 A Yes.

8 Q Did he ask you whether or not you could get  
9 him or where to get another .45 caliber handgun?

10 A Yes.

11 Q Can you tell the Court about what your  
12 cousin was saying at this point and why he wanted  
13 another gun?

14 A He wanted another gun, because he wanted to  
15 be like those guys in Face Off with two .45's.

16 Q Okay. Face Off is a movie?

17 A It's a movie, yeah.

18 Q And you understood him that he wanted to  
19 have two .45's?

20 A Yeah, so he can go one like that,  
21 (demonstrating).

22 Q And you are pointing with him charging in  
23 with two guns?

24 A Both guns, yeah.

25 Q I would like you to take a look at

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AA02181

303

2JDC03616

SVan1s12JDC03616

1 photograph 12 in evidence. Do you recognize that  
2 apartment or that portion of the apartment?

3 A Yes.

4 Q Okay. Is that your brother David's house?

5 A Yes.

6 Q I will leave that photograph in front of  
7 you, Vainga.

8 Did there come a time where your cousin talked  
9 about Lamanite warriors?

10 A Yes.

11 Q What is a Lamanite warrior as you  
12 understand it?

13 A As far as I know, we are descendents of the  
14 Lamanite warriors.

15 Q They are people of color?

16 A Yes.

17 Q And what was your cousin telling you about  
18 becoming a Lamanite warrior and what he wanted to do?

19 A He wanted to claim us to be Lamanites and  
20 Lamanite warriors. He wanted to gather our cousins or  
21 the gang members in that area so we can get together.

22 Q When you say "us", you mean Tongans?

23 A Yes.

24 Q And when they get together, what did he  
25 want to do?

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AA02182

304

2JDC03617

SVan1s12JDC03617

1 A "Let's do some crime".

2 Q Did he tell you an incident about what he  
3 did in Inglewood, California in talking to some TCG's?

4 A Yes.

5 Q What did he say occurred that he did in  
6 Inglewood?

7 A He said he went up to a dance in Inglewood.  
8 I guess it was a church dance. And all the TCG's gang  
9 members in Inglewood were outside the parking lot.

10 He said he went up to them and asked them if  
11 they wanted to join him. And he said, "Do you want to  
12 join me and go kill people?" And they said, "No".

13 Q Did there come a time--

14 That photograph I showed you earlier about the  
15 vehicle and the tarp, did there come a time where he  
16 used a particular term to describe that vehicle to  
17 you?

18 A G ride.

19 Q A G ride?

20 A Yes.

21 Q What does a G ride mean to you?

22 A G meaning gang, gang meaning stolen.

23 Q So when he called the car under the tarp a  
24 G ride, to you it meant that--

25 How did he get it?

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AA02183

305

2JDC03618

SVan1s12JDC03618

SVan1s12JDC03619

1 A Stole it.

2 Q Did he admit to you that he did steal it?

3 A Yes.

4 Q The photograph in front of you has a series

5 of pictures that hangs on your brother's wall. There

6 is a picture there of Jesus Christ, and there is a

7 picture of three white gentlemen.

8 Do you know who those three white gentlemen are?

9 A They are the prophets.

10 Q In the Mormon church?

11 A Yes.

12 Q They are the elders?

13 A Yes.

14 Q And did there come a time when the

15 defendant made some direct reference towards those

16 photographs?

17 A Yes.

18 Q What did he do?

19 A He pointed the-- He pointed the pistol at

20 the pictures, saying, "Fuck that white man. I'll kill

21 that white man."

22 Q And that is the pictures of Jesus Christ

23 that he did that to as well as the elders in the

24 Mormon Church?

25 A Yes.

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AA02184

306

2JDC03619

1 Q Did there come a time where he mentioned  
2 that he was upset at his parents?

3 A Yes.

4 Q Is that about the same time that he's doing  
5 this with the photographs?

6 A Somewhere around that time.

7 Q Okay. What was he upset with his parents  
8 about or why?

9 A He said his parents should have left him in  
10 Tonga.

11 THE COURT: In where?

12 THE WITNESS: Tonga.

13 BY MR. STANTON:

14 Q And he indicated to you that he starts  
15 hating white people when?

16 A He starts talking about, you know, his  
17 parents should have left him in Tonga, you know, like,  
18 I would have learned my roots. Instead they stick me  
19 here, and I learn that the white people are bad.

20 Q Why was he upset at white people? What did  
21 he tell you that white people had done to make him so  
22 angry?

23 A Because our people being-- He claims that  
24 our people are being oppressed by the white man.

25 Q Did there come a time where he describes

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AA02185

307

2JDC03620

SVan1s12JDC03620

1 events again in Reno, and specifically an incident  
2 involving police dogs?

3 A Yes, he said he watched them-- the canine  
4 searching the area, and there was a part in the fence  
5 that was already cut out. He was with his dog, and he  
6 got through, and his dog-- He let his dog go, and he  
7 watched the canine pick up that scent as well as  
8 taking off his hat-- whatever else was right by him.

9 Q Now, when he's saying the police and using  
10 canines, is that near the murder scene?

11 A Yes.

12 Q And once again could you describe what he  
13 told you that he did with the beanie and the  
14 dreadlocks that were attached to the beanie? What did  
15 he do with that?

16 A He threw it in a canal that was nearby or  
17 some kind of running water.

18 Q All right. At the time that you saw your  
19 cousin can you describe the type and color of the  
20 shoes that he had?

21 A He had light brown utility boots.

22 Q And did you notice anything unusual to be  
23 on those boots?

24 A I saw spots on there.

25 Q What did it look like those spots were?

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AA02186

308

2JDC03621

SVan1s12JDC03621

1 A Well, it could be blood.

2 Q Okay. And how was he dressed? Starting  
3 with his upper torso, what kind of clothes did he have  
4 on? What color?

5 A Well, when he walked in, he had on this red  
6 jacket, and as time went by he had took it off. I saw  
7 a purplish cut-off, T-shirt he had on. He had on two  
8 sweaters, one almost darker than the other. They were  
9 both blue, and he had a pair of black pants like I  
10 have on.

11 Q Are those tight or baggy?

12 A Baggy.

13 Q Did he tell you what he did with the  
14 hatchet after he murdered the police officer?

15 A I think he took it to his relatives' house.

16 Q Okay. And what did he tell you he did with  
17 the gun belt?

18 A Said I guess his homeboy got it.

19 Q Did you take that to mean it was the same  
20 homeboy that went with him the night before?

21 A Yes, probably.

22 Q Did there come a time when he was talking  
23 about being a Tongan Robinhood?

24 A Yes.

25 Q What was he telling you about that?

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AA02187

309

2JDC03622

SVan1s12JDC03622

1 A He meant that in helping our people out by  
2 getting us together and robbing and give it back to  
3 our people.

4 Q Did he ask you whether there were any TCG's  
5 in Salt Lake City?

6 A Yes.

7 Q And what did you tell him?

8 A I told him there was quite a few out there.

9 Q All right. And is there quite a few?

10 A Yes, there is.

11 Q Did he ask you whether or not they still  
12 are involved in criminal activity?

13 A Yes.

14 Q And what did you tell him about TCG's?

15 A I told him they were heavily involved in  
16 crime.

17 Q And what did he say right after you told  
18 him that?

19 A To hook up-- Why don't we go hook up with  
20 them.

21 Q And do what?

22 A And get together and do crime.

23 Q Was there specifically people he wanted to  
24 commit crimes against?

25 A White people.

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AA02188

310

2JDC03623

SVan1s12JDC03623



SVan1s12JDC03624

1 Q Now, at one point you tell the Reno  
2 detectives in quite a long quotation about a statement  
3 when the police ask you whether or not your cousin is  
4 insane, intelligent, smart. And you told them quote  
5 that your cousin told you about him using the term  
6 insane.

7 Do you remember that?

8 A Yes.

9 Q Can you tell us, as best you can recall,  
10 Vainga, the exact words that your cousin used?

11 A Something like, I was 100 percent insane.

12 Q Do you remember what he said after that?

13 A No.

14 Q Would looking at a transcript of your  
15 interview with the Reno detectives refresh your  
16 memory?

17 A Yes.

18 MR. STANTON: It's page 22, (showing).

19 (Counsel briefly conferred.)

20 BY MR. STANTON:

21 Q I would like to refer you to page 22 of  
22 this statement.

23 And if you would, sir, just read to yourself so  
24 you can kind of put this into context. Up here at  
25 line 11, this would be the question by Detective

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1 Jenkins, and then, of course, your name is here.

2 So if you could start at line 11-- And I'm  
3 interested in his response down here that you gave at  
4 line 25. So if you can just read that to yourself and  
5 tell me when you are done reading.

6 A (Reading.)

7 Q Does that refresh your recollection?

8 A Yes.

9 Q Does that accurately say there at lines 28  
10 through 32 what your cousin told you?

11 A Yes.

12 Q Could you read those lines 22 through 38  
13 out loud.

14 A Insane. He told me straight up, I am  
15 straight up 100 percent insane. You know, I don't  
16 care about anything anymore. I'm free. And this is  
17 what I want to live-- Once I kill I got to kill some  
18 more to keep my heart.

19 MR. STANTON: I have no further questions.

20 THE COURT: All right. Mr. Fey.

21 MR. FEY: No questions.

22 THE COURT: Thank you, Vainga. You are excused.

23 Okay. I am going to take a ten-minute break for  
24 my court reporter. We will reconvene at 20 till 11.  
25 Okay.

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(A break was taken.)

THE COURT: All right. Before Mr. Stanton calls his next witness there are a couple things I need to let people know.

Mr. Specchio has something he has to do in his office at 11:30, so we will break at that time. We will return at 1:00 to continue the hearing, but it will be in Courtroom E, which is on the other end of the building, because they need this courtroom this afternoon for verified citation trials.

So if people are coming back after lunch, please go to Courtroom E.

MR. SPECCHIO: Thank you, Your Honor.

THE COURT: All right. Mr. Stanton.

MR. GAMMICK: Your Honor, I would call Louis Hill, please.

THE COURT: Mr. Hill, if you will come up to my right, I will swear you in.

Please raise your right hand and be sworn.

(The Court administered the oath  
to the prospective witness.)

THE COURT: All right. Please be seated.

///

///

///

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AA02191

313

2JDC03626

SVan1s12JDC03626

1 LOUIS D. HILL,

2 produced as a witness herein, having  
3 been first duly sworn, was examined  
4 and testified as follows:

5  
6 DIRECT EXAMINATION

7 BY MR. GAMMICK:

8 Q Would you please state your name and spell  
9 your last name, sir.

10 A My name is Louis Daniel Hill. My last name  
11 is H-i-l-l.

12 Q Okay. Do you live in Reno, Nevada?

13 A Yes.

14 Q I would like to show you exhibit number 7.  
15 It has been admitted. It only shows a partial car  
16 there with a license plate, but do you recognize that?

17 A Yes, I do.

18 Q Whose car is that?

19 A It's my car.

20 Q And I would like to call your attention to  
21 January 13th, 1998. Were you driving your car on that  
22 day?

23 A Yeah.

24 Q And at about 10:15 at night do you recall  
25 where you were at?

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AA02192

314

2JDC03627

SVan1s12JDC03627

SVan1s12JDC03628

1 A Yes, I do.

2 Q Where was that?

3 A On 1998 Helena Street.

4 Q Is that in Reno, Nevada?

5 A Yes.

6 Q And were you in your car?

7 A Unh-unh. I was in the house. I had the  
8 car outside, warming up. And I came out two minutes  
9 later, and it was gone.

10 Q Okay. You were inside, you had your car  
11 running, warming up, you came outside, and it was  
12 gone?

13 A Uh-huh.

14 Q Do you know where it went?

15 A Unh-unh.

16 Q I would like to call your attention to the  
17 person that is sitting right here in front of you in  
18 the red jump suit, the Defendant Vanisi. Do you know  
19 him?

20 A No, I don't.

21 Q Have you ever met him before?

22 A Nope.

23 Q Did you give him permission to take your  
24 car?

25 A No.

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AA02193

215

2JDC03628

SVan1s12JDC03629  
1 Q Did you get your car back?

2 A Yes, I did.

3 Q Did you have to go get it?

4 A Yeah.

5 Q Where was it?

6 A In Salt Lake City.

7 Q What year, what make, and what color is  
8 your car?

9 A It's a '91-- I mean '92 Camry Toyota. It's  
10 black and gold.

11 Q And when you went to Salt Lake City to get  
12 it, who had your car there?

13 A Well, my parents went and picked it up, so  
14 it was in impound at the Utah Police Department--  
15 whatever.

16 Q The police department had it?

17 A Yeah.

18 MR. GAMMICK: That is all the questions I have.  
19 Thank you.

20 THE COURT: Mr. Fey.

21 MR. FEY: No questions.

22 THE COURT: Thank you, Mr. Hill. You are  
23 excused.

24 He's free to go?

25 MR. SPECCHIO: Yes, Your Honor.

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AA02194

816

2JDC03629

1 THE COURT: You won't need to recall him?

2 MR. GAMMICK: No, Your Honor.

3 THE COURT: Next witness.

4 MR. STANTON: The State would next call  
5 Detective Keith Stephens.

6 THE COURT: Detective, if you will come up to my  
7 right, I will swear you in. Raise your right hand and  
8 be sworn.

9 (The Court administered the oath  
10 to the prospective witness.)

11 THE COURT: Please be seated.

12  
13 KEITH STEPHENS,  
14 produced as a witness herein, having  
15 been first duly sworn, was examined  
16 and testified as follows:

17  
18 DIRECT EXAMINATION

19 BY MR. STANTON:

20 Q Could you please state your complete name  
21 and your occupation.

22 A Keith Stephens, S-t-e-p-h-e-n-s, Deputy  
23 Sheriff Investigator, Salt Lake County Sheriff's  
24 Office.

25 Q What is your current assignment?

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1 A Investigator with the Homicide Unit.

2 Q How long have you been a police officer?  
3 How long have you been assigned to Homicide?

4 A Sixteen years with the Sheriff's Office,  
5 four years Homicide.

6 Q Directing your attention to January 14th,  
7 1998, did you have occasion in your official capacity  
8 to be involved in an investigation of a wanted subject  
9 from Reno, Nevada?

10 A Yes, sir, I did.

11 Q And was your involvement at the scene of a  
12 residence in Salt Lake City?

13 A Yes, sir.

14 Q And do you recall that address?

15 A 1665 Riverside Drive.

16 Q And the apartment number?

17 A I believe it was 116.

18 Q During the course of your initial  
19 involvement was there a subject wanted for the murder  
20 of a police officer in Reno?

21 A Yes, sir, there was.

22 Q And what was your initial responsibilities  
23 at that scene?

24 A Our initial responsibilities were to get  
25 the other inhabitants of the apartment out safely and

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AA02196

2.18

2JDC03631

SVan1s12JDC03631



1 then to secure the subject within the apartment until  
2 we could safely get him out of there.

3 Q Can you give just a brief overall  
4 assessment of what happened during the hostage and  
5 stand-off situation at that location.

6 A What part do you want me to start at, sir?

7 Q Start off at the point where Mr. Vanisi was  
8 hold up in the house.

9 A Myself, a supervisor of mine, and another  
10 detective put a perimeter on the apartment ourselves  
11 while Swat was responding and staging, so they could  
12 prepare to relieve us. We held the perimeter on that  
13 residence.

14 We could see the subject inside the residence.  
15 We were fairly comfortable that he was alone. There  
16 was some verbal contact with him. We gave him some  
17 commands when he attempted to exit the front door. He  
18 did not wish to comply with us, at that time closed  
19 the door, retreated back into the apartment.

20 Q Okay. Do you see that person in court  
21 today?

22 A Yes, sir, I do.

23 Q And could you describe physically where he  
24 is in the courtroom and what he's wearing.

25 A Sitting at counsel table with the red jump

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AA02197

219

2JDC03632

SVanisi12JDC03632

1 suit on.

2 MR. STANTON: May the record reflect the  
3 identification of the defendant?

4 MR. SPECCHIO: We will stipulate, Your Honor.

5 THE COURT: All right, it will. Thank you.

6 BY MR. STANTON:

7 Q Generally, could you pick it up, detective,  
8 once again. Just in a general fashion what happens?

9 A Generally speaking, we were position by  
10 position relieved by Swat team members. They took  
11 over the perimeter and the external operation from  
12 them. And I did some peripheral things at the scene  
13 and away from the scene during the stand off.

14 Q At sometime there was a decision, a  
15 tactical decision, made by the Salt Lake County Swat  
16 Unit to enter the home or make contact with the  
17 subject, is that correct?

18 A A portion of the Swat team has an immediate  
19 response team, and their job is to upon their  
20 discretion act immediately upon emergency or any other  
21 situation that requires entry into the residence.

22 They felt that their actions were needed,  
23 because the residence in their opinion was beginning  
24 to be engulfed in fire. There was a fire set within  
25 the residence, and they believed they needed to make

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AA02198

217

2JDC03633

SVan1s12JDC03633

1 entry immediately.

2 Q And that was a fire in what portion of the  
3 residence?

4 A A garage that is directly within the  
5 residence, however, it's offset from the rest of the  
6 domicile.

7 Q What was your responsibilities relative to  
8 the scene of the interior of that apartment and the  
9 collection of evidence after Swat had done its thing?

10 A Just to document evidence, collect it,  
11 photograph it, and seize it.

12 Q Before you I have two photographs, Exhibits  
13 6 and 7 into evidence.

14 Starting with the photograph to your left--That  
15 would be State's Exhibit 6--do you recognize what is  
16 in that photograph?

17 A Yes, sir, I do.

18 Q And where was that in the home?

19 A There is a hallway adjacent to the entrance  
20 of the residence. There is a washroom off that  
21 hallway, and this is immediately inside the washroom  
22 on top of the washer.

23 Q And what is the caliber, make and model of  
24 the handgun depicted in the photograph?

25 A It is a Glock .45 caliber semi-automatic

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AA02199

321  
2JDC03634

SVan1s12JDC03634

SVan1s12JDC03635

1 pistol.

2 Q In your presence at some point with that  
3 weapon were you with Reno Police Officers and doing  
4 serial number comparisons of that weapon?

5 A Yes, sir, we did.

6 Q Did that weapon match the weapon that  
7 Detective Jim Duncan was looking for?

8 A Yes, sir, it did.

9 Q Photograph 7, to the right, is that a  
10 vehicle that you located and directed to be taken into  
11 custody?

12 A Yes, sir, I located the vehicle. It was  
13 loaded onto a tow truck, and I put it into evidence  
14 personally.

15 Q Where was that vehicle located at that  
16 time?

17 A It was roughly eight blocks north of the  
18 Riverside Drive address.

19 Q And you knew that to be a relative of the  
20 occupants of apartment 116?

21 A It was, sir.

22 Q It was the address where that vehicle was  
23 located?

24 A I didn't have that pertinent information.  
25 At that time we just knew the location of the vehicle.

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AA02200

322

2JDC03635

1 Q Subsequent to that, though, you had been  
2 able to determine the location of the vehicle that was  
3 there was because of the relative that lived nearby?

4 A Nearby, yes.

5 MR. STANTON: No further questions of Detective  
6 Stephens.

7 THE COURT: Mr. Fey.

8  
9 CROSS-EXAMINATION

10 BY MR. FEY:

11 Q With respect to the vehicle that you  
12 located, without saying what someone may have told  
13 you, was the location of that vehicle based upon what  
14 others may have told you, or was it based upon your  
15 own independent investigation, sir?

16 A Myself and Sgt. Townsend went to the  
17 location, and he basically pointed it out to me.

18 Q Sgt. Townsend had had previous contact with  
19 the residents at that location?

20 A Yeah, previous contact with family members.  
21 They had pointed it out to him.

22 Q When you saw State's Exhibit 6, was this  
23 the condition in which these items were found?

24 A I found them. Yes, they were.

25 Q Was the firearm that you just described up

MERIT REPORTING (702) 323-4715

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IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

SIAOSI VANISI,

Appellant,

vs.

RENEE BAKER, WARDEN, and  
CATHERINE CORTEZ MASTO,  
ATTORNEY GENERAL FOR  
THE STATE OF NEVADA,

Respondents.

No. 65774

Volume 9 of 26

Electronically Filed  
Jan 14 2015 12:19 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

APPELLANT'S APPENDIX

Appeal from Order Denying Petition  
for Writ of Habeas Corpus (Post-Conviction)

Second Judicial District Court, Washoe County

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 7th day of January, 2015. Electronic Service of the foregoing Appellant's Appendix shall be made in accordance with the Master Service List as follows:

Terrence P. McCarthy  
Washoe County District Attorney  
tmccarth@da.washoecounty.us

Felicia Darensbourg  
An employee of the Federal Public Defender's Office



SVanisi18898  
SVanisi108898  
call a mitigation expert. Vanisi failed to show that counsel's performance was deficient or that he was prejudiced.

Vanisi did not present any significant additional mitigating evidence or demonstrate how a mitigation specialist could have added to the mitigating evidence. The testimony of attorney Richard Cornell that there might be a psychiatrist out there willing to testify that Vanisi was in a manic phase aggravated by drug use was purely speculative. Furthermore, it conflicted with the trial testimony of Vanisi's expert that there was no evidence that a violent manic episode occurred at the time of the crime or that Vanisi abused methamphetamines. Therefore, the district court did not err in denying this claim.

#### Cumulative error

Vanisi argues that the district court erred by denying his claim that, but for the collective failures of counsel, he would have been able to put on a meaningful defense. Other than claiming that someone else killed Sergeant Sullivan—which would have amounted to perjury—Vanisi did not identify what defenses he could have offered at trial. Because Vanisi failed to demonstrate that counsel performed deficiently or that he was prejudiced, the district court did not err by denying this claim.

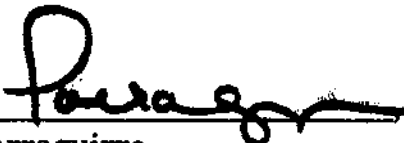
#### Ineffective assistance of appellate counsel

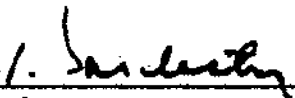
Other than those addressed above, Vanisi failed to raise any specific claims that his appellate counsel was ineffective. Rather, in both his petition below and his briefs on appeal, he included a generic claim that "all other errors alleged herein which were not raised by appellate counsel should have been." This court has previously stated that we "will not accept such conclusory, catchall attempts to assert ineffective assistance of counsel." Evans v. State, 117 Nev. 609, 647, 28 P.3d 498, 523

CV-2011-00000  
(2001). Because Vanisi failed to provide specific argument that his appellate counsel was ineffective, we decline to consider this claim. See id.

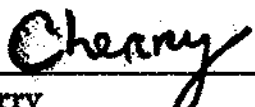
Having reviewed all of Vanisi's claims and concluded that no relief is warranted, we


ORDER the judgment of the district court AFFIRMED.


  
Parraguirre C.J.


  
Hardesty J.

  
Douglas J.

  
Cherry J.

  
Saitta J.

  
Gibbons J.

  
Pickering J.

cc: Hon. Connie J. Steinheimer, District Judge  
Scott W. Edwards  
Law Office of Thomas L. Qualls, Ltd.  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

# Exhibit 46

# Exhibit 46

1  
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3 \* \* \*

4  
5 SIAOSI VANISI,

6 Appellant,

7 vs.

8 THE STATE OF NEVADA,

9 Respondent.  
10 \_\_\_\_\_/

Electronically Filed  
May 10 2010 04:30 p.m.  
Case No. 50607  
Tracie K. Lindeman

**Death Penalty Case**

11 **PETITION FOR REHEARING**

12 Appellant SIAOSI VANISI, by and through his attorneys, SCOTT W. EDWARDS  
13 and THOMAS L. QUALLS, petitions this Court for rehearing of its Order of Affirmance,  
14 filed April 20, 2010.

15 NRAP 40(2) grants this Court authority to consider rehearing in the following  
16 circumstances:

17 (i) When the court has overlooked or misapprehended a material fact in the  
18 record or a material question of law in the case, or

19 (ii) When the court has overlooked, misapplied or failed to consider a  
20 statute, procedural rule, regulation or decision directly controlling a  
dispositive issue in the case.

21 NRAP 40(2).

22 In the instant case, though Vanisi disagrees with the Court's analysis, application  
23 of facts to law, and final rulings on many issues in its Order of Affirmance, rehearing is  
24 appropriate under NRAP 40(2), regarding the following:

25 (1) Mr. Vanisi requests rehearing on the ground that this Court's order  
26 misapprehended the substance of his claim that appellate counsel were ineffective in  
27 failing to raise the due process claims which were factually and legally presented in  
28 extensive detail in his Supplemental Points and Authorities to the district court, and

1 which were reiterated in his Opening Brief to this Court.

2 “Appeals from a district court to the Supreme Court are governed by the Nevada  
3 Rules of Appellate Procedure” except to the extent that they are “inconsistent or in conflict  
4 with the procedure and practice provided by the applicable statute . . . applications for  
5 extraordinary writs in the Supreme Court are governed by the Civil Rules of Appellate  
6 Procedure.” Nev. R. Civ. P. 81(a). Also, Rule 250 (7)(c) of the Nevada Supreme Court  
7 Rules indicate that “[b]riefing shall proceed in accordance with NRAP 28 through 32,  
8 inclusive.”

9 Rule 28(a)(C)(8) of the Nevada Rules of Appellate Procedure requires that the  
10 argument must contain: “(A) appellant’s contentions and the reasons for them, with  
11 citations to the authorities and parts of the record on which the appellant relies; and (B)  
12 for each issue, a concise statement of the applicable standard of review (which may appear  
13 in the discussion of the issue or under a separate heading placed before the discussion of  
14 the issues).”

15 Rule 21(3) of the Nevada Rules of Appellate Procedure requires that the contents  
16 of a petition must state “the relief sought, the issues presented, the facts necessary to  
17 understand the issue presented by the petition, and the reasons why the writ should issue,  
18 including points and legal authorities.”

19 In addition to the first claim of error regarding Mr. Vanisi’s incompetency to  
20 proceed with habeas proceedings, pursuant to Rohan ex rel Gates v. Woodford, 334 F.3d  
21 803 (9<sup>th</sup> Cir. 2003), Mr. Vanisi’s opening brief raised twenty-one points of error for which  
22 he provided detailed specific factual allegations and were supported by points of  
23 constitutional, statutory, and case authority and allegations of prejudice. These claims of  
24 error contained specific references to the appendix which contained a copy of the petition  
25 and supplemental petition filed in the district court, multiple transcripts of proceedings,  
26 motions, and various evidentiary documents. In his twenty-second claim of error, Mr.  
27 Vanisi specifically alleged that appellate counsel had been ineffective for failing to raise  
28 on direct appeal the prior twenty-one claims of error:

SVANISI00441

1 All claims of error alleged herein [Opening Brief at 11-43] were  
2 apparent on the face of the record and therefore could have been raised by  
3 appellate counsel. Appellate Counsel only raised three: (1) the Faretta error,  
4 (2) the Reasonable Doubt instruction was impermissible; and (3) that the  
5 Death Penalty was excessive and was unfairly influenced by passion and  
6 prejudice. All other errors alleged herein which were not raised by appellate  
7 counsel should have been. Jones v. State, 110 Nev. 730, 877 P.2d 1052 (Nev.  
8 1994).

9 Opening Brief at 76.

10 In his Reply Brief, Mr. Vanisi went on to argue that:

11 It is a reasonable probability that a more favorable result would have  
12 been obtained if all of these claims had been properly asserted and if the  
13 standard of prejudice of Chapman v. California, 386 U.S. 18 (1967),  
14 requiring the state to show beyond a reasonable doubt that any error was  
15 harmless, had been applied. Further, the petition alleges that counsel had  
16 no tactical or strategic basis for failing to raise these claims. (JA I, 164-65).

17 Reply Brief at 43.

18 Mr. Vanisi's Opening Brief clearly sets forth the factual issues, law, constitutional  
19 errors and prejudice which he plainly incorporated by reference in Claim Twenty-Two of  
20 his Opening and Reply briefs. The proceedings at issue were the first post-conviction  
21 proceedings (not successive, nor proceedings pursuant to Crump v. Warden) and those  
22 proceedings (and this appeal from the denial of the first habeas petition) were the first  
23 opportunity for instant counsel to raise a claim of the ineffective assistance of appellate  
24 counsel.

25 Similarly, Mr. Vanisi utilized the same format in his Supplemental Points and  
26 Authorities to Petition for Writ of Habeas Corpus (Post-Conviction). In Claims One  
27 through Twenty-One, he provided points of error for which he provided detailed specific  
28 factual allegations of errors supported by points of constitutional, statutory and case  
authority and allegations of prejudice. In Claim Twenty-Two, he alleged that appellate  
counsel only raised the previously referenced three claims of errors, and went on to state  
that "[a]ll other errors alleged herein which were not raised by appellate counsel should  
have been. [citation omitted] All legal arguments from all Claims set forth above, are  
incorporated by reference as if set forth verbatim herein." Supp. Points and Authorities  
at 125.

1 Rule 10(c) of the Nevada Rules of Civil Procedure states that “[s]tatements in a  
2 pleading may be adopted by reference in a different part of the same pleading or in  
3 another pleading or in any motion. A copy of any written instrument which is an exhibit  
4 to a pleading is part thereof for all purposes.” (Emphasis added).

5 Rule 8(a) of the Nevada Rules of Civil Procedure requires the pleading to contain:  
6 (1) a short and plain statement of the claim showing that the pleader is entitled to relief,  
7 and (2) a demand for judgment for the relief the petitioner seeks. The pleading must set  
8 forth sufficient facts to establish all of the necessary elements of a claim for relief so that  
9 the adverse party has adequate notice of the nature of the claim and relief sought. Hay v.  
10 Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984). Courts must liberally construe  
11 pleadings to place into issue matters which are fairly noticed to the adverse party. Id.  
12 Pleadings of conclusions, either of law or fact, is sufficient so long as the pleading gives fair  
13 notice of the nature and basis of the claim. Crucil v. Carson City, 95 Nev. 583, 585, 600  
14 P.2d 216, 217 (1979).

15 Mr. Vanisi, therefore, clearly incorporated by reference his claims that appellate  
16 counsel was ineffective for failing to raise meritorious due process claims regarding: (1)  
17 the denial of consular contact under the Vienna Convention; (2) the denial of trial  
18 counsel’s motions to withdraw; (3) that Mr. Vanisi was harmed by his counsel’s conflict  
19 of interest; (4) that Nevada’s Death Penalty scheme allows for a death-qualified jury; (5)  
20 that Nevada’s death penalty scheme operates in an arbitrary and capricious manner; (6)  
21 that the death penalty violates the Eighth Amendment and the International Covenant on  
22 Civil and Human rights; (7) the inherent conflict posed by popularly elected judges; (8)  
23 that Nevada’s lethal injection violates the protections against cruel and unusual  
24 punishment; (9) the risk that innocent persons will be executed; (10) that rehabilitation  
25 outweighs the government’s interest in retribution; (11) that the death penalty presents  
26 a wanton, arbitrary infliction of pain; (12) that Nevada’s death penalty scheme allows  
27 district attorneys to select defendants arbitrarily, inconsistently and discriminatorily; (13)  
28 that the sentence was imposed under the influence of arbitrary factors; and (14) that Mr.

1 Vanisi was unconstitutionally statutorily precluded from entering an insanity plea.

2       The district court ruled on the merits that appellate counsel was not ineffective for  
3 failing to raise: (1) the denial of consular contact under the Vienna Convention, Judgment  
4 at 3; (2) the denial of trial counsel's motions to withdraw, Judgment at 7; (3) that Mr.  
5 Vanisi was harmed by his counsel's conflict of interest, Judgment at 7; (4) that Nevada's  
6 death penalty scheme allows for a death-qualified jury, Judgment at 11; (5) that Nevada's  
7 death penalty scheme operates in an arbitrary and capricious manner, Judgment at 8; (6)  
8 that the death penalty violates the Eighth amendment and the International Covenant on  
9 Civil and Human rights, Judgment at 9; (7) the inherent conflict posed by popularly  
10 elected judges, Judgment at 10; (8) that Nevada's lethal injection violates the protections  
11 against cruel and unusual punishment, Judgment at 10; (9) the risk that innocent persons  
12 will be executed, Judgment at 11; (10) that rehabilitation outweighs the government's  
13 interest in retribution, Judgment at 11; (11) that the death penalty presents a wanton,  
14 arbitrary infliction of pain, Judgment at 11; (12) that Nevada's death penalty scheme  
15 allows district attorneys to select defendants arbitrarily, inconsistently and  
16 discriminatorily, Judgment at 11; (13) that the sentence was imposed under the influence  
17 of arbitrary factors, Judgment at 11; and (14) that Mr. Vanisi was unconstitutionally  
18 statutorily precluded from entering an insanity plea, Judgment at 12.

19       The district court, thus, ruled upon Mr. Vanisi's claim Twenty-Two that appellate  
20 counsel was ineffective for failing to raise the properly detailed claims, not by procedural  
21 bar due to a lack of specificity, but by finding that "appellate counsel made reasonable  
22 tactical decisions concerning the issues to raise, and that none of the various potential  
23 issues were reasonably likely to succeed." Judgment at 13.

24       This Court's ruling that "[a]ll of these [ineffective assistance of appellate] claims  
25 could have been raised on direct appeal and are procedurally barred absent a showing of  
26 good cause and actual prejudice," in combination with this Court's ruling that "[o]ther  
27 than those addressed above, Vanisi failed to raise any specific claims that his appellate  
28 counsel was ineffective" is belied by both the Petition, Supplemental Petition and points



1 and authorities, and the Opening and Reply briefs. Vanisi v. State, No. 20607 at 10 (Nev.  
2 4/20/2010). Moreover, these two findings appear to be in conflict with one another.  
3 Especially if one considers that ineffective assistance (for failure to timely or effectively  
4 raise a claim or claims in this matter) has been found to meet the cause and prejudice  
5 requirement. Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct 2639, 2645 (1986); Crump  
6 v. Warden, 113 Nev. 293, 934 P.2d 247 (1997).

7 Further, since this Court's ruling in Evans v. State, 117 Nev. 609, 647, 28 P.3d 498,  
8 523 (2001), this Court has repeatedly reached the merits of ineffective assistance of  
9 counsel claims which incorporated by reference due process claims pled in other parts of  
10 petitions and briefs. It is an Equal Protection violation for this Court to deny Mr. Vanisi  
11 the same type of review that this Court has been applying to other Petitioners since the  
12 Evans ruling.

13 It is notable that even in Mr. Vanisi's direct appeal, this Court *sua sponte* addressed  
14 an issue that had not been raised in the district court or in either parties' briefing  
15 regarding the defective jury instruction given about mutilation. Vanisi v. State, 117 Nev.  
16 330, 343, 22 P.3d 1164, 1173 (2001) ("Although Vanisi does not specifically challenge the  
17 jury instruction on appeal, we note that it included some language no longer mandated  
18 by the statutory aggravating circumstance. The jury was instructed: 'The term 'mutilate'  
19 means to cut off or permanently destroy a limb or essential part of the body, or to cut off  
20 or alter radically so as to make imperfect, or other serious and depraved physical abuse  
21 beyond the act of killing itself. This instruction is largely the same as the one we have  
22 approved. However, the emphasized language appears to come from an instruction based  
23 on a former version of NRS 200.033(8), which referred to 'depravity of mind' as well as  
24 torture and mutilation. In 1995, the Legislature amended the statute to delete 'depravity  
25 of mind.' Use of the instruction here was not prejudicial since the State did not argue  
26 depravity of mind and there was compelling evidence of mutilation, as discussed above.  
27 We take this opportunity, however, to clarify that language referring to 'other serious and  
28 depraved physical abuse' should no longer be included in a definition of mutilation.").

1 Finally, this Court has set the limit for Opening Briefs at 80 pages, and has  
2 repeatedly denied requests to extend the page limit. Hernandez v. State, 117 Nev. 463, 465,  
3 24 P.3d 767, 768 (2001). This Court, in defending its page limit requirements has said,  
4 “[a] reasonable page limit does not prevent an appellant from presenting arguments, but  
5 merely limits the manner in which he can present them.” Hernandez v. State, 118 Nev.  
6 513, 533, 50 P.3d 1100, 1114 (2002). To require Mr. Vanisi to restate every single stand  
7 alone claim in the section where he addresses the ineffective assistance of direct appeal  
8 counsel would severely impair Mr. Vanisi’s ability to present his meritorious claims to this  
9 Court. The “incorporation by reference” procedure enables an appellant to give fair notice  
10 of the facts, arguments and prejudice that he is arguing and comply with this Court’s page  
11 limit restrictions.

12 Accordingly, rehearing must be granted and this Court accept and review these  
13 claims on their merits.

14 (2) This Court’s decision to re-weigh and find harmless the sentence of death, in the  
15 face of the acknowledged McConnell error, misapplies or fails to consider the Nevada  
16 statutory scheme for capital cases and the federal constitution, including the rights to due  
17 process and equal protection. The McConnell error resulted in the jury considering an  
18 aggravating factor that was improperly applied in Mr. Vanisi’s case. This error affected  
19 the assessment of death-eligibility and the ultimate selection of the sentence. *See, e.g.*,  
20 Johnson v. State, 118 Nev. 787, 802-803, 59 P.3d 450 (2002) (weighing of aggravation  
21 against mitigation element of death eligibility). Further, the jury has the complete  
22 discretion to decline to impose a death sentence, *e.g.* Bennett v. State, 111 Nev. 1099, 1110,  
23 902 P.3d 676 (1995), and impermissible aggravating factor may have swayed at least one  
24 juror not to exercise mercy in this case.

25 Since there is no case too egregious that the imposition of a death sentence is a  
26 foregone conclusion, such an assumption – under any circumstances – would be contrary  
27 to the premises of individualized sentence under the Eighth Amendment, *e.g.*, Lockett v.  
28 Ohio, 438 U.S. 586, 604 (1978); Sumner v. Shuman, 483 U.S. 66, 75-77 (1987), and to the

1 Supreme Court's own jurisprudence. *See, e.g., Williams v. Taylor*, 529 U.S. 362, 395-397  
2 (2000) (failure to present mitigation prejudicial, where aggravating evidence included  
3 extensive criminal history, including killing with mattock that was capital robbery-murder  
4 offense; previous convictions for armed robbery, burglary and grand larceny; two  
5 additional auto thefts; two "separate violent assaults" after capital offense, including one  
6 "brutal" assault that left the victim in a "vegetative state;" an arson while in jail awaiting  
7 capital trial; and expert testimony of "high probability" that defendant would continue to  
8 pose threat to society), *Caro v. Woodford*, 280 F.3d 1247, 1257-1258 (9th Cir. 2002)  
9 (aggravation included killing two teenagers and assault with multiple gunshot wounds on  
10 the same night, and previous kidnapping and sexual assaults). Simply put, there is no  
11 such thing as a "natural" death penalty case, or one in which death is a foregone  
12 conclusion.

13 In *State v. Haberstroh*, 69 P.3d at 683-84, this Court held that it could not find the  
14 inclusion of an invalid aggravating factor in the sentencing calculus harmless beyond a  
15 reasonable doubt, even though four valid aggravating factors remained. *See also*  
16 *Browning v. State*, 120 Nev. 347, 91 P.3d 39, 51-52 (2004) (invalid aggravating factor not  
17 harmless despite existence of four other valid aggravators). The same error in Vanisi's  
18 case cannot then be found harmless beyond a reasonable doubt. This Court continues to  
19 misapply or fail to consider both the subjective nature of the Nevada statutory scheme and  
20 the constitutional requirements at issue. In short, it is a legal impossibility for this Court,  
21 upon review of a cold record, to know what was in the hearts and minds of each of the  
22 jurors in this case. Accordingly, pursuant to the acknowledged McConnell error, the  
23 sentence of death must be vacated.

#### 24 **Conclusion.**

25 This Petition for Rehearing is based on grounds that this Court has either  
26 overlooked, misapplied, erroneously omitted, or failed to consider a number of facts and  
27 authorities presented in the appeal in this matter, including, the nature and factual  
28 grounds of the claims presented, as well as the legal authorities of the United States

SVANISI00447  
1 Supreme Court, this Court and the Nevada Statutes, upon which those claims were based.

2 **WHEREFORE**, for all the reasons set forth herein, this Court must rehear these  
3 matters pursuant to NRAP 40 (2).

4 **AFFIRMATION PURSUANT TO NRS 239B.030**

5 The undersigned hereby affirms that this document does not contain the social  
6 security number of any person.

7 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of May, 2010.

8  
9 /s/ Thomas L. Qualls  
10 THOMAS L. QUALLS, ESQ.  
11 Nevada State Bar 8623  
12 230 East Liberty Street  
13 Reno, Nevada 89501  
14 (775) 333.6633  
15 Attorney for Appellant,  
16 SIAOSI VANISI  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and NEFR 9, I certify that I am an employee of THOMAS L. QUALLS, ESQ, that I am over the age of 18 years and not a party to the within action. I am familiar with the practice of the Law Offices of Thomas L. Qualls, Esq., for the service of documents via facsimile, U.S. mail and electronic mail and that, in accordance with the standard practice, I caused a true and correct copy of the foregoing **PETITION FOR REHEARING** to be served on the parties below via the following method(s):

  X   Via the Nevada Supreme Court ECF system to the following:  
       Via Hand Delivery  
       Via Facsimile  
       Via Overnight Delivery  
  X   Placing the foregoing document(s) in a sealed envelope with postage thereon fully prepaid in the United States Mail, at Reno, Nevada, addressed as follows:

Washoe County District Attorneys Office  
 Appellate Division  
 P.O. Box 30083  
 One South Sierra Street, 4<sup>th</sup> Floor  
 Reno, Nevada 89520

DATED this   10<sup>th</sup>   day of   May  , 2010.

      /s/ Michelle D. Harris        
 Michelle D. Harris

# Exhibit 47

# Exhibit 47

## WASHOE COUNTY SHERIFF'S OFFICE

## INMATE VISITOR REPORT

REPORT: VISIT

FROM: 01/24/1998 TO: 09/17/1999

Page: 1

DATE: 09/17/1999

INMATE NAME	BCA	VISITOR NAME	DATE	IN	OUT	VISIT TYPE
VANISI, SIAOSI	14630198	BOSLER, JEREMY	08/09/1999	14:33		PUB DEF
		bosler, jeremy todd	01/05/1999	13:52		contact
		BOSLER, JEREMY TODD	08/02/1999	13:38		CONTACT
		CALDERON, CRYSTAL J	01/27/1998	15:03		PUB DEF
		calderon, crystal	12/07/1998	14:21		attorney
		calderon, CRYSTAL	02/03/1999	14:14		PUB DEF
		CALDERON, CRYSTAL J.	05/03/1999	9:07		CRIM.INVES
		CALDERON, CRYSTAL J	06/05/1998	14:27		CONTACT
		CALDERON, CRYSTAL J	07/07/1998	13:52		CONTACT
		Carlson, Larry	04/09/1998	13:49		CONTACT
		FAGER, PATRICIA ANN	08/05/1999	7:53		PUB DEF IN
		FEY, WALTER B	02/10/1998	9:16		CONTACT
		Filimoshala, Mary Tafuna	02/19/1998	9:09		NONCONTACT
		FINAU, TUIHALANGINGIE	02/05/1998	19:20		NONCONTACT
		Ford, Timothy F.	02/12/1998	13:37		CONTACT
		gregory, stephen	09/30/1998	10:42		pub def
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		Lewis, Richard William	10/10/1998	14:18		CONTACT
		Lui, Olsi Vilifinefeuiaki	01/15/1999	14:01		NONCONTACT
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		NONE,	04/24/1998	15:51		NONCONTACT
		novak, etno	10/12/1998	13:55		atty
		O'Brien, Michael W.	04/09/1998	13:48		CONTACT
		OBRIAN, MICHAEL	03/31/1998	14:33		CONTACT
		REBIDEAUX, ECHO LEE	03/05/1998	20:54		NONCONTACT
		RICH, PHILLIP	10/25/1998	14:13		CONTACT
		specchio, michael r.	06/09/1998	10:20		CONTACT
		specchio, michael	12/07/1998	9:55		attorney
		SPECCHIO, MICHAEL	06/03/1998	10:42		P.D.
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		SPECCHIO, MICHAEL R	02/10/1998	9:15		CONTACT
		specchio, michael	10/12/1998	13:55		atty
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		Tafuna, Mele Manu	01/29/1998	20:04		NONCONTACT
		Tafuna, Toeum Fianu	01/15/1999	14:10		NONCONTACT
		Vanacey, Deann Fae	01/15/1999	14:08		NONCONTACT

&lt;== END OF REPORT ==&gt;

## WASHOE COUNTY SHERIFF'S OFFICE

## INMATE VISITOR REPORT

REPORT: VISIT  
DATE: 12/07/1998

FROM: 01/21/1998 TO: 12/07/1998

Page: 1

INMATE NAME	BCA	VISITOR NAME	DATE	IN	OUT	VISIT TYPE
VANISI, SIAOSI (1)S3,5	14630198	CALDERON, CRYSTAL J	01/27/1998	15:03		PUB DEF
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		CALDERON, CRYSTAL J	07/07/1998	13:52		CONTACT
		calderon, crystal	12/07/1998	14:21		attornay
		Carlson, Larry	04/09/1998	13:49		CONTACT
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		OBRIAN, MICHAEL	03/31/1998	14:33		CONTACT
		REBIDEAUX, ECHO LEE	03/05/1998	20:54		NONCONTACT
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		specchio, michael r.	06/09/1998	10:20		CONTACT
		specchio, maichael	12/07/1998	9:55		attorney
		Specchio, Michael R.	03/13/1998	10:44		CONTACT
		specchio, michael r	05/13/1998	13:32		pub def
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&lt;== END OF REPORT ==&gt;



WASHOE COUNTY SHERIFF'S OFFICE  
INMATE VISITOR REPORT  
REPORT DATE: 9/3/2010

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		DEBRUCE, SELA OTOOTA	10/05/1999	20:32:38	NONCONTACT
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		REBIDEAUX, ECHO LEE	03/05/1998	20:54:09	NONCONTACT

RICH, PHILLIP	10/25/1998	14:13:12	CONTACT
SPECCHIO, MICHAEL R.	06/09/1998	10:20:09	CONTACT
SPECCHIO, MAICHAEL	12/07/1998	9:55:43	attorney
SPECCHIO, MICHAEL	11/16/1998	9:43:18	ATTY
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SPECCHIO, MICHAEL R.	10/22/1998	9:56:08	PUB DEF
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TUKUAFU, KALOLINE T	10/05/1999	20:33:29	NONCONTACT
VANACEY, DEANN FAE	01/15/1999	14:08:49	NONCONTACT
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VIMAH, TOA LAUMANUKILUE	10/05/1999	20:30:19	NONCONTACT

\*\*\*\*\*End of Report\*\*\*\*\*

## VISITING LOG

**SILVANSI**

[illegible]

# Exhibit 48

# Exhibit 48

ORIGINAL

FILED

DEC 27 2004

RONALD A. CHRISTIN, JR., CLERK

By:   
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

SIAOSI VANISI,

Petitioner,

Case No. CR98P-0516

VS.

Dept. No. 4

WARDEN, ELY STATE PRISON, AND

THE STATE OF NEVADA,

Respondent.

**ORDER**

On November 22, 2004 this Court heard argument and received evidence upon the Petitioner's motion to stay post-conviction proceedings and have the Petitioner's competence evaluated. Having duly considered the matter, this Court finds and orders that the Petitioner should be evaluated regarding his present competency to maintain and participate in a capital post-conviction habeas proceeding. Specifically the Petitioner's mental competence to assist and communicate with counsel, understand and knowingly participate in the habeas proceeding as a litigant and witness, should be evaluated by mental health experts. Further, the Court needs an evaluation of the Petitioner's understanding of the difference between the truth and a lie and the consequences of lying as a witness in court. Accordingly, it is hereby ordered that pursuant to NRS 178.415, two psychiatrists, two psychologists, or one psychiatrist and one psychologist, are to examine the Petitioner in the Nevada prison facility and report back to this Court with any and all findings relative to the Petitioner's present mental competence. The experts appointed

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pursuant to this Order should be given access to review all medical records of the Petitioner held by the Department of Corrections. Further, the appointed experts shall complete their respective evaluations and send their written reports to this Court and respective counsel no later than January 26, 2005. On January 27, 2005, this Court shall receive the expert reports in open court, consider all evidence and argument and make a determination of the Petitioner's competence or incompetence. Once the Court has made a competency determination, it will then rule upon the request for a stay of post-conviction habeas proceedings. Good cause appearing therefore, it is hereby ordered that

Dr. Thomas Bittler and  
Dr. Alfredo Amezaga, Jr.

are appointed to conduct a psychiatric/psychological evaluation of the Petitioner at public expense. Further, the appointed experts shall complete their respective evaluations and send their written reports to this Court and respective counsel no later than January 26, 2005 and appear at the hearing on January 27, 2005 at 2 pm and testify to their findings if requested by the Court or one of the parties.

DATED this 27<sup>th</sup> day of December, 2004.

Connie I. Steinberg  
DISTRICT JUDGE

CERTIFICATE OF MAILING

I certify that I am an employee of JUDGE CONNIE STEINHEIMER; that on the  
27<sup>th</sup> day of December, 2004, I deposited in the county mailing system  
for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of  
the order for psychiatric/psychological evaluation, addressed to:

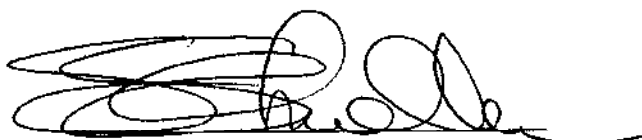
Washoe County District Attorney, Appellate Division  
Via: Interoffice mail

Scott Edwards, Esq.  
1030 Holcomb Avenue  
Reno NV 89502

Thomas Qualls, Esq.  
443 Marsh Avenue  
Reno NV 89509

Dr. Thomas Bittker  
80 Continental Drive #200  
Reno NV 89509

Dr. Alfredo Amezaga, Jr.  
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S. Schueller

# Exhibit 49

# Exhibit 49



*Thomas E. Bittker, M.D., Ltd.*

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**FORENSIC PSYCHIATRIC ASSESSMENT**

Re: **VANISI, SIAOSI**  
BAC No.: **63376**  
Date: **01/14/05**

**REASON FOR ASSESSMENT:** To evaluate Siaosi Vanisi regarding his present competence to maintain and participate in the capital post-conviction habeas proceedings. Specifically, the assessment of competence should address the ability of Mr. Vanisi to assist and communicate with counsel, understand and knowingly participate in the habeas proceedings as a litigant and witness, and understand the difference between the truth and a lie, and the consequence of lying as a witness in the court.

**SOURCES OF INFORMATION:**

- 1) Supreme Court opinion of May 17, 2001 regarding the appeal of Mr. Vanisi's first conviction of first degree murder with use of a deadly weapon, three counts of robbery with the use of a deadly weapon, and one count of grand larceny.
- 2) Interview with Scott Edwards, Esq., and Thomas Qualls, Esq., co-counsels for Mr. Vanisi, on Friday, 1/14/05.
- 3) Review of the medical records provided to me by the infirmary at the Nevada State Penitentiary.
- 4) Interview with Mr. Vanisi on Friday, 1/14/05.

**BACKGROUND INFORMATION:** Mr. Vanisi is a 34 year old, Tongan man (date of birth, 6/26/70), who was convicted of the murder of a police officer, Sergeant George Sullivan. The murder occurred on 6/13/98. Following the murder, Mr. Vanisi also was involved in three counts of robbery and one count of grand larceny. His trial resulted in a jury verdict of conviction of one count of first degree murder with the use of a deadly weapon, three counts of robbery with the use of a deadly weapon, and one count of grand larceny.

His attorneys are in the process of appealing the death penalty and have requested, with the endorsement of the court, a competency assessment.

**SUMMARY OF REVIEW OF MEDICAL INFORMATION:** The chart material I reviewed referenced only the medical care of Mr. Vanisi while housed at the Nevada State Prison. Note, for much of his incarceration, Mr. Vanisi has been housed in Ely, Nevada.

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The chart review indicates the following diagnoses:

- 1) Bipolar Disorder.
- 2) Polysubstance Dependence.
- 3) Antisocial Personality Disorder.

Mr. Vanisi is currently being treated with Depakote 500 mg b.i.d., Haldol decanoate 50 mg IM every two weeks, and Cogentin 1 mg b.i.d.

Review of laboratory studies performed on 11/8/04 indicate the presence of hyperlipidemia, an elevated red blood cell count, elevated hemoglobin, and an elevated hematocrit, suggestive of a diagnosis of emerging polycythemia. In addition, Mr. Vanisi had a valproic acid level of 66 (low therapeutic range).

**INTERVIEW WITH CO-COUNSELS:** Co-counsels reported that at Mr. Vanisi's hearing on 11/22/04, he was markedly guarded, displayed blunted affect and appeared to be heavily sedated. In addition, they reported their concerns about Mr. Vanisi's bizarre behavior while incarcerated including draping himself in a cape, remaining outdoors for 24 hours, and requiring multiple disciplinary interventions. They stated that Mr. Vanisi was not forthcoming in dialogue with them and consistently maintained a high degree of suspicion of them. Specifically, they stated that Mr. Vanisi never discussed with them the circumstances preceding the instant offenses. Both co-counsels concluded that they had great difficulty representing Mr. Vanisi coincident to his lack of disclosure about key elements in the case.

**INTERVIEW WITH MR. VANISI:** My interview with Mr. Vanisi occurred between 9:45 a.m. and 11:45 a.m., at the Nevada State Penitentiary.

Mr. Vanisi and I were in an interview room alone, with a guard waiting outside the interview room. Mr. Vanisi was shackled at the wrists and ankles. He greeted me appropriately and shook my hand when offered.

Note, according to the medical records, Mr. Vanisi had not yet received his biweekly dosage of 50 mg of Haldol on the day of my interview with him. The Haldol was to be administered following my interview with him.

After I introduced myself to Mr. Vanisi, I advised him that the product of our interview would not be confidential and that it would be available to the court.

Mr. Vanisi was extremely guarded during the early parts of our interview. His affect was blunted. He offered a blank stare when asked questions and frequently would respond by stating "I don't

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know" or "I don't want to talk about that." He was most guarded when discussing his background, the circumstances prior to the instant offenses, and his divorce from his wife of two years.

Mr. Vanisi did offer the following elements in his history:

He moved from Tonga to San Francisco at approximately age six. His parents were divorced sometime in his childhood.

He described himself as an average student, earning Ds and Cs in high school. He played football and earned a letter as an offensive and defensive lineman. He aspired to continue his football career, but stated he was not good enough to advance his ambitions.

He acknowledged working in a variety of jobs and stated that his favorite job was to be working as a lighting technician.

**MEDICAL HISTORY:** Mr. Vanisi stated that he never suffered from a seizure disorder. His principal encounters with physicians occurred following incarceration.

He acknowledged taking Depakote, Haldol, and Cogentin. He acknowledged significant ambivalence about taking these medications. He stated that the medicines, on the one hand, helped control his bizarre behavior and helped him conform, but on the other hand they did not permit him to be himself and, in particular, on the medicines, he believed that he was not spontaneous, he could not be creative nor could he concentrate.

He made reference to frequent natural highs, stating that during these natural highs he would sing, be energetic, creative, "vivacious," spontaneous, and extremely intuitive.

He also acknowledged periods of lows marked by hypersomnia and depressed mood. He admitted to feeling chronically suicidal and stated he has felt suicidal for years, but he has never acted out in a suicidal way.

He denied experiencing auditory or visual hallucinations, but did admit to feeling frequently depersonalized, having nihilistic delusions (nothing really matters), and being specifically uncaring about whether or not he lived or died.

**SUBSTANCE ABUSE HISTORY:** Mr. Vanisi admitted to use of alcohol, commencing at approximately age 18, and acknowledged drinking to intoxication on the average of once a week since that time, until his arrest.

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Similarly, he used marijuana at least on a weekly basis. He denied use of any other street drugs.

**PRIOR PSYCHIATRIC HISTORY:** Mr. Vanisi denied any involvement with psychiatrists or mental health professionals prior to his arrest.

**PSYCHIATRIC REVIEW OF SYSTEMS:** Mr. Vanisi admits to a longstanding history of fluctuating moods. He stated it was not until he reached adulthood that he realized the significance of this and elaborated that he had been struggling with suicidal ideation for years.

He denied ever experiencing perceptual distortions, but did admit to being bothered by thoughts inside of his head.

He made several references to God during the interview, stating that he was not sure that God existed, but on the other hand felt that God pervaded everything in his life.

His attitude toward himself, toward life and the proceedings that he is about to confront was marked by ambivalence. On the one hand, he stated that he wished to die, but on the other hand he stated he was not sure death made any difference and that in the afterlife he might be confronted with the same dilemmas that he is experiencing currently without the power to act.

"It's like you have this craving to smoke or this craving to have sex, but you can't do anything about it because you don't have a body anymore."

**PRIOR LEGAL INVOLVEMENT:** Mr. Vanisi admitted to moving violations, but no felony convictions prior to his arrest.

**DEVELOPMENTAL HISTORY:** Mr. Vanisi specifically denied any history of childhood abuse victimization and acknowledged no significant major losses in his life outside of his second marriage.

**APPELLANT'S REPORT OF MOTIVATION AT THE TIME OF THE INSTANT OFFENSE:** Mr. Vanisi was particularly guarded about his motivation, his thinking and his behavior in the days prior to the instant offense. He would acknowledge only that he did resent police coincident to an altercation with a police officer in a bar in the week prior to his move to Reno, Nevada.

**COMPETENCY, SPECIFIC EXAMINATION:** Mr. Vanisi was aware of the charges of which he has been convicted. He is also aware that he is confronting the death penalty. He is ambivalent about accepting the death penalty.

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He alleges that he is "competent" to stand trial. He reported to me that he was forthcoming with his defense counsels, but that he could not trust me because he knew that my report would go to the court. On the other hand, when I interviewed defense counsels, they stated that he was as guarded with them as he was with me during my interview. He only a vague awareness of the expectations for his behavior in the courtroom and could not specifically respond as to what he would say or do if somebody told a lie about him in court. Furthermore, his nihilistic delusions penetrated his awareness of the distinction between the truth and a lie. When asked about the importance of the distinction, Mr. Vanisi responded merely that a lie was perjury, but could not elaborate further and did not seem to fully capture the significance of being transparent with his defense counsels. On a number of occasions, I attempted to inquire about the nature of his inner life and on each occasion, he would response either "I can't talk about that" or "I don't want to talk about that" or "I don't know." He had limited insight as to what apparently, through other observers, appeared to be the bizarre motivation associated with the instant offenses for which he has been convicted.

**MENTAL STATUS EXAMINATION:** The appellant's demeanor during my examination was bifurcated.

Initially, he was guarded, appeared quite distrusting, and his duration of utterance was quite brief. In an effort to encourage Mr. Vanisi to be more forthcoming, I responded to his guardedness by asking him to leave and then, as he was about to leave, call him back to the interview room for "a few more questions." At the second point of the interview, Mr. Vanisi became more transparent and with his increasing transparency, the fluidity of his speech grew, as did his emotional lability. During the second part of the interview, his speech was pressured, excited, and displayed flight of ideas. He was able to disclose greater concerns about his medications, feeling not himself, and feeling particularly disconnected from himself while on the medicines. On the other hand, he had sufficient insight to appreciate that the medications were successful in inhibiting bizarre behavior. Although, initially stating that he had never seen me before, in the second part of the interview he did acknowledge recall from my previous examination and specifically remembered that I considered him to be malingering at that time (note, Mr. Vanisi attempted to feign psychotic mutism during my initial examination). He confessed that he had been given bad advice by the amateur attorneys on his cell block prior to my previous interview. During the second part of our examination, he made frequent references to his intuitive abilities, his special philosophy about life and the after life, and how he felt both disconnected with God and that God pervaded

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every element of his life.

His affect during the second part of the interview was expansive and he acknowledged feeling good. In spite of this positive acknowledgment, he also acknowledged ongoing thoughts of death and his intent to die.

As for the specific cognitive elements in the mental status exam, Mr. Vanisi was oriented to time, place, person and circumstance. He could recall the details of his previous meal. He declined to perform arithmetic exercises, but was capable of spelling world backwards, and had a full awareness of current events. He was able to correctly identify the similarity between a grape and a banana. He could not distinguish misery from poverty, but proverb interpretation was excellent. He specifically interpreted the proverb "people in glass houses" as a proverb reflecting the proscription against judging others and the proverb "the tongue is the enemy of the neck" as reflecting the principle that talking too much could get you into difficulty (at this point in the interview, he made reference Minnesota Viking wide-receiver, Randy Moss, and some of his most recent public disclosures).

His recent and remote memory were intact. His social judgment was compromised by his nihilistic delusional system and his narcissistic sense of entitlement.

He had sufficient insight to appreciate his need for medication, but also acknowledged that he felt that the current medication was depriving him of his identity.

**FORMULATION:** Mr. Vanisi presents with a complicated history.

Unfortunately, I do not currently have access to prior psychiatric assessments, however, in reading the abstraction of Dr. Thienhaus prior testimony, I note that Dr. Thienhaus affirmed that Mr. Vanisi suffered Bipolar Disorder, but it was not extreme or severe.

Mr. Vanisi's current presentation is consistent with a diagnosis of Bipolar Disorder, mixed type, with psychosis. The psychotic manifestations are reflected in his bizarre behavior, his nihilistic delusions, his narcissistic entitlement, and his marked ambivalence about issues such as life, death, and the nature of reality.

Defense counsels report that at the time of the trial, he was nonspontaneous, showed blunted affect, markedly sedated. This is most likely a consequence of Mr. Vanisi receiving a dose of 50 mg of Haldol two days prior to his court presentation. In contrast,

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his interview with me occurred 14 days following the Haldol injection. He was more spontaneous, forthcoming, and as his rapport with me improved, he was able to disclose a greater range of affect and more florid manic symptoms.

Although he has a reasonable level of sophistication about the trial process, his guardedness, manic entitlement and paranoia inhibit his ability to cooperate with counsel.

Mr. Vanisi's comments regarding the medication are most revealing. His reports about the effects of haloperidol are consistent with my clinical experience with the agent, as well as reports in the literature. Specifically, haloperidol will contain the positive symptoms of psychosis, but leaves Mr. Vanisi feeling numb and lacking spontaneity.

**DIAGNOSES:**

**AXIS I:**

- 1) Bipolar Disorder, Mixed, With Psychosis, 296.64
- 2) Alcohol Abuse, By History, 305.00
- 3) Cannabis Abuse, By History, 305.20

**AXIS II:**

**AXIS III:** No diagnoses immediately relevant to psychiatric presentation, however, evidence of hyperlipidemia and polycythemia.

**AXIS IV:** Incarcerated, confronting death penalty, isolation from family.

**AXIS V:** 30/30, behavior is considerably influenced by delusions and serious impairment in judgment.

**OPINION REGARDING COMPETENCY:** Although possessing a rudimentary understanding of the information required in the court, in the appeal process, and aware of both the charges that he has been convicted of and the consequent penalties, Mr. Vanisi does not currently have the requisite emotional stability to permit him to cooperate with counsel or to understand fully the distinction between truth and lying. This latter deficit emerges directly as a consequence of his incompletely treated psychotic thinking disorder.

**RECOMMENDATIONS:** Mr. Vanisi's current medications are not ideally suited to assist him in reestablishing competency. Although the medications serve well to contain Mr. Vanisi's aberrant behavior,

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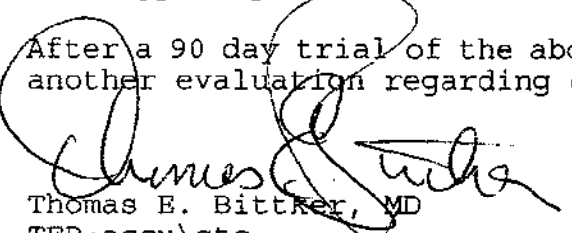
Date: 01/14/05

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the cognitive impact of his Bipolar Disorder and the side-effects of medicines significantly compromise his ability to cooperate with counsel. I would recommend the court's consideration of a modification in Mr. Vanisi's medication regimen, to include the following:

- 1) A trial of increasing the Depakote to mid to high therapeutic levels, e.g., 1500 to 2000 mg per day. Note, we may also have an unrealistically high valproic acid level, given that Mr. Vanisi is currently taking Depakote on a b.i.d. basis. It is possible that his most recent laboratory study in November occurred immediately following the administration of Depakote (ideally, the Depakote should be administered as an evening dose).
- 2) The variations in Mr. Vanisi's mental status may be a consequence of the periodicity of his haloperidol administration. Assuming his ability to cooperate with the administration of medications, I would suggest discontinuing haloperidol and substituting one of several newer generation antipsychotic agents. In particular, ziprasidone (Geodon) in dosages of 160 to 240 mg per day (dosage adjusted coincident to Mr. Vanisi's size and metabolism) or aripiprazole in dosages of 15 to 30 mg per day would be warranted. Both of these agents have an advantage in that they are less likely to compromise Mr. Vanisi's health, particularly his hyperlipidemia and his obesity.

After a 90 day trial of the above regimen, Mr. Vanisi would warrant another evaluation regarding competency.

  
Thomas E. Bittker, MD

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# Exhibit 50

# Exhibit 50



18124 Wedge Parkway - Suite 538 - Reno, Nevada 89511-8134 - USA/EUA

**A.M. Amézaga, Jr., Ph.D.**

Nevada Licensed Psychologist - PY0327  
California Licensed Psychologist - PSY14696  
Nevada Licensed Alcohol & Drug Counselor (LADC) - No. 1431  
Certified by the APA College of Professional Psychology in the  
Treatment of Alcohol & Other Psychoactive Substances - No. AD003460  
Credentialed by the National Register of Health Service Providers in  
Psychology - No. 44207

February 15, 2005

Second Judicial District Court  
Washoe County  
Honorable Connie J. Steinheimer  
District Judge  
Department Four  
75 Court Street  
Reno, NV 89520

**Defendant:** Siasosi (NMI) Vanisi  
**Case #:** CR98P-0516  
**DOB:**

**Evaluation Date:** 02.03.2005  
**Report Date:** 02.15.2005

Judge Steinheimer:

At the request of the Court, I examined Siasosi Vanisi on the above listed date at the Nevada State Prison (NSP) in Carson City, Nevada. The purpose of the evaluation was to determine his competency to proceed with trial.

#### Referral History

By order of the Court, arrangements were first made to conduct the evaluation on January 20, 2005. As was previously arranged, I arrived at the NSP on this date to conduct the examination. However, Mr. Vanisi chose not to cooperate with the examination by refusing to exit his cell and participate with the assessment process. Given his refusal, he was provided by correctional staff with Nevada Department of Corrections Form Number NDOP 2523 ("Release of Liability for Refusal of Medical Treatment.") Mr. Vanisi refused to sign this release. Given his refusal to endorse the document, the form was signed by the correctional officers who had presented it to him with a written entry made on the form noting his refusal to sign (see attachment #1).

In the afternoon hours of January 20, 2005, I advised the Court via fax of Mr. Vanisi's refusal to participate with the evaluation. On or about January 24, 2005, I received a phone call from Tom Qualls, attorney for the defendant, who informed me that his client, Siasosi Vanisi, was now willing to cooperate with the evaluation. The evaluation was rescheduled and completed on February 3, 2005. Overall, Mr. Vanisi was cooperative and compliant with the interview process and I believe the information to be sufficient to offer an opinion.

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### Dusky Standard

The U.S. Supreme Court articulated the *Dusky* standard for competency in a single sentence: "The test must be whether he has sufficient present ability (emphasis mine) to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him" (*Dusky v. United States, 1960*).

Efforts to deconstruct the Dusky standard have resulted in several competing models, the most encompassing makes operational each component of *Dusky* as:

- (a) factual understanding of the courtroom proceedings
- (b) rational understanding of the courtroom proceedings
- (c) rational ability to consult with counsel about his defense

Overall, factual understanding involves the simple recall of repeated or common knowledge information within the context of a courtroom proceeding such as the duties and responsibilities of the various participants of the court. Rational abilities involve a much more complex cognitive or thinking process such as abstraction, deduction abilities, reasoning and problem solving skills. The assessment of both factual and rational abilities must be made as part of any valid determination of competency to proceed.

In addition, given the nature of the referral, the issue of feigning psychiatric symptoms must also be considered as part of this evaluation.<sup>1</sup> Malingering or the feigning of mental health symptoms occurs in psycho-legal situations with sufficient frequency to warrant consideration. A number of studies have concluded that the demonstration or exaggeration of psychiatric symptoms routinely occurs in 20% to 30% or more of forensic examinations conducted for personal injury cases and in at least 15% to 20% of examinations conducted for criminal matters (*Evaluation of Competency to Stand Trial-Revised: Professional Manual, 2004*). The prevalence of such behavior points to the need for the objective assessment of feigning or of the misrepresentation of symptoms that is not exclusively or primarily dependent on subjective clinical judgment or clinical opinion even if the clinician has had years of professional experience or significant contact with a given clinical population.

The decision about any psycho-legal issue, such as competency to proceed, should reflect a convergence of evidence from a variety of sources including direct contact, relevant history, clinical judgment and the results of objective measures of assessment, including validated measures of feigning or the misrepresentation of abilities. Apart from the use of such objective measures of assessment, one is dependent on the exclusive use of oftentimes unreliable subjective clinical judgment as well as the "good faith" intentions of the test taker as the primary means for arriving at an accurate, reliable conclusion.

<sup>1</sup> Malingering is defined in the Text Revision of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR; American Psychiatric Association, 2000) as the "intentional production of false or grossly exaggerated physical or psychological symptoms motivated by external incentives" (p. 739).

**Report Conclusions**

1. Mr. Vanisi has a factual understanding of courtroom proceedings
2. His rational ability to assist his attorney with his defense is at most mildly impaired
3. His rational understanding of the courtroom proceedings is not impaired

**Tests Administered**

1. Clinical Interview and Mental Status Examination
2. Evaluation of Competency to Stand Trial-Revised (ECST-R)
3. Validity Indicator Profile-Nonverbal Subtest (VIP)

Apart from the possibility of a developmental disability such as a mental retardation, tests of intelligence are irrelevant to the question of competency to proceed. In like manner, measures of personality or personality style (e.g., MMPI, etc.) are also irrelevant to the ultimate question.

**Clinical Interview and Mental Status Examination**

Mr. Vanisi was escorted to the interview room by correctional staff. He wore clean, navy-blue sweat pants and a loose fitting white t-shirt. He was washed, neatly groomed and shaven. He was handcuffed at his wrists and ankles. He stated no discomfort in being handcuffed ("No problem...") He sat in a chair across from a small size interview table. Throughout the interview, he postured himself in his chair at a right angle from the table so as to avoid direct eye contact. Approximately two hours was spent in one-to-one contact with Mr. Vanisi as part of this evaluation.

Overall, he was guarded but cooperative with the interview process. As part of the evaluation, he demonstrated no behaviors or mannerisms to suggest antagonism, fear, aggression or hostility. The majority of his answers to questions were limited to one or two word responses.

He described his mood as "good." He denied complaints associated with his present incarceration. His affect or emotional state was quiet, subdued, reserved with no demonstrations of emotional intensity or variability. At the onset of the interview, his body posture at times was mechanical and robotic. He literally would stiffen in his chair as he contemplated the question asked of him, only to relax his posture after he answered the question. After approximately the first 10 minutes of the evaluation, his stiffening behavior ceased in its entirety.

Though limited in his answers to questions asked of him, his responses were clear, coherent and rational. Though English is his second language, he demonstrated no difficulties in comprehending or rationally responding to the inquiries that were made of him. On those few occasion in which he provided an extended response to a specific question, his language was comprehensible and his ideas were logical and well connected. As part of this evaluation, he demonstrated no idiosyncrasies in his word usage. He often answered more difficult or emotionally laden questions with an "I don't know" response or the statement, "I'm not going to respond to that" (e.g., "How do you feel about all that has happened to you?")



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He denied the experience of all psychotic symptoms. He claimed that he has never experienced any form of hallucination, be it auditory or visual. He demonstrated no flight of ideas, loose associations, thought blocking or derailment that might suggest an ongoing psychotic process. As part of the evaluation, he admitted to what might be defined as a delusion of memory. He claimed he could not possibly be guilty of the charges he has incurred because he "never lived in Reno or Nevada before." He stated that he is not now suicidal or homicidal.

Overall, his cognitive functioning was relatively intact and without significant impairment. Though attentive and able to concentrate on the questions asked of him, he was at times unable or unwilling to maintain his concentration for a significant period of time. His short-term memory may be mildly impaired in that he was only able to verbally recall two of three words after a five minute delay. His recall required a verbal cue or reminder to assist him with his recollection. Initially, he could not remember what he had for breakfast that morning. After approximately a five minute delay and after proceeding to a different topic he spontaneously stated, "I had eggs for breakfast today." When asked about what might account for his memory difficulties he immediately responded, "My [psychiatric] medicine doesn't give me any zest or zeal anymore..., I'm veggin' out, can't remember anything. This is how the prison wants me..., [I] hate it."

#### Review of Measures

As part of this evaluation, two standardized psychological testing instruments were administered. A brief review of these instruments is as follows.

#### Evaluation of Competency to Stand Trial-Revised (ECST-R)

The ECST-R is a measure that enables a psychologist to systematically assess the legal and psychological abilities and skills considered essential in the determination of competency. The test is organized into two parts. The first part is composed of 18 items developed to measure specific competency related abilities specified by the Dusky prongs: Consultation with Counsel, Factual Understanding and Rational Understanding. The second part of the ECST-R consists of 28 Atypical Presentation items (ATP) designed to identify defendants who might be attempting to feign incompetence (i.e., possible malingering).

#### Validity Indicator Profile (VIP)

The VIP Non-verbal subtest consists of 100 picture matrix problems with two answer choices, one correct and one incorrect. The test is used to identify when the results of psychological testing may be invalid because of the *intention* to perform sub-optimally (feigning impoverished performance) or because of a decreased *effort*, be it intentional or not. The measured results of intention and effort assessed by the VIP are combined to provide four possible response styles, one of which dominates and typifies the response style employed by the test taker in the completion of the VIP assessment:

- 1) Compliant Response Style.....(Valid Results)
- 2) Inconsistent Response Style.....(Invalid Results)
- 3) Irrelevant Response Style.....(Invalid Results)
- 4) Suppressed Response Style.....(Invalid Results)

On the VIP, the intention to willfully under-perform or to under-perform because of decreased effort is characterized by any of the three invalid response styles (Inconsistent, Irrelevant or Suppressed). The response style categories are intended to characterize the test-taker's *performance* on the VIP test, leaving the clinician to draw conclusions about the test taker's *motives* on this measure as well as on the overall assessment process.

#### **Analysis of the Results-ECST-R (Evaluation of Competency to Stand Trial-Revised)**

**ECST-R:** The administration of all testing instruments proceeded in a straightforward manner. Although his answers to the questions of the instruments administered were at times short and abrupt, his responses in general were reasonable, rational and gave no indication of being significantly influenced by whatever psychotic symptoms he may or may not be experiencing.

**Potential Feigning on the ECST-R:** An examination of his ATP (Atypical Presentation) scores revealed no evidence of feigning incompetency. His scores were very low and did not exceed the established cut-off limits.<sup>2</sup> However, an ATP-R (Atypical Presentation-Realistic Responses) score of less than 5 may suggest excessive defensiveness in his response to the assessment material. Mr. Vanisi obtained an ATP-R score of 3 (see attachment #3-Summary Form). This means that he may be under-reporting his actual experience of personal and emotional stressors which may indicate an overall level of defensiveness or guardedness in responding to the questions of the ECST-R assessment.

According to the ECST-R Professional Manual, most non-feigning defendants (>85.0%) endorse in an affirming manner items number 17 ("Do you miss things?") and 20 ("Would you like to have charges dismissed?") of the ATP-R scale. Failure to endorse these specific items (score=0) would strongly suggest that the defendant may be purposely under-reporting or denying otherwise expected experiences and complaints. The defendant obtained a score of 1 ("sometimes" response) on question 17 and a score of 2 ("yes" response) to question 20. These two responses constituted his only affirmations on the ATP-R scale and resulted in a total ATP-R score of 3. Though suggestive of a defensive, guarded style in his approach to the assessment (ATP-R score = <5), it is not indicative of an invalid profile.

In considering possible explanations for his defensive posture, it is possible that his guarded, protective style of responding (i.e., denying common or expected symptoms and complaints) may be associated with his stated desire to discontinue his psychiatric medications ("Meds don't give me any zest or zeal...I hate it") or, at the very least, to avoid the possibility that his medication dosage may be increased.

In summary, as was observed as part of his overall presentation, the results of his ECST-R testing indicate no effort to feign or exaggerate psychiatric symptoms in order to suggest the possibility of incompetency. Point in fact, he is attempting to minimize whatever stressors or legitimate complaints he may actually be experiencing, possibly in an attempt

<sup>2</sup> His Atypical Presentation Scores (ATP) are as follows: ATP-R=3, ATP-P=0, ATP-N=0 and ATP-B=0. These scales are depicted in Attachment #2- Profile Form.

to present himself as an individual who does not require the regime of potent psychiatric medications that he is now, involuntarily, receiving.

**Factual Understanding on the ECST-R:** Mr. Vanisi has a basic factual understanding of the charges against him. Though he was initially resistant in identifying his charges ("I don't remember"), when provided with a few seconds of time he identified his charges as "homicide-murder." As part of this evaluation, he was asked to define murder. He responded, "The victim involved is dead." He identified the possible consequences associated with his murder charge as "death penalty—I'm subject to die." He was able to correctly appreciate the roles and responsibilities of both the defense ("My attorney, helps defend my case") and opposing counsel ("...McCarthy, prosecutes the case..., against me.") He identified the primary responsibility of the judge as "[to] preside over the court." He identified the primary responsibility of the jury as "[to] deliberate." He obtained a T-score of 38 on the "Factual Understanding of Courtroom Proceedings (FAC) scale of the ECST-R Competency Scales (attachment #2). T-scores which range between 0 to 59 on this measure are considered in the mildly impaired to normal range. Based on his response to questioning and the pattern of his answers to the ECST-R, I conclude that he demonstrates no significant impairment in his level of factual understanding.

**Rational Understanding on the ECST-R:** He demonstrated no significant deficits in his level of rational understanding. His response to questioning was typically abbreviated, but otherwise clear, coherent and rational. In general, he offered no psychotic reasoning or irrational justifications for his past or present behaviors. His rational abilities were not significantly compromised by a psychotic process. He defined, for example, a plea bargain as "trying to reduce [the] sentence..., get a deal for less punishment." He was able to provide simple responses for decisions about plea bargaining ("Think about it. Talk to my attorney. Believe him if good offer.") Given the nature of his legal charges, he was able to define a good offer as "life in prison." He was aware of the adversarial nature of the proceedings and the importance of not speaking with opposing counsel without legal representation ("No, that would not be advantageous to me.") He identified the best possible outcome associated with his legal charges as "life [in prison]." His worst possible outcome was identified as "death." He described the most likely or probable outcome associated with his charges as "life, most likely." He was unable or unwilling to offer his reasoning for this expectation ("I don't know.") He claimed no particular stressors, psychotic influences or difficulty in his ability to cope whenever he is involved in a courtroom proceeding. He reported that he dislikes attending court because he is "chained up all the time, it's a nuisance." He obtained a T-score of 44 on the "Rational Understanding of Courtroom Proceedings (RAC) scale of the ECST-R Competency Scales (attachment #2). T-scores on this measure which range between 0 to 59 are considered in the mildly impaired to normal range. Based on his response to questioning and the pattern of his answers to the ECST-R, I conclude that he demonstrates no significant impairment in his level of rational understanding.

**Capacity to Consult with Counsel on the ECST-R:** He reported that he has two attorneys, Scott Edwards and Tom Qualls. He spontaneously provided the spelling for Mr. Qualls' name ("Q-U-A-L-L-S") as if he anticipated a problem in my spelling of the last

name. He expressed confidence and trust in the abilities of his attorneys to serve as his advisors and advocates ("[They] do what [they're] supposed to do, represent me.") He has a realistic expectation of his responsibilities as a defendant for his own defense ("To assist him, listen to him and do what he wants me to do.") He was unable to provide an example of a significant disagreement with either of his attorneys ("I agree to cooperate..., no examples [of disagreement].") He was unable or unwilling to offer a definitive means of how he might resolve the possibility of a future conflict ("I don't know—just do what they say.") He obtained a T-score of 50 on the "Consult with Counsel" (CWC) scale of the ECST-R Competency Scales (attachment #2). T-scores on this measure which range between 0 to 59 are considered in the mildly impaired to normal range. It would appear, in spite of whatever psychiatric symptoms he now may or may not be experiencing, that Mr. Vanisi has the present ability and capacity to at least minimally, but rationally, communicate with his legal counsel as well as form a reality based working relationship with one or both of his current attorneys. Based on his response to questioning and the pattern of his answers to the ECST-R, I conclude that he demonstrates at most mild impairment in his capacity to consult with his legal counsel.

#### Analysis of Results-VIP (Validity Indicator Profile)

When the VIP indicates that the test taker's approach to the assessment is valid, the clinician can generally have confidence that the individual intended to perform well on the test and that a concerted effort was made to do so. When the VIP indicates invalidity, it should be known that concurrently administered assessments may suggest that an insufficient effort was made to respond in a fully accurate manner or that suboptimal attention and concentration was experienced during testing. In other instances, invalidity may indicate a purposeful lack of cooperation, reflecting a deliberate attempt to perform poorly. The results of Mr. Vanisi's VIP testing are as follows:

#### VIP Non-verbal Subtest Results-Suppressed Response Style

Overall subtest validity	<i>Invalid</i>
Subtest response style	<i>Suppressed</i>

The defendant's performance on the non-verbal subtest of the VIP is likely not an accurate representation of his maximal capacity to respond correctly. There is sufficient reliable evidence to support a conclusion that he intended to misrepresent himself as impaired on the test. An alternate conclusion is that he actually intended to do well, but he was extremely unlucky in guessing the correct answers for many of the test items that exceeded his problem-solving capacity<sup>3</sup>.

Based on the presence of a pattern of prolonged incorrect responding (see Sector 3 of the profile depicted in attachment #4), the best, most likely conclusion is that the defendant intended to respond incorrectly to a majority of the *quite difficult to most difficult* test items. Of the four response style options offered by the VIP, his style is characteristic of a pattern of *suppressive responding*. His response pattern suggests that he deliberately suppressed correct answer choices and instead chose incorrect answers. Alternatively, his sustained very poor performance could be a result of incorrect, but yet improbable,

<sup>3</sup> See attachment #4 for a copy of the summary profile of his overall VIP results.



guessing. The probability that his extended demonstration of suppressed answers would result from guessing alone is less than .50 percent.

**Evidence of Reasoning Abilities Based on VIP Results:** The non-verbal test items have a wide range of difficulty and it is possible, according to the assessment manual, to provide fair estimates of reasoning ability based on the characteristics of the VIP results. If the presence of the suppressed pattern of responding exists as a result of intentional incorrect responding, his ability to deliberately choose the wrong answers to the items would suggest that he has the same cognitive capacity as someone who chooses the correct answers to the items. In order to willfully select an incorrect response for a given item, the correct answer must first be identified and then purposefully ignored. Individuals who are capable of choosing the correct answers to the same extent as was demonstrated by the defendant typically possess at least average to high average reasoning ability.

**Conclusions About VIP Results:** The results of his VIP testing provided a valid assessment which depicts an invalid response style. The defendant presented a **suppressed style** of responding on the measure.<sup>4</sup> It appears that he intentionally chose incorrect answers for at least some of the items on the VIP non-verbal subtest. The extended period of his incorrect responding occurred at a point on the measure where guessing (a 50/50 choice) was expected. If in fact he were merely guessing at this point, he would be statistically expected to obtain a certain proportion of correct answers. It is extremely unlikely that an individual could obtain such a pattern of incorrect results exclusively by chance. It is much more likely that his initial correct answering followed by an extended series of incorrect answers points to a sophisticated attempt at misrepresenting his cognitive abilities by choosing the correct response for moderately difficult items and intentionally choosing the incorrect response for only the more difficult items.

The results of his VIP assessment, specifically his apparent willingness to attempt to misrepresent his abilities, calls into question a number of different issues that are directly or indirectly associated with the question of competency. Two such examples include: 1) his willingness or capability to engage in truthful testimony, and 2) the legitimacy of his demonstrated psychiatric symptoms and complaints.

Is the defendant willing to engage in truthful testimony?

As was requested in the order of the court, an attempt was made to assess the defendant's understanding of the difference between the truth and a lie and the consequences of lying as a witness in court. As part of the ECST-R assessment (Question 13a), the defendant was asked, "If your attorney suggested that you testify, how would you decide what to do?" The defendant's response to this question was, "Do it because it's the right thing to do." He was then asked about his decision-making process if his attorney advised him against testifying and he responded, "Do what he [attorney] says." Given the absence of psychotic or impaired content in his response to these questions, the defendant was then asked the following:

<sup>4</sup> The term malingering is most commonly associated with a suppressed response style on the VIP (i.e., a concerted effort to answer items incorrectly).



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Examiner: What is a lie?  
 Defendant: *Dishonest about something you say..., [I] won't lie under oath*  
 Examiner: What does it mean to take an oath?  
 Defendant: *To swear, to swear to tell the truth*  
 Examiner: Are you willing to tell the truth at testimony?  
 Defendant: *Yes*

At face value, the defendant appears to understand the difference between truth and the misrepresentation of that truth. If asked to testify, he purports a commitment to speak honestly. However, the suppressed pattern of responding demonstrated as part of his VIP assessment strongly suggests that, given the opportunity, he may be willing to engage in the misrepresentation of his person or of facts if he believes his efforts are not likely to be recognized or detected. It is assumed that most individuals called to testify believe it is important to be honest because lying is wrong and leads to negative consequences. In the case of Mr. Vanisi, he claims sincerity in his willingness to respond, but at the same time has clearly demonstrated his willingness to engage in sophisticated acts of deception which appear to be motivated by his awareness of the ultimate negative consequence that may await him (i.e., death penalty). I conclude, therefore, that his reliability to testify in a truthful manner or in a manner in which there is little chance that he might display a disruptive form of acting out behavior as part of his testimony is in serious doubt.

The legitimacy of the defendant's psychiatric history and symptoms

For reasons that parallel the argument made above, the legitimacy of his psychiatric symptoms and complaints can also reasonably be called into question. As is stated in the VIP instruction manual, clinicians conducting psychological evaluations should have a low, moderate or high threshold for considering whether or not the results of an assessment may be subject to distortion. For example, with evaluations pertaining to disability or criminal litigation, one should readily suspect the intention to perform poorly based on even very little evidence. In contrast, a job applicant assessment should involve a high threshold for the suspected feigning of psychiatric symptoms, but a low threshold for suspecting excessive defensiveness. In general, job candidates in need of employment have strong incentives to minimize their personal deficiencies. Given the context of the referral, it would be naïve to presume that sufficient incentives do not exist for this defendant to feign, exaggerate psychiatric symptoms or to misrepresent the nature of his actual skills and capabilities.

Independent, however, of the above argument, there are at least three additional facts that may call into question the legitimacy of his overall psychiatric status.

1. In the first instance, as part of my review of the defendant's medical record and notes, I discovered no documentation to indicate that he required or received any form of mental health intervention, assessment or treatment prior to his initial detention at the Washoe County Jail. In brief, the onset, detection and severity of his current psychiatric disorder is presumed to have coincided with his initial 1998 incarceration at the Washoe County Jail.

2. Throughout his medical record, references are repeatedly made by various medical professionals responsible for his care that call into question the authenticity of his alleged psychiatric symptoms. Examples of such entries include the following:

- a) May 5, 1999- Medical note made during the defendant's incarceration at the Washoe County Jail. *"Manic with psychotic features. It is not possible for me at this time to rule out, with certainty, a factitious [malingering] component."*
- b) June 6, 1999-Ph.D. Mental health evaluation. *"Mr. Vanisi does not believe that he is mentally ill, but he is smart and motivated..., he is attempting to manipulate us into believing that he is psychotic..., he is motivated to avoid a death sentence."*
- c) December 1999-State Prison Evaluation. *"Denies any prior psychiatric, physical interventions prior to his incarceration. First encounter with psychiatrist at county jail in Reno. No psych hospitalizations..., not psychiatric illness in family. He received a diagnosis of bipolar disorder while incarcerated. Other evaluators have noted an exaggeration of symptoms consistent with malingering."*

Since the beginning days of his incarceration up to the most recent months, questions have persisted about the authenticity of his psychiatric symptoms and behaviors. Because of the experience his treatment professionals have acquired in detecting, recognizing and treating serious forms of mental illness, their repeated concerns about the authenticity of his symptoms should be seriously considered and not be summarily dismissed.

3. Prior to his arrival or relocation to the Reno area, the defendant lived in Los Angeles, California. He reports that while living in the Los Angeles area, he was briefly employed as a professional actor. He was willing to identify his agent, but only by her first name ("My agent's first name is Nancy.") He reports he was paid three thousand dollars to appear in a "Miller Lite TV commercial" sometime in early 1997 ("I'm not sure exactly when, maybe during the football season.") As part of his participation in past court-ordered competency evaluations, the defendant was housed for extended periods of time at the Lakes Crossing Psychiatric Detention Facility in Sparks, Nevada. This facility is an ideal place to learn, refine and rehearse the severity of psychiatric behaviors that some, by means of their repeated observations, have suspected he has attempted to exaggerate or feign.

#### Conclusions about Competency

Based on my review of the available documentation, direct contact with the defendant and the results of the objective measures of assessment that were administered to him, I conclude that defendant Siaosi Vanisi possesses sufficient present ability to meet competency to proceed criteria. The convergence of evidence strongly indicates that he possesses: 1) A factual understanding of courtroom proceedings, 2) the rational ability, with at most mild impairment, to assist his attorney(s) with his defense, and 3) a rational and competent understanding of the courtroom proceedings.



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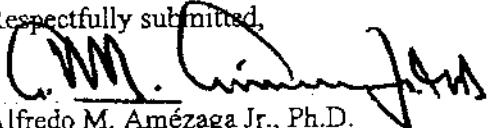
On the VIP measure he demonstrated a likely purposeful intent to misrepresent and understate his true cognitive abilities. While his pattern of providing suppressed responses to correct answers can only be generalized to other concurrent assessments of his cognitive skills, his willingness to misdirect and understate his capabilities places in serious doubt his overall commitment to present himself in an honest, straightforward manner regarding his overall psychiatric status, symptoms and behaviors.

Overall, as part of my evaluation, I detected no evidence of "scattered thinking." The results of his various assessments, specifically his VIP results, offer no evidence of a significant disruption in his overall cognitive capabilities. Even if such thinking did exist it would not, in and of itself, constitute sufficient grounds for a designation of incompetency to proceed.

The only possible limitation that may exist for him may be his inclination to provide abbreviated, one to two word replies to questions that are asked of him. This tendency resulted in my designation of a possible mild impairment in his ability to assist his counsel with his defense. However, at the same time, it was apparent that he was capable of providing extended, elaborative and reasoned responses to questions when he perceived such a response was necessary. Examples of these would include his replies of "I'm not going to respond to that" or "No, that would not be advantageous to me" or even "My [psychiatric] medicine doesn't give me any zest or zeal anymore..." I am left to conclude, therefore, that his decision to limit the length and detail of his replies or the quality of information he is willing to provide and share with his attorneys is largely volitional and subject to his own decision-making priorities and control.

Thank you for the referral. Please know that the opinions, conclusions and recommendations made as part of this evaluation are clinical in nature and do not constitute a legal decision. Ultimate legal questions are solely for the Court to decide. I appreciate the opportunity to be of service.

Respectfully submitted,

  
Alfredo M. Amézaga Jr., Ph.D.

Enclosed: Attachment #1: Nevada Department of Prisons, Form #2523  
Attachment #2: ECST-R Profile Form (Evaluation of Competency to Stand Trial-Revised)  
Attachment #3: ECST-R Summary Form  
Attachment #4: Summary Profile of VIP Results

Attachment #1

RELEASE OF LIABILITY FOR  
REFUSAL OF MEDICAL TREATMENT

I hereby release the Nevada Department of Prisons from any and all liability and responsibility that might result from my refusal of examination, treatment or testing described below; and further release any and all personnel from any and all liability and/or responsibility that might be incurred.

CHECK ALL THAT APPLY:

☐ INFIRMARY APPOINTMENT FOR: \_\_\_\_\_  
☐ DENTAL APPOINTMENT FOR: \_\_\_\_\_  
☒ PSYCHIATRY/PSYCHOLOGY APPOINTMENT FOR: \_\_\_\_\_  
☐ PHYSICAL THERAPIST APPOINTMENT FOR: \_\_\_\_\_  
☐ OPTOMETRIST APPOINTMENT FOR: \_\_\_\_\_  
☐ PODIATRIST APPOINTMENT FOR: \_\_\_\_\_  
☐ OSHA PROTOCOL FOR TB/BLOOD BORNE  
PATHOGENS: \_\_\_\_\_  
☐ OTHER. DESCRIBE: \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This release has been signed under no duress and with full understanding of possible hazards which may occur due to refusal.

Vanshi, S. K. (Signature) 63376 01-20-05  
INMATE/STAFF SIGNATURE DOP#/SS# DATE

Sgt. P. D. (Rose) (Signature) 01-20-05  
STAFF WITNESS DATE

Y/C J. (Signature) 01-20-05  
STAFF WITNESS (IF SECOND WITNESS NECESSARY) DATE

NEVADA DEPARTMENT OF PRISONS

NAME \_\_\_\_\_  
LAST FIRST MI

RELEASE OF  
LIABILITY

DOP #/SS # \_\_\_\_\_ UNIT \_\_\_\_\_

DOP 2523 (17693)

AA02045

TQUALLS06688

# ECST-R Profile Form

SIAOSI VANISI

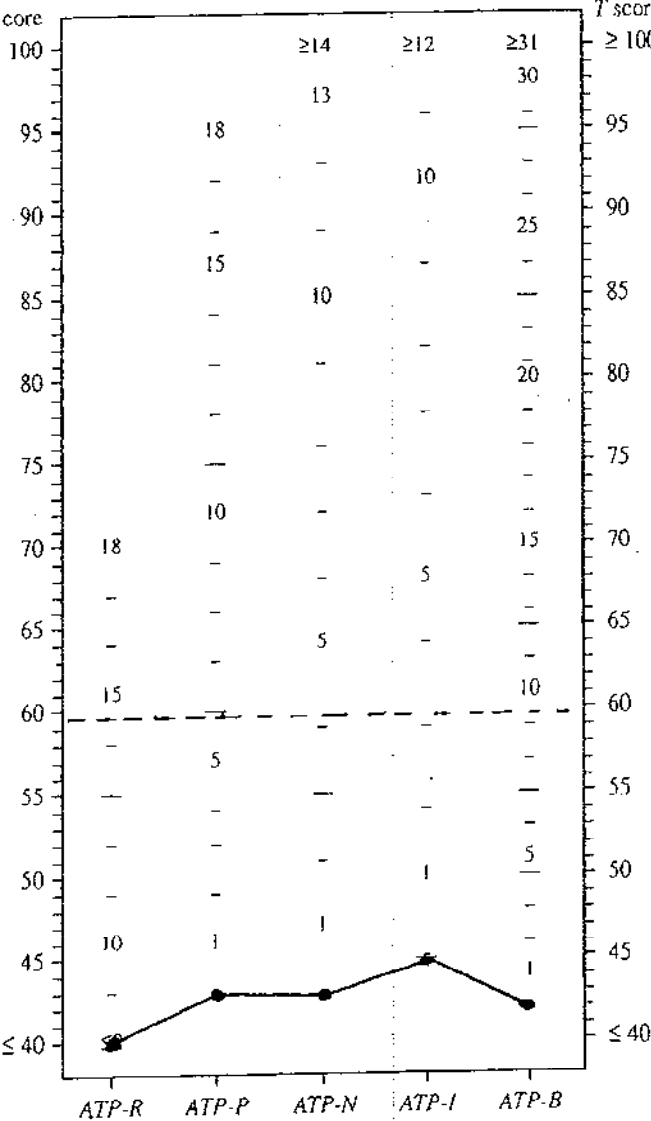
Age 34/6

Testing date 02/03/05

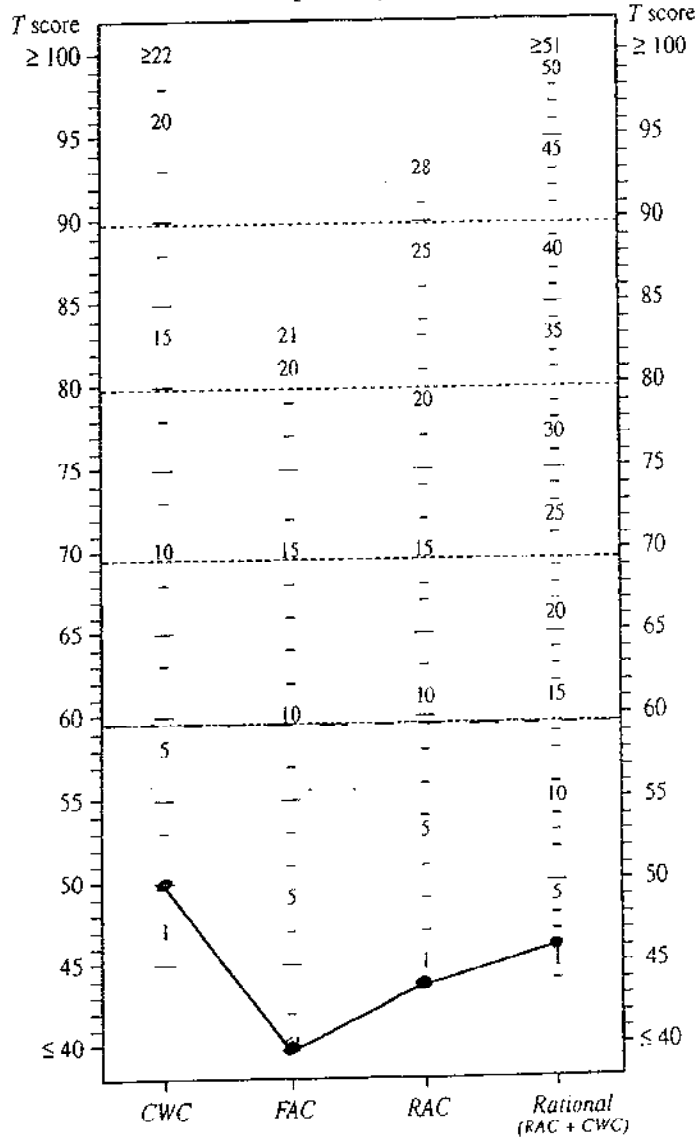
AMA

Place of evaluation NSP-Corrections

## Atypical Presentation scales



## Competency scales



Score	25	43	43	45	42
Raw score	3	0	0	0	0
%ile	1.0	25	25	32	23

T score	50	38	44	46
Raw score	2	0	0	2
%ile	50	13	27	37

# ECST-R Summary Form

## Response Styles

### Defensible defensiveness:

TP-R &lt; 5

Defendant's ATP-R raw score: 

### Possible overreporting<sup>1</sup>:

TP-P &gt; 1

Defendant's ATP-P raw score: 

TP-N &gt; 0

Defendant's ATP-N raw score: 

TP-I &gt; 1

Defendant's ATP-I raw score: 

TP-B &gt; 2

Defendant's ATP-B raw score: 

### 3. Ancillary data on feigning competency-related impairment<sup>2</sup>:

• ATP-P &gt; 4

Defendant's ATP-P raw score: 

• ATP-N &gt; 2

Defendant's ATP-N raw score: 

• ATP-I &gt; 1

Defendant's ATP-I raw score: 

• ATP-B &gt; 6

Defendant's ATP-B raw score: 

in the possible overreporting range do not signify feigning; they simply signal the need for a full evaluation of response styles. scores are only meaningful if independently confirmed by the SIRS or other validated methods for assessing feigned mental disorders.

## Relative Data for Competency Scales

Impairment (T scores)
Rate: 60 to 69
e: 70 to 79
me: 80 to 89
extreme: > 90

Certitude (T scores)	CWC	FAC	RAC
Preponderant	60	60	60
Probable	65	64	64
Very probable	67	67	66
Definite	69	69	67

Competency scales	T score	Impairment	Certitude
Legal ability to consult with counsel (CWC)	T = 50	None	Definite
Legal understanding of the proceedings (FAC)	= 38	↓	↓
Legal understanding of the proceedings (RAC)	= 44	↓	↓
Full rational ability (Rational)	= 46	↓	↓

## Specific Deficits From Competency Scales

ATP-R Query.

#17 - "Missedings?" = "Sometimes" = Score = 1

#20 - "Dismiss Charges?" "yes" = Score = 2

ATP-R = 3

Additional copies are available for qualified mental health professionals from:

**PAR** Psychological Assessment Resources, Inc.  
16204 N. Florida Avenue • Lutz, FL 33549 • 1.800.331.8378 • www.parinc.com

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Allochment #4

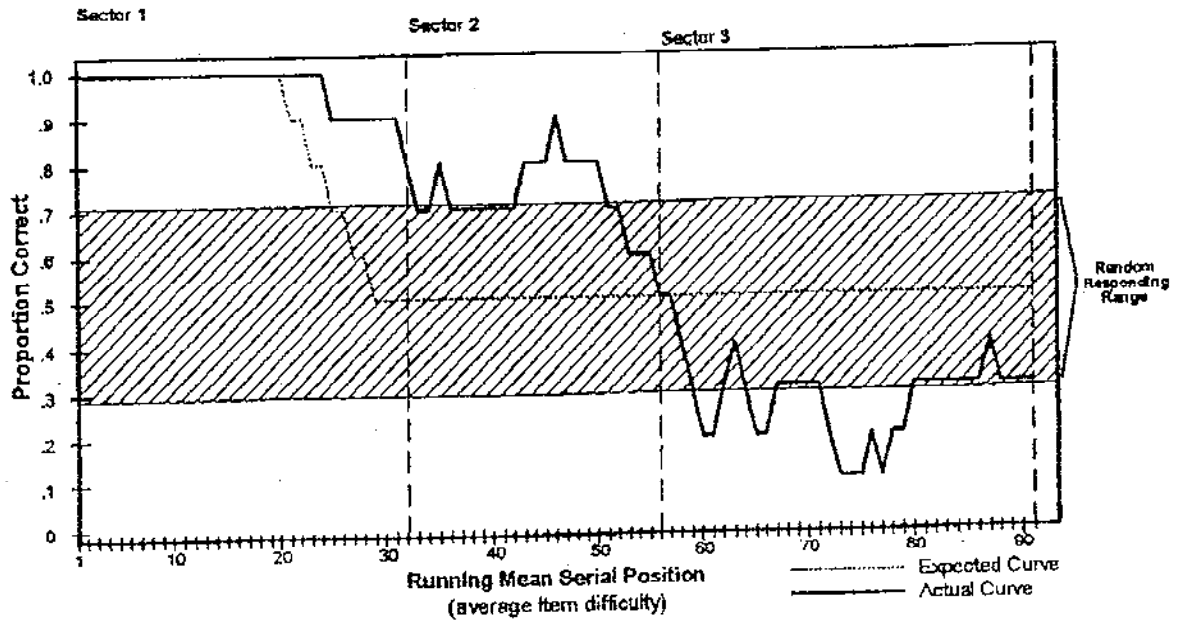
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Interpretive Report  
Page 3

# NONVERBAL SUBTEST

## Performance Curve

Response Style: Invalid/Suppressed



## Summary of Scores

Total Score ..... 64      Adjusted Score ..... 28

## Performance Curve Measures

Sector 1 Distance .....	32	Slope .....	-0.0110
Sector 2 Distance .....	25	Point of Entry .....	1.0
Sector 3 Distance .....	36	Peak Performance Interval .....	24
Sector 1 Residual .....	0.005	Patterned Responding .....	NA
Suppression Sector .....	Yes		
Suppression Sector Starting Point .....	64		
Suppression Sector Ending Point .....	86		
Suppression Sector Distance .....	23		
Suppression Sector Probability .....	< .5%		

1772 148  
AA02048

TQUALS06691



# Exhibit 51

# Exhibit 51

1 SMEM

2 DAVID ROGER  
3 DISTRICT ATTORNEY

4 Nevada Bar #002781

5 VICKI J. MONROE

6 Chief Deputy District Attorney

7 Nevada Bar #003776

8 200 South Third Street

9 Las Vegas, NV 89155-2211

10 (702) 455-4711

11 Attorney for Plaintiff

FEB 04 2004

*Sharon Coffman*

SHARON COFFMAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

VERNELL RAY EVANS,  
#924477

Defendant.

CASE NO:

C116071

DEPT NO:

VIII

SENTENCING AGREEMENT

I, VERNELL RAY EVANS, having been found guilty by a jury of: COUNTS 2  
THROUGH 5 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON  
(Felony - NRS 200.010, 200.030, 193.165)), hereby agree to enter into the following  
sentencing agreement:

Both parties stipulate that the Defendant will be sentenced to a term of life in the  
Nevada Department of Corrections without the possibility of parole, plus an equal and  
consecutive term of life in the Nevada Department of Corrections without the possibility of  
parole for the deadly weapon enhancement, per count. Further, both parties stipulate that all  
counts will run consecutive to one another and will run consecutive to Count 1, which the  
Defendant is currently serving time for. Additionally, both parties agree that if the Court is  
not inclined to sentence the Defendant as stipulated, either party may withdraw from these  
negotiations and proceed to a penalty hearing.

RECEIVED

FEB 04 2004

COUNTY CLERK

P:\WPDOCS\INP\304\30423904.doc

AA02050

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**1**

1 sentencing, including my criminal history. This report may contain hearsay information  
2 regarding my background and criminal history. My attorney and I will each have the  
3 opportunity to comment on the information contained in the report at the time of sentencing.  
4 Unless the District Attorney has specifically agreed otherwise, then the District Attorney  
5 may also comment on this report.

6 WAIVER OF RIGHTS

7 I understand that the Nevada Supreme Court has ordered a new penalty hearing for  
8 me in this case. I agree, after speaking with attorneys, that it is in my best interests to accept  
9 the conditions set forth in the sentencing agreement. I further agree that I waive my right to  
10 appeal my decision to waive my penalty hearing at this time.

11 VOLUNTARINESS OF PLEA

12 I have discussed with my attorney any possible appellate issues and circumstances  
13 which might be in my favor.

14 All of the foregoing elements, consequences, rights, and waiver of rights have been  
15 thoroughly explained to me by my attorney.

16 I believe that entering into this sentencing agreement is in my best interest, and that a  
17 penalty hearing would be contrary to my best interest.

18 I am signing this agreement voluntarily, after consultation with my attorney, and I am  
19 not acting under duress or coercion or by virtue of any promises of leniency, except for those  
20 set forth in this agreement.

21 I am not now under the influence of any intoxicating liquor, a controlled substance or  
22 other drug which would in any manner impair my ability to comprehend or understand this  
23 agreement or the proceedings surrounding my entry into this agreement.

24 My attorney has answered all my questions regarding this sentencing agreement and

25 //

26 //

27 //

28 //

1 its consequences to my satisfaction and I am satisfied with the services provided by my  
2 attorney.

3 DATED this 4 day of <sup>February</sup>~~January~~, 2004.

4  
5 Vernell Ray Evans  
6 VERNELL RAY EVANS  
7 Defendant

8 AGREED TO BY:

9 Vicki J. Monroe  
10 VICKI J. MONROE  
11 Chief Deputy District Attorney  
12 Nevada Bar #003776  
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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of  
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)  
5 and sentencing options for which the Defendant was convicted.

6 2. I have advised the Defendant of the penalties for each charge and the restitution  
7 that the Defendant may be ordered to pay.

8 3. All waivers offered by the Defendant pursuant to this agreement are consistent  
9 with the facts known to me and are made with my advice to the Defendant.

10 4. To the best of my knowledge and belief, the Defendant:

11 a. Is competent and understands the charges and the consequences of the  
12 agreement and waivers as provided in this agreement.

13 b. Executed this agreement voluntarily.

14 c. Was not under the influence of intoxicating liquor, a controlled substance or  
15 other drug at the time I consulted with the defendant as certified in paragraphs  
16 1 and 2 above.

17 Dated: This 4 day of January, 2004.

18   
19 ATTORNEY FOR DEFENDANT

20 

21 mb

# Exhibit 52

# Exhibit 52

# District Case Inquiry - Minutes

Home

Summary  
Case Activity  
Calendar  
Continuance  
Minutes  
Parties  
Def. Detail  
Next Co-Def.  
Charges  
Sentencing  
Bail Bond  
Judgments  
District Case  
Party Search  
Corp. Search  
Atty. Search  
Bar# Search  
ID Search

Calendar Day  
Holidays

Help  
Comments &  
Feedback  
Legal Notice

Case 97-C-144577-C

Just Ct. Case# 97-GJ-00041

Status CLOSED

Plaintiff State of Nevada  
Defendant Strohmeyer, Jeremy  
Judge Villani, Michael

Attorney Roger, David J.  
Attorney Colucci, Carmine J.  
Dept. 17

Event 09/08/1998 at 09:00 AM

AT THE REQUEST OF THE COURT

Heard By Leavitt, Myron E.

Officers SUE DEATON, Court Clerk  
LAURIE WEBB, Reporter/Recorder

Parties 0000 - S1	State of Nevada	Yes
000477	Bell, Stewart L.	Yes
001951	Leen, Peggy	Yes
0001 - D1	Strohmeyer, Jeremy	Yes
000888	Wright, Richard A.	Yes
910154	Abramson, Leslie H.	Yes

Prior to Court convening, Ms. Karen Winckler, Esq., FILED Guilty Plea Agreement IN OPEN COURT.

Also present in courtroom, Mr. William Koot, Chief Deputy District Attorney, representing the State.

OUTSIDE PRESENCE OF THE JURY - Court informed Deft Strohmeyer that Court had been told Deft wished to withdraw his pleas of Not Guilty. Colloquy between Court and Deft; Court WILL ALLOW Deft Strohmeyer to WITHDRAW HIS PLEAS OF NOT GUILTY. Mr. Bell stated negotiations are that the State agrees to withdraw the Notice of Intent to Seek Death; Deft agrees to stipulate to the maximum sentences otherwise provided by law and that all four (4) sentences shall run consecutive to each other, Count I - First Degree Murder, sentence shall be Life Without the Possibility of Parole, Count II - First Degree Kidnaping, sentence shall be Life Without the Possibility of Parole, to run consecutive to the sentence imposed for Count I, Count III - Sexual Assault With a Minor Under Sixteen Years of Age With Substantial Bodily Harm, sentence shall be Life Without the Possibility of Parole, to run consecutive to the sentences imposed for Counts I and II and Count IV - Sexual Assault With a Minor Under Sixteen Years of Age, sentence shall be Life With the Possibility of Parole after a minimum of twenty (20) years are served, to run consecutive to the sentences imposed for Counts I, II and III. Mr. Bell noted there had been a meeting in Chambers between all counsel and the Court and Court had reviewed and agreed with Deft's Guilty Plea Agreement with the State. Court inquired of Deft Strohmeyer if he had reviewed his decision to enter guilty pleas in this matter with his attorneys and family and that he understood exactly what the sentence is as to each Count and that Deft understood the State was no longer seeking the death penalty; Deft Strohmeyer answered yes to each inquiry. Court inquired if Deft realized that he would have to spend the rest of his natural life in prison, due the sentences imposed for Counts I, II and III, notwithstanding the parole eligibility as to Count IV, Deft will never be eligible for parole; Deft acknowledged that he understood he would never be eligible for parole. Court reviewed rights Deft would be giving up by entering into plea agreement; Deft indicated he understood he was giving up those rights. Deft Strohmeyer indicated he had no questions regarding Guilty Plea Agreement he had signed; that he had reviewed the document with his attorneys and July

PA02056



understand what he was signing. DEFT STROHMEYER ARRAIGNED AND PLED GUILTY TO COUNT I - FIRST DEGREE MURDER (F) and COUNT II - FIRST DEGREE KIDNAPING (F). DEFT STROHMEYER ARRAIGNED and PLED GUILTY PURSUANT TO ALFORD TO COUNT

III - SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE WITH SUBSTANTIAL BODILY HARM (F) and COUNT IV - SEXUAL ASSAULT WITH A MINOR UNDER

SIXTEEN YEARS OF AGE (F). Mr. Bell made an offer of proof as to what facts the State could prove as to Counts III and IV if this matter should go to trial. COURT ACCEPTED DEFT'S PLEAS OF GUILTY AS TO COUNTS I AND II AND DEFT'S PLEAS OF GUILTY PURSUANT TO ALFORD AS TO COUNTS III AND IV and ORDERED matter referred to Division of Parole & Probation for a PSI Report and SET for SENTENCING.

COURT FURTHER ORDERED State's Exhibits marked as "Proposed Exhibits" in this matter TO BE RETURNED to Las Vegas Metropolitan Police Department.

CUSTODY

10-14-98, 9:00 A.M., SENTENCING (DEPT. XII)

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Due to time restraints and individual case loads, the above case record may not reflect all information to date.

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Top Of Page

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Exhibit 53

Exhibit 53

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DISTRICT COURT

CLARK COUNTY, NEVADA

C176201

THE STATE OF NEVADA,

Plaintiff,

-vs-

JONATHAN CORNELIUS DANIELS,  
#1201050

Defendant.

CASE NO. C1126201

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT

NOV 01 1995 19

LORETTA BOWMAN, CLERK

BY

*Andy Horton*  
Deputy

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (June Mildred Frye), designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

X

The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

X

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

X

The murder was committed to avoid or prevent a lawful arrest or to effect an escape from custody.

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X

The Defendant has, in the immediate proceeding,  
been convicted of more than one offense of murder  
in the first or second degree.

DATED at Las Vegas, Nevada, this 1st day of <sup>November</sup>~~October~~, 1995

Marshall T. Egan  
FOREPERSON

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JONATHAN CORNELIUS DANIELS,  
#1201050

Defendant.

) CASE NO. C1126201

) DEPT. NO. XV

) DOCKET NO. L

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (June Mildred Frye), designate that the mitigating circumstance or circumstances which have been checked below have been established.

\_\_\_\_\_ The defendant has no significant history of prior criminal activity.

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

X The defendant acted under duress or under the domination of another person.

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\_\_\_\_\_ The youth of the defendant at the time of the  
crime.

X Any other mitigating circumstances.

DATED at Las Vegas, Nevada, this 1st day of <sup>November</sup>~~October~~, 1995.

Michael J. Engen  
FOREPERSON

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DISTRICT COURT

CLARK COUNTY, NEVADA

C126201

THE STATE OF NEVADA,

CASE NO. C126201

Plaintiff,

DEPT. NO. XV

-VS-

DOCKET NO. L

JONATHAN CORNELIUS DANIELS,  
#1201050

Defendant.

FILED IN OPEN COURT  
NOV 01 1995 19  
LORETTA BOWMAN, CLERK  
BY Cindy Horton Deputy

V E R D I C T

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Nicasio Diaz) and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

\_\_\_\_\_ Life in Nevada State Prison With the  
Possibility of Parole.

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

\_\_\_\_\_ Death.

DATED at Las Vegas, Nevada, this 1st day of <sup>NOVEMBER</sup>~~October~~, 1995

Michael L. Egan  
FOREPERSON

647

AA02063

CE31

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

C126201

3 THE STATE OF NEVADA,

CASE NO. C126201

4 Plaintiff,

DEPT. NO. XV

5 -vs-

DOCKET NO. L

6 JONATHAN CORNELIUS DANIELS,  
7 #1201050

8 Defendant.

FILED IN OPEN COURT  
NOV 01 1995

LORETTA BOWMAN, CLERK

BY Cindy Horton

10 SPECIAL

11 VERDICT

12 We, the Jury in the above entitled case, having found the  
13 Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT II - MURDER  
14 OF THE FIRST DEGREE (Nicasio Diaz), designate that the aggravating  
15 circumstance or circumstances which have been checked below have  
16 been established beyond a reasonable doubt.

17 X

The murder was committed by a person who knowingly  
18 created a great risk of death to more than one  
19 person by means of a weapon, device or course of  
20 action which would normally be hazardous to the  
21 lives of more than one person.

22 X

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

25 X

The murder was committed to avoid or prevent a  
26 lawful arrest or to effect an escape from custody.

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X

The Defendant has, in the immediate proceeding,  
been convicted of more than one offense of murder  
in the first or second degree.

DATED at Las Vegas, Nevada, this 1ST day of <sup>NOVEMBER</sup>~~October~~, 1995

Michael H. Eason  
FOREPERSON

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JONATHAN CORNELIUS DANIELS,  
#1201050

Defendant.

) CASE NO. C1126201

) DEPT. NO. XV

) DOCKET NO. L

SPECIAL

VERDICT

We, the Jury in the above entitled case, having found the Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Nicasio Diaz), designate that the mitigating circumstance or circumstances which have been checked below have been established.

\_\_\_\_\_ The defendant has no significant history of prior criminal activity.

X

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

X

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

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\_\_\_\_\_ The youth of the defendant at the time of the  
crime.

  X   Any other mitigating circumstances.

DATED at Las Vegas, Nevada, this 1ST day of <sup>NOVEMBER</sup>~~October~~, 1995.

Michael J. Gayson  
FOREPERSON

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

5 -vs-

6 JONATHAN CORNELIUS DANIELS,  
7 #1201050

8 Defendant.

C126201  
CASE NO. C1126201

DEPT. NO. XV

DOCKET NO. L

FILED IN OPEN COURT  
NOV 01 1995 18

LORETTA BOWMAN, CLERK

BY Candy Horton  
Deputy

9  
10 VERDICT

11 We, the Jury in the above entitled case, having found the  
12 Defendant, JONATHAN CORNELIUS DANIELS, Guilty of COUNT I - MURDER  
13 OF THE FIRST DEGREE (June Mildred Frye) and having found that the  
14 aggravating circumstance or circumstances outweigh any mitigating  
15 circumstance or circumstances impose a sentence of,

16 \_\_\_\_\_ Life in Nevada State Prison With the  
17 Possibility of Parole.

18 X Life in Nevada State Prison Without  
19 the Possibility of Parole.

20 \_\_\_\_\_ Death.

21 DATED at Las Vegas, Nevada, this 1st day of <sup>NOVEMBER</sup>~~October~~, 1995

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23 Michael T. Egan  
24 FOREPERSON

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# Exhibit 54

# Exhibit 54

1 VER

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6 DISTRICT COURT  
CLARK COUNTY, NEVADA  
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

12  
13 Defendant.  
14

Case No. C148936  
Dept. No. XI

15 SPECIAL  
16 VERDICT  
(COUNT I - SAMANTHA LATRELLE SCOTTI)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD  
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A  
19 DEADLY WEAPON, designate that the mitigating circumstance or circumstances which have  
20 been checked below have been established.

- 21 \_\_\_\_\_ The Defendant has no significant history of prior criminal activity.  
22 \_\_\_\_\_ The victim was a participant in the Defendant's criminal conduct or consented to  
23 the act.  
24 \_\_\_\_\_ The Defendant was an accomplice in a murder committed by another person and  
25 his participation in the murder was relatively minor.  
26 \_\_\_\_\_ Any other mitigating circumstances.  
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DATED at Las Vegas, Nevada, this 15 day of November, 2000.

FOREPERSON

1 VER

11-15-00 5:50 PM

*John T. Blum*

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff, -

10 -vs-

11 RICHARD EDWARD POWELL

13 Defendant.

Case No. C148936  
Dept. No. XI

SPECIAL  
VERDICT  
(COUNT I - SAMANTHA LATRELLE SCOTTI)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

- 21 ☒ 1. The murder was committed while the person was engaged in  
22 the commission of or an attempt to commit any Burglary.  
23 ☒ 2. The murder was committed by a person who  
24 knowingly created a great risk of death to more than one  
25 person by means of a weapon, device or course of action  
26 which would normally be hazardous to the lives of more  
27 than one person.

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FOREPERSON

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6 DISTRICT COURT  
CLARK COUNTY, NEVADA  
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8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

12  
13 Defendant.  
14

Case No. C148936  
Dept. No. XI

15 SPECIAL  
16 VERDICT  
(COUNT II - LISA RENEE BOYER)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD  
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A  
19 DEADLY WEAPON, designate that the mitigating circumstance or circumstances which have  
20 been checked below have been established.

- 21 \_\_\_\_\_ The Defendant has no significant history of prior criminal activity.  
22 \_\_\_\_\_ The victim was a participant in the Defendant's criminal conduct or consented to  
23 the act.  
24 \_\_\_\_\_ The Defendant was an accomplice in a murder committed by another person and  
25 his participation in the murder was relatively minor.  
26 \_\_\_\_\_ Any other mitigating circumstances.  
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DATED at Las Vegas, Nevada, this 15 day of November, 2000.

*[Signature]*  
FOREPERSON

1 VER

11-15-00 5:30 PM

*John Brown*

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6 DISTRICT COURT  
CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

12  
13 Defendant.  
14

Case No. C148936  
Dept. No. XI

15 SPECIAL  
16 VERDICT  
(COUNT II - LISA RENEE BOYER)

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

- 21 ☒ 1. The murder was committed while the person was engaged in  
22 the commission of or an attempt to commit any Burglary.  
23 ☒ 2. The murder was committed by a person who  
24 knowingly created a great risk of death to more than one  
25 person by means of a weapon, device or course of action  
26 which would normally be hazardous to the lives of more  
27 than one person.  
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✓ 3. The murder was committed to avoid or prevent a  
lawful arrest.

DATED at Las Vegas, Nevada, this 1 day of November, 2000.

SD 6/1/1  
FOREPERSON

1 VER

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6 DISTRICT COURT  
CLARK COUNTY, NEVADA  
7

8 THE STATE OF NEVADA,

9 Plaintiff, )

10 -vs- )

11 RICHARD EDWARD POWELL )

12 )  
13 Defendant. )  
14 )

Case No. C148936  
Dept. No. XI

15 SPECIAL  
16 VERDICT  
(COUNT III - STEVEN LAWRENCE WALKER)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD  
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A  
19 DEADLY WEAPON, designate that the mitigating circumstance or circumstances which have  
20 been checked below have been established.

21 \_\_\_\_\_ The Defendant has no significant history of prior criminal activity.

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

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

26 \_\_\_\_\_ Any other mitigating circumstances.  
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DATED at Las Vegas, Nevada, this 11 day of November, 2000.

FLORIAN  
FOREPERSON

1 VER

11-15-00

5:50 PM

*James Brown*

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936  
Dept. No. XI

SPECIAL  
VERDICT  
(COUNT III - STEVEN LAWRENCE WALKER)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

☒

1. The murder was committed while the person was engaged in the commission of or an attempt to commit any Burglary.

☒

2. The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

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✓ 3. The murder was committed to avoid or prevent a  
lawful arrest.

DATED at Las Vegas, Nevada, this 1 day of November, 2000.

411-6-11  
FOREPERSON

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6 DISTRICT COURT  
CLARK COUNTY, NEVADA  
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

12  
13 Defendant.  
14

Case No. C148936  
Dept. No. XI

15 SPECIAL  
16 VERDICT  
(COUNT IV - JERMAINE M. WOODS)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD  
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A  
19 DEADLY WEAPON, designate that the mitigating circumstance or circumstances which have  
20 been checked below have been established.

21 \_\_\_\_\_ The Defendant has no significant history of prior criminal activity.

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

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

26 \_\_\_\_\_ Any other mitigating circumstances.  
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DATED at Las Vegas, Nevada, this 15 day of November, 2000.

[Signature]  
FOREPERSON

1 VER

11-15-00

52301M

*John K. ...*

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICHARD EDWARD POWELL

Defendant.

Case No. C148936  
Dept. No. XI

SPECIAL  
VERDICT  
(COUNT IV - JERMAINE M. WOODS)

We, the Jury in the above entitled case, having found the Defendant, RICHARD EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A DEADLY WEAPON, designate that the aggravating circumstance or circumstances which have been checked below have been established beyond a reasonable doubt.

1. The murder was committed while the person was engaged in the commission of or an attempt to commit any Burglary.
2. The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

AA02084

DATED at Las Vegas, Nevada, this 15 day of November, 2000.

AA02085

1 VER

11-15-00 5:30 PM

*John Brand*

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

13 Defendant.

Case No. C148936  
Dept. No. XI

15 VERDICT  
16 (COUNT I - SAMANTHA LATRELLE SCOTTI)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD  
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A  
19 DEADLY WEAPON and having found that the aggravating circumstance or circumstances  
20 outweigh any mitigating circumstance or circumstances impose a sentence of,

- 21 ☒ Life in Nevada State Prison With the Possibility of Parole.  
22 ☐ Life in Nevada State Prison Without the Possibility of Parole.  
23 ☐ Death.

24 DATED at Las Vegas, Nevada, this 15 day of November, 2000

26 *[Signature]*  
27 FOREPERSON  
28

AA02086

1 VER

11-15-00 5:30 PM

*John Brown*

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

13 Defendant.

Case No. C148936  
Dept. No. XI

15 VERDICT  
16 (COUNT II - LISA RENEE BOYER)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD  
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A  
19 DEADLY WEAPON and having found that the aggravating circumstance or circumstances  
20 outweigh any mitigating circumstance or circumstances impose a sentence of,

21 ☐ Life in Nevada State Prison With the Possibility of Parole.

22 ☒ Life in Nevada State Prison Without the Possibility of Parole.

23 ☐ Death.

24 DATED at Las Vegas, Nevada, this 15 day of November, 2000

26 *[Signature]*  
27 FOREPERSON

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AA02087

1 VER

11-15-00 5:50 PM

*Jose Braun*

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6 DISTRICT COURT  
CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

12  
13 Defendant.  
14

Case No. C148936  
Dept. No. XI

15 VERDICT  
16 (COUNT III - STEVEN LAWRENCE WALKER)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD  
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A  
19 DEADLY WEAPON and having found that the aggravating circumstance or circumstances  
20 outweigh any mitigating circumstance or circumstances impose a sentence of,

21 ☐ Life in Nevada State Prison With the Possibility of Parole.

22 ☒ Life in Nevada State Prison Without the Possibility of Parole.

23 ☐ Death.

24 DATED at Las Vegas, Nevada, this 15 day of November, 2000

25  
26 *Scott White*  
27 FOREPERSON  
28

AA02088



1 VER

11-15-00 5:30 PM

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6 DISTRICT COURT  
CLARK COUNTY, NEVADA

*Joye Breaux*

7  
8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 RICHARD EDWARD POWELL

12  
13 Defendant.  
14

Case No. C148936  
Dept. No. XI

15 VERDICT  
16 (COUNT IV - JERMAINE M. WOODS)

17 We, the Jury in the above entitled case, having found the Defendant, RICHARD  
18 EDWARD POWELL, Guilty of MURDER OF THE FIRST DEGREE WITH USE OF A  
19 DEADLY WEAPON and having found that the aggravating circumstance or circumstances  
20 outweigh any mitigating circumstance or circumstances impose a sentence of,

- 21 ☐ Life in Nevada State Prison With the Possibility of Parole.  
22 ☒ Life in Nevada State Prison Without the Possibility of Parole.  
23 ☐ Death.

24 DATED at Las Vegas, Nevada, this 15 day of November, 2000

25  
26 *[Signature]*  
27 FOREPERSON  
28

AA02089

# Exhibit 55

# Exhibit 55

1 VER

MAY 7 1996

BY

Deputy

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FERNANDO PADRON RODRIGUEZ

Defendant.

Case No. C130763  
Dept. No. VI  
Docket B

VERDICT

We, the Jury in the above entitled case, having found the Defendant, FERNANDO PADRON RODRIGUEZ, Guilty of COUNT I - MURDER OF THE FIRST DEGREE (Brad Palcovic) and having found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or circumstances impose a sentence of,

- ☐ A definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has passed
- ☐ Life in Nevada State Prison With the Possibility of Parole.
- ☒ Life in Nevada State Prison Without the Possibility of Parole.
- ☐ Death.

DATED at Las Vegas, Nevada, this 7 day of May, 1996

Jacques C. Sagne  
FOREPERSON

1 VER

MAY 1 1996

LORETTA JOHNSON

BY

Deputy

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5  
6 DISTRICT COURT  
CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 FERNANDO PADRON RODRIGUEZ

12  
13 Defendant.

Case No. C130763  
Dept. No. VI  
Docket B

14  
15 VERDICT

16 We, the Jury in the above entitled case, having found the Defendant, FERNANDO PADRON  
17 RODRIGUEZ, Guilty of COUNT II - MURDER OF THE FIRST DEGREE (Richley Miller) and having  
18 found that the aggravating circumstance or circumstances outweigh any mitigating circumstance or  
19 circumstances impose a sentence of,

20 \_\_\_\_\_ A definite term of 50 years, with eligibility for parole beginning when a minimum of  
21 20 years has passed

22 \_\_\_\_\_ Life in Nevada State Prison With the Possibility of Parole.

23 X Life in Nevada State Prison Without the Possibility of Parole.

24 \_\_\_\_\_ Death.

25 DATED at Las Vegas, Nevada, this 1 day of May, 1996

26  
27 Jacques C. Sague  
28 FOREPERSON

AA02092

CE31

# Exhibit 56

# Exhibit 56

ORIGINAL

2000/11/13

*K Sullivan*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF WASHOE

\*\*\*

SIAOSI VANISI,

Petitioner,

v.

Case No. CR98P0516

WARDEN, ELY STATE PRISON,  
AND THE STATE OF NEVADA,

Dept. No. 4

Respondents.

ORDER FINDING PETITIONER COMPETENT TO PROCEED

Petitioner was found guilty of the murder of Sergeant George Sullivan and was sentenced to death. He appealed but the judgment was affirmed. He then filed a timely petition for writ of habeas corpus. That petition, however, raised no claims for relief. This court appointed counsel and allowed the opportunity for a supplemental petition. The lawyers were initially Marc Picker and Scott Edwards. Thereafter, the case was delayed several times for various reasons. Mr. Picker withdrew and Tom Qualls was appointed, along with Mr. Edwards. After delays exceeding two years, counsel still did not file a supplemental petition. Instead, counsel filed a request to stay the proceedings, alleging that Petitioner Vanisi was not competent to proceed. The State opposed the motion, arguing inter alia that the allegation had no legal significance as state law allowed an incompetent prisoner to seek relief in his own name, and because Vanisi had successfully invoked the jurisdiction of the court in his own name.

The court, without initially determining the significance of the allegation, determined that

1 the best course would be to inquire into the issue. Accordingly, the court appointed two experts, a  
2 psychiatrist and a psychologist, to inquire into the present competence of petitioner Vanisi.

3 On the question of the legal significance of the alleged incompetence of the petition, this  
4 court is bound to follow the decision of the Ninth Circuit Court of Appeals in Rohan ex rel. Gates v.  
5 Woodford, 334 F.3d 803 (9<sup>th</sup> Cir. 2003). That court held that, in a capital case, there is a constitutional  
6 right to counsel in a habeas corpus action. That is in accord with the holdings of the Nevada Supreme  
7 Court to the effect that there is a statutory right to counsel in an initial Nevada habeas corpus action in a  
8 capital case. The Rohan court went on to hold that the right to counsel incorporates the right to be  
9 competent during the habeas corpus proceedings. Therefore, held the court, the habeas corpus  
10 proceedings must be stayed until such time as the prisoner regains competence.

11 This court notes the incongruities pointed out by the State. In particular, the court notes  
12 the possibility that the Rohan court would prohibit an incompetent prisoner from seeking relief from the  
13 conviction even if the prisoner wished to seek relief. That is contrary to the implications of the Nevada  
14 Supreme Court in various other cases. Nevertheless, this court is bound to follow the ruling of the  
15 Rohan court. Therefore, the court holds that if the petitioner is incompetent, then the habeas corpus  
16 action would have to be stayed.

17 The court also holds that the proper standard for competency is the standard generally applied in  
18 criminal cases. The court rejects that notion that a civil standard of incompetence should be  
19 determinative.

20 Having made those rulings, the question naturally arises as to whether Vanisi is, in fact,  
21 incompetent. The court initially received the report and the testimony of Thomas Bittker, M.D. Dr.  
22 Bittker had conducted an extensive clinical interview with Vanisi and opined that Vanisi was unable to  
23 fully assist his attorneys. Subsequently, the court received the testimony of Dr. Raphael Amézaga, Ph.D.  
24 Dr. Amézaga conducted a clinical interview with Vanisi and, in addition, administered more objective  
25 tests. Dr. Amézaga agreed that Vanisi was most likely suffering from bi-polar disorder and did not  
26 dispute the conclusion that he was psychotic. However, Dr. Amézaga opined that Vanisi still had the

1 capacity to assist his attorneys if he chose to do so. Both experts agreed that Vanisi understood the  
2 charges of which he was convicted and had a sufficient understanding of the proceedings that he had  
3 initiated. They diverged only on the question of whether Vanisi could assist his attorneys.

4 The court has given careful consideration to the reports and the testimony of the experts.  
5 In addition, the court has considered the documentary evidence presented and the affidavits of counsel.  
6 The court has also had its own opportunity to observe Vanisi in the courtroom. Based on the entirety of  
7 the evidence, the court finds that Vanisi understands the charges and the procedure. In addition, the  
8 court has given greater weight to the expert who administered objective tests and determined that Vanisi  
9 has the present capacity to assist his attorneys. The court agrees that Vanisi might present some  
10 difficulties for counsel. Nevertheless, the court finds that Vanisi has the present capacity, despite his  
11 mental illness, to assist his attorneys if he chooses to do so. In short, the court finds as a matter of fact  
12 that Vanisi is competent to proceed.

13 The motion to stay these proceedings is denied. The parties and the court shall expedite  
14 this matter by giving it the priority required by SCR 250.

15 DATED this 14 day of ~~February~~, 2005.  
*March*

16  
17 Conrad J. Steinbeim  
18 DISTRICT JUDGE  
19  
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21  
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26



1 CERTIFICATE OF MAILING

2  
3 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County  
4 District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at  
5 Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

6 Scott W. Edwards, Esq.  
7 729 Evans Avenue  
8 Reno, NV 89512

9 Thomas L. Qualls, Esq.  
10 216 East Liberty Street  
11 Reno, NV 89501

12 DATED: March 14, 2005.

13  
14 Stella Muel  
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# EXHIBIT 57

OMITTED

# EXHIBIT 57

# Exhibit 58

# Exhibit 58

# Evaluating Competency to Stand Trial with Evidence-Based Practice

Richard Rogers, PhD, and Jill Johansson-Love, PhD

Evaluations for competency to stand trial are distinguished from other areas of forensic consultation by their long history of standardized assessment beginning in the 1970s. As part of a special issue of the *Journal* on evidence-based forensic practice, this article examines three published competency measures: the MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA), the Evaluation of Competency to Stand Trial-Revised (ECST-R), and the Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR). Using the *Daubert* guidelines as a framework, we examined each competency measure regarding its relevance to the *Dusky* standard and its error and classification rates. The article acknowledges the past polarization of forensic practitioners on acceptance versus rejection of competency measures. It argues that no valuable information, be it clinical acumen or standardized data, should be systematically ignored. Consistent with the American Academy of Psychiatry and the Law Practice Guideline, it recommends the integration of competency interview findings with other sources of data in rendering evidence-based competency determinations.

*J Am Acad Psychiatry Law* 37:450–60, 2009

Evidence-based practice for evaluation of competency to stand trial cannot be considered without first providing a clinical context and legal framework. Clinically, the movement toward empirically based assessments has created important advances, some limitations, and substantial resistance. The *Daubert* standard provides a legal framework for evidence-based practice in the forensic arena. This article begins with an overview of evidence-based practice and the *Daubert* standard, which sets the stage for an extensive examination of competency to stand trial via three competency measures.

Paris<sup>1</sup> ably documents the evolution of psychiatric practice from idiosyncratic clinical inferences and basic research studies to systematic investigations of evidence-based practice. Applied mostly to treatment and treatment outcomes, evidence-based practice is an attempt to evaluate treatment efficacies systematically via randomized control trials and meta-

analyses.<sup>2,3</sup> These efforts to revolutionize mental health practices are not without critics,<sup>4,5</sup> who raise problems with research design (e.g., weak outcome measures, diagnostic validity, comorbidity, and sub-syndromal cases). Established practitioners sometimes are slighted by evidence-based researchers, who now feel “entitled to criticize and rectify clinical authorities” perhaps motivated by “an iconoclastic or even patricidal tendency” (Ref. 5, p 327). While the phrase “patricidal tendency” is an overreach, it does capture the concerns of seasoned practitioners who see the possibility that their decades of experience will be devalued or even discredited by evidence-based approaches. Moreover, the objectivity of evidence-based researchers has been called into question because they are motivated by payment and publication to produce noteworthy results.<sup>4</sup> The acceptance of evidence-based methods within the psychiatric community is clearly influenced by both concerns regarding research design and polarized professional attitudes. While the bulk of the article addresses research findings, the next two paragraphs outline the equally important topic of professional attitudes.

Professional attitudes are an often overlooked but key component in the acceptance of evidence-based

Dr. Rogers is Professor of Psychology, University of North Texas, Denton, TX. Dr. Johansson-Love is Clinical Assessment Specialist, Dallas County Community Supervision and Corrections, Dallas, TX. Address correspondence to: Richard Rogers, PhD, 1155 Union Circle #311280, Denton, TX 76203-5017. E-mail: rogersr@unt.edu. Dr. Rogers is the principal author of the Evaluation of Competency to Stand Trial-Revised (ECST-R) and receives a royalty for each ECST-R record form and summary sheet administered.

practice. Slade and his colleagues<sup>6</sup> carefully evaluated the acceptance of an empirically based assessment model involving a constellation of standardized measures. Objections by practitioners to using the assessment model have included concerns about its cost (35%), usefulness (38%), duplicated effort (23%), and duration (10%). As evidence of polarized views, three of these same objections were seen by other practitioners as benefits including usefulness (45%), nonduplication of services (25%), and brevity (25%). Lessons from Slade *et al.* can clearly be applied to forensic practice regarding important determinants for the acceptance of evidence-based practice.

Aarons *et al.*<sup>7,8</sup> have gone a step further in studying how professional attitudes toward evidence-based practice are reflected in effective interventions. Although they focused on treatment, several findings may be applicable to forensic practice. The two most salient objections to evidence-based practice were that clinical experience is better than standardized methods and that practitioners know better than researchers. We revisit these objections later in the context of evidence-based competency measures. The next section addresses the admissibility of expert evidence in light of the *Daubert*<sup>9</sup> standard.

### Application of the Daubert Standard

The Supreme Court, in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,<sup>9</sup> applied scientific principles to the admissibility of scientific evidence. It explicitly rejected the test established in *Frye v. United States*,<sup>10</sup> which relied solely on general acceptance. While serving as gatekeepers, trial judges are to consider the following guidelines under *Daubert*:

1. Ordinarily, a key question to be answered in determining whether a theory or technique is scientific knowledge that will assist the trier of fact will be whether it can be (and has been) tested.
2. Another pertinent consideration is whether the theory or technique has been subjected to peer review and publication.
3. Additionally, in the case of a particular scientific technique, the court ordinarily should consider the known or potential rate of error.
4. Finally, "general acceptance" can yet have a bearing on the inquiry. A "reliability assessment does not require, although it does permit, explicit identification of a relevant scientific community and an express determination of a particular degree of acceptance within that community [Ref. 9, pp 593–4].

Guidelines 1 and 3 specifically address scientific methods. Guideline 1 relies on the construct of falsifiability set forth by Popper.<sup>11</sup> Simply put, a conclusion cannot be accepted as true if there is no way that its truth or falsity can be proven—if it has never been tested. With reference to forensic concerns, can the concept be empirically tested and does the research have the potential to disprove the conclusion? Whereas Guideline 1 is more theoretical, Guideline 3 is solidly methodological. Its error rate focuses specifically on the accuracy of measurement, which is affected by reliability and validity.

*Daubert* and two subsequent Supreme Court cases (*General Electric Co. v. Joiner*<sup>12</sup> and *Kumho Tire Co. v. Carmichael*<sup>13</sup>) are referred to as the *Daubert* trilogy. In *Joiner*, the Court specified that the trial judge would be the arbiter of scientific admissibility and could be overruled based only on the abuse-of-discretion standard. For mental health experts, the practical effect of this ruling is that different trial judges within the same jurisdiction may legitimately reach opposite conclusions about the admissibility of specific methods, such as competency measures.<sup>14</sup> In *Kumho*, the Supreme Court applied the *Daubert* guidelines beyond scientific evidence to all expert testimony. The practical effect of this decision was to prevent experts from circumventing *Daubert* by claiming that their expertise (e.g., clinical practice) was nonscientific. The Court reaffirmed the flexibility in applying the *Daubert* guidelines, which may or may not be relevant in determining the reliability of the expert testimony in a particular case. Welch<sup>15</sup> extensively describes "*Daubert's* legacy of confusion" in allowing trial judges to apply any or all of the *Daubert* guidelines when admitting expert testimony.

A comprehensive review of the *Daubert* decision is far beyond the scope of this article, given the hundreds of scholarly works in the psychological, medical, and legal literatures. Readers may wish to refer to the Federal Judicial Center<sup>16</sup> and special issues of *Psychology, Public Policy, and Law* (vol. 8, issues 2–4) and the *American Journal of Public Health* (vol. 95, suppl. 1) for a more thorough introduction. For our purposes, we selectively review articles that provide key insights in *Daubert* and examine several examples of how *Daubert* has been applied to standardized measures and legal standards.

Gatowski and her colleagues,<sup>17</sup> in a national study of 400 state trial court judges, found that most judges

(i.e., ranging from 88% to 93%) believed that the individual *Daubert* guidelines were useful in deciding the admissibility of scientific evidence. Not surprisingly, they had the most difficulty in fully understanding those directly involved in scientific method (Guidelines 1 and 3). In contrast, Guidelines 2 and 4 were relatively easy to grasp. Based on her work, we should anticipate that more scientific guidelines will generate greater discrepancies among trial courts.

Researchers and scholars have critically evaluated whether general psychological tests meet the *Daubert* guidelines for admissibility. For example, controversy and debate surround the sufficiency of the Rorschach<sup>18,19</sup> and MCMI-III<sup>20,21</sup> when evaluated according to *Daubert* guidelines. Regarding the MCMI-III, Rogers and his colleagues<sup>22</sup> questioned the admissibility of any measure when the error rate substantially exceeded its accuracy. *Daubert* reviews have also considered several forensic measures for which the adequacy of their psychometric properties has been debated: competency to confess measures<sup>23,24</sup> and the Mental State at the Time of the Offense scale.<sup>25,26</sup>

Within the context of family law, Kelly and Ramsey<sup>27</sup> provide a masterful analysis of validity as it applies to psycholegal constructs and measures, along with a detailed list of specific benchmarks. Researchers and practitioners are likely to find this a valuable resource in evaluating forensic measures.

## Author Disclosure

The opening paragraph of this article noted the professional schisms between traditional practice and the growing movement toward evidence-based practice. Among the broad array of criticisms, researchers have been singled out as motivated by personal and professional gain.<sup>5</sup> An alternative view is that traditionalists are equally motivated to avert criticisms of their current clinical practices by researchers. Be that as it may, a brief disclosure from the first author is in order. Rogers has pioneered the use of empirically validated forensic measures for more than two decades, beginning in 1984 with the publication of the R-CRAS (Rogers Criminal Responsibility Assessment Scales)<sup>28</sup> for assessing criminal responsibility and later the Structured Interview of Reported Symptoms (SIRS)<sup>29</sup> for feigned mental disorders. Of particular relevance to this article, he is the principal author of the Evaluation of Competency to Stand

Trial-Revised (ECST-R)<sup>30</sup> and receives a royalty of approximately 30 cents for each ECST-R record form and summary sheet administered. Readers can independently evaluate the following analyses of competency measures in light of this disclosure.

## Competency to Stand Trial

The standard for competency to stand trial was established by the Supreme Court's decision in *Dusky v. United States*<sup>31</sup> with a one-sentence formulation requiring that the defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." Rogers and Shuman<sup>14</sup> provide a legal summary of *Dusky*'s three prongs: a rational ability to consult one's own attorney, a factual understanding of the proceedings, and a rational understanding of the proceedings. Practitioners should be familiar with the *Dusky* standard and relevant appellate cases.

Competency to stand trial is especially important to evidence-based forensic practice because of its prevalence; it represents the most common pretrial focal point within the criminal domain of forensic psychiatry. Conservative estimates suggest there are 60,000 competency cases per year, with rates of incompetency often falling in the 20- to 30-percent range.<sup>32</sup> When extrapolated from the number of actively psychotic and mentally disordered inmates,<sup>33</sup> the potential number of competency evaluations could easily be twice this estimate.

Competency evaluations are also relevant to evidence-based forensic practice because of their long history of empirical validation. In his seminal work, Robey<sup>34</sup> proposed in 1965 a standardized checklist for operationalizing competency to stand trial. With NIMH support, Lipsitt and his colleagues<sup>35</sup> developed in 1971 the first standardized competency measure, the Competency Screening Test (CST). It was followed in 1973 by the Competency Assessment Instrument (CAI), developed and validated by McGarry and his team<sup>36</sup> at Harvard Medical School's Laboratory of Community Psychiatry. This historical perspective provides an essential insight: the foundation for evidence-based forensic practice was established while the American Academy of Psychiatry and the Law (AAPL) and its counterpart, the American Academy of Forensic Psychologists, were

still in their infancies. Unlike other forensic concerns, competency to stand trial has been the vanguard of evidence-based practice, championed for decades by prominent forensic psychiatrists and psychologists.

The importance of competency evaluations was recently underscored by the 2007 publication of the AAPL Practice Guideline.<sup>37</sup> This guideline provides a thorough introduction to the legal framework and conceptual basis for conducting these evaluations. While it does not grapple directly with evidence-based practices, the guideline attempts to standardize competency evaluations by recommending 15 specific areas of inquiry. Without providing standardized questions, it provides a nuanced statement that "Assessing and documenting a defendant's functioning usually requires asking specific questions that systematically explore" competency-related abilities (Ref. 37, p S34). Parenthetically, the qualifying term "usually" seems difficult to understand. Nonetheless, the AAPL Task Force recommends the use of specific questions and a systematic examination covering 15 areas of inquiry. Could each forensic psychiatrist or psychologist develop his or her own specific questions and systematic examination of competency? Although theoretically possible, an affirmative response would suggest marked optimism that does not take into account the need to establish the reliability and accuracy of their systematic examinations. A more sound approach would be the integration of clinical interviews with standardized measures. In fact, this approach is embraced by the AAPL Task Force in its summary statement about competency measures: "Instead, psychiatrists should interpret results of testing in light of all other data obtained from clinical interviews and collateral sources" (Ref. 37, p S43).

Evidence-based practice cannot be achieved without standardization. For assessments, the use of reliable and valid measures is the most direct and empirically defensible method of achieving this standardization. The remainder of this article assumes that practitioners will integrate case-specific (clinical interview and collateral information) with nomothetic (standardized results) data. The standardized results, while only one component of competency evaluations, achieve four major objectives by systematizing the evaluation of key points, reducing the subjectivity in recording competency-related information, providing normative comparisons, and

demonstrating the inter-rater reliability of observations and findings. Despite these important contributions to competency assessments, the caution of the AAPL Task Force is well founded; conclusions should not be based only on this source but should reflect a careful integration of multiple sources of data.

## Overview of Competency Measures

The first-generation of competency measures was introduced in the 1970s. Of mostly historical interest, first-generation measures have limited data on their psychometric properties, a lack of normative data, and poor correspondence to the relevant legal standard.<sup>38</sup> Although reviews of these measures are readily available,<sup>39</sup> this article focuses more selectively on three published competency measures. Two measures are intended for general competency evaluations: the MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA)<sup>40</sup> and the ECST-R.<sup>30</sup> The third measure, the Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR),<sup>41</sup> concentrates on defendants with mental retardation. The purpose of these competency measures is to provide standardized data to assist practitioners in reaching empirically based conclusions about elements of competency to stand trial. As noted by one reviewer, it would be utterly naïve to attempt to equate any test or laboratory findings with an ultimate or penultimate legal opinion.

The following subsections provide a brief description of the measures and their development. They are followed by a more in-depth examination of competency measures as a form of evidence-based practice.

### MacCAT-CA Description

The MacCAT-CA was not originally developed as a measure of competency to stand trial. Instead, the original MacArthur research was intended to assess a much broader construct of decisional competence via a lengthy research measure, the MacArthur Structured Assessment of the Competencies of Criminal Defendants.<sup>42</sup> It was subsequently shortened and retrofitted for the evaluation of competency to stand trial.

The MacCAT-CA is composed of 22 items that are organized into three scales: understanding (8 items), reasoning (8 items), and appreciation (6 items). Probably because of its original development as a research measure, 16 of the 22 items do not

address the defendant's case. Rather, the MacCAT-CA asks the examinee to consider a hypothetical case about two men (Fred and Reggie) and their involvement in a serious, almost deadly, assault following an altercation while playing pool.

The MacCAT-CA has excellent normative data for 446 jail detainees, 249 of whom were receiving mental health services. They were compared with 283 incompetent defendants in a competence restoration program. These normative data were used for clinical interpretation of information from the jail detainees to establish three categories. Minimal or no impairment had assessed deficits that fell within 1 standard deviation (SD) of the presumably competent detainees. Mild impairment was designated as the narrow band of deficits falling between 1 and 1.5 SD. Clinically significant impairment was designated as deficits at and above 1.5 SD. Unfortunately, this approach was unsuccessful for the appreciation scale; the authors simply assigned cut scores to the three categories, based on their own hypotheses regarding delusional thinking.

### **ECST-R Description**

The ECST-R is composed of both competency and feigning scales. Its competency scales parallel the *Dusky* prongs: Consult With Counsel (CWC; six items), Factual Understanding of the Courtroom Proceedings (FAC; six items), and Rational Understanding of the Courtroom Proceedings (RAC; seven items). For feigning, the ECST-R uses Atypical Presentation (ATP) scales that are organized by content (i.e., ATP-Psychotic and ATP-Nonpsychotic) and purported impairment (i.e., ATP-Impairment). Most competency items are scored on five-point ratings: 0, not observed; 1, questionable clinical significance; 2, mild impairment unrelated to competency; 3, moderate impairment that will affect but not by itself impair competency; and 4, severe impairment that substantially impairs competency.

The ECST-R was developed specifically for the purpose of evaluating the *Dusky* prongs. The key components for each prong were assessed by five competency experts via prototypical analysis. Those components retained an average of 6.10 on a 7.00 rating scale of their representativeness. Individual items for the competency scales were developed and pilot tested. The feigning scales were developed by using two primary detection strategies: rare symptoms and symptom severity.

The ECST-R has excellent normative data based on 200 competency referrals and 128 jail detainees. In addition, data were available for comparison purposes for 71 feigners as classified by simulation research or results on the SIRS.<sup>29</sup> Cut scores were developed on the basis of linear T scores, which facilitates their interpretation. One limitation of the ECST-R is that its cut scores have not been validated for defendants with IQs of less than 60. Unlike the MacCAT-CA, which restricts its normative data to presumably competent participants, the ECST-R includes both competent and incompetent defendants in its normative group, thereby mirroring the entire population that it is intended to evaluate. This observation is a likely explanation for the differences in cut scores between the two measures. The ECST-R uses the following classification: 60 to 69 T, moderate impairment, usually associated with competent defendants; 70 to 79 T, severe impairment, which can reflect competent or incompetent defendants; 80 to 89 T, extreme impairment, usually associated with incompetent defendants; and 90 to 110 T, very extreme impairment, almost always associated with incompetent defendants.

### **CAST-MR Description**

The CAST-MR is composed of three competency scales: Basic Legal Concepts (25 multiple-choice questions), Skills to Assist Defense (15 multiple-choice questions), and Understanding Case Events (10 open-ended questions). Basic Legal Concepts is the one most closely aligned with *Dusky*'s factual understanding, whereas skills to assist defense uses hypothetical examples to evaluate the consult-with-counsel prong. Understanding case events asks for detailed recall (e.g., date and witnesses) of the alleged crime and the current criminal charges. Although not a perfect match, this last scale is most closely aligned with factual understanding.

The CAST-MR is an outgrowth of a doctoral dissertation. A small group of 10 professionals (lawyers, administrators, and forensic psychologists) rated the appropriateness of the CAST-MR content. On a five-point scale, the ratings were somewhat variable, with Skills to Assist in Defense reaching an average score of only 3.03 regarding the appropriateness of its content (Ref. 41, p 31).

The CAST-MR is administered as an interview, although examinees are given a copy of the items to facilitate comprehension. According to its authors,



the CAST-MR has a reading level of fourth grade or less, which was calculated by taking two samples, each less than 400 words, and subjecting them to reading estimates.

Descriptive but not normative data are presented from two studies of criminal defendants. A total of 128 criminal defendants compose the following groups: no mental retardation or mental disorder ( $n = 46$ ), mental retardation but no competency evaluation, ( $n = 24$ ), mental retardation and competent ( $n = 27$ ), and mental retardation and incompetent ( $n = 31$ ). The second validation study indicated a moderate agreement (71%) between cut scores and examiner judgment.

### Competency Measures and Evidence-Based Practices

With *Daubert* used as the conceptual framework, this section examines competency measures as evidence-based practice. We begin with an evaluation on the congruence between the competency measures and the *Dusky* standard. Next, we examine these measures in light of error and classification rates.

#### Relevance of Competency Measures

The Supreme Court held in *Daubert* that expert testimony must be relevant to the matter at hand. Citing Federal Rule of Evidence 702, it "requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility" (Ref. 9, p 592). It describes relevance as a matter of "fit"; scientific validity is not sufficient unless it fits the specific matter under consideration by the trial court. For competency determinations, the Supreme Court in *Dusky* established the three prongs for which the "fit" or congruence of scientific evidence must be considered.

Specific factual aspects of cases must also be considered. For example, the three competency measures differ in the extent to which they have been evaluated for pretrial defendants with mental retardation. For scientific validity to be relevant, it must be "sufficiently tied to the facts of the case" (Ref. 9, p 591). Therefore, the following analysis examines the construct validity of competency measures in light of their specific applications to defendant categories.

Table 1 provides a summary of the specific scales on competency measures with descriptive data regarding their type of inquiry and the complexity of

their questions. Inquiries can be either case-specific (i.e., the content focuses on the defendant's case) or hypothetical (i.e., the content is unrelated to the defendant's case). Obviously, case-specific data are likely to meet the *Daubert* guideline of being "sufficiently tied to the facts of the case." In contrast, hypothetical data must be examined closely to determine its relevance or fit to a particular defendant's case. For instance, what would be the similarities in MacCAT-CA's aggravated assault between friends and delusionally motivated crimes?

With respect to relevance and fit, three competency measures have the most in common in their assessment of *Dusky*'s factual understanding of the courtroom proceedings. Each evaluates the defendant's understanding of the courtroom personnel and their respective roles at trial. The CAST-MR provides the broadest appraisal of factual understanding with inquiries about common legal terms and basic information regarding verdicts and sentencing. The CAST-MR also has a specific scale for considering the defendant's memory of the offense and subsequent arrest. Recall of these events is likely to be helpful in competency cases in which amnesia plays a central role. The MacCAT-CA also assesses courtroom personnel and then uses a hypothetical case to evaluate criminal charges related to assault and matters such as plea bargaining. Although considered to be factual understanding,<sup>40</sup> this scale also requires rational abilities in deciding on the alternatives. Neither the CAST-MR nor MacCAT-CA assesses defendants' knowledge of their own criminal charges and the severity of these charges. The ECST-R focuses on both courtroom proceedings and defendants' understanding of their own criminal charges.

Forensic practitioners should decide which is most relevant to a particular competency evaluation. As a simple reminder, the CAST-MR has been validated only in defendants with mental retardation; it should not be used for mentally disordered defendants, with or without mental retardation. One strength of the ECST-R is that it both prompts and educates defendants with insufficient responses on factual understanding.

The competency measures are markedly divergent in their assessment of *Dusky*'s consult-with-counsel prong. The MacCAT-CA uses a hypothetical assault to evaluate the defendant's ability to distinguish relevant and irrelevant information and consider

**Table 1** Description and Congruence ("Fit") between *Dusky's* Prongs and Selected Competency Measures

Measure	Scale (n)	Type	M Length	<i>Dusky</i> Prong	Representative Content
MacCAT-CA	Understanding (8)	Hypoth	45.3	Factual understanding	Roles of courtroom personnel; understanding different criminal charges related to assault; understanding convictions and plea bargaining
	Reasoning (8)	Hypoth	39.9	Consult counsel	Distinguishing helpful from unhelpful information to provide to counsel; understanding mitigating factors (e.g., provocation and intoxication); making decisions about plea bargaining
	Appreciation (6)	Case	22.7	Rational understanding	Beliefs about outcome (likelihood of conviction and punishment); perception of lawyer (helpfulness and trust with all information); beliefs about the legal system (fairness and viability of plea bargaining)
ECST-R	FAC: factual	Case	7.2	Rational understanding	Roles of courtroom personnel; understanding the criminal charges
	CWC: counsel	Case	7.7	Consult counsel	Perceptions and expectations of counsel; identifying and resolving disagreements with counsel; impaired communication with counsel
	RAC: rational	Case	8.1		Decision-making about trial; appraisal of different outcomes; problematic courtroom experiences
CAST-MR	Legal concepts (25)	Case	20.3	Factual understanding	The duties of legal professionals in court; common legal terms; specific terms related to sentencing
	Understand case (10)	Case	7.4	Factual understanding	Recall of the crime; recall of the arrest; description of criminal charges
	Assist defense (15)	Both	46.9	Consult counsel	Cooperation with the lawyer; doing what others (e.g. police, inmates, or prosecutors) ask; response to persons (prosecutor or witness) telling lies about the defendant)

M length is the average number of words addressed to the defendant before he is asked to respond; some items include a statement followed by an inquiry. Case is the specific queries about the defendant's case; Hypoth is hypothetical queries unrelated to the defendant; and Both is a combination of case-specific and hypothetical queries.

choices related to matters such as plea bargaining. Therefore, it assesses rational abilities but does not consider the actual defendant-attorney relationship or the ability to communicate rationally. We have found the MacCAT-CA especially useful in competency cases in which the defendant has expressed an interest in serving as his or her own attorney. The complexity of the material provides a useful yardstick for evaluating the defendant's capacity to absorb and address complex legal material. The CAST-MR uses some hypothetical material (e.g., a theft) but mostly relies on material in the defendant's case. It emphasizes the ability of the defendant to cooperate with his counsel, while not acquiescing to others (e.g., police or prosecutors). Although it does not assess the quality of the defendant-attorney relationship directly, it can provide valuable information about the defen-

dant's willingness to cooperate. The ECST-R focuses on the nature of the defendant-attorney relationship; through open-ended questions, it examines the quality of that relationship and the defendant's ability to identify and resolve disagreements in relationship to the trial.

For the rational-understanding prong, both the MacCAT-CA and the ECST-R elicit information about the likely outcome of the case. They differ in that the ECST-R examines how severe psychopathology may affect the defendant's rational abilities. The MacCAT-CA also includes several items about defendants' views and actions toward their attorneys. This information may help with the consult-with-counsel prong. The ECST-R also asks defendants to consider how they might make important decisions about their cases, such as plea bargaining. The focus

**Table 2** Reliabilities and Error Rates of the Three Competency Measures

Estimate	Description	Scales	Competency Measure		
			CAST-MR	McCAT-CA	ECST-R
Reliability	Inter-rater reliability establishes the reproducibility of scores when evaluated by two or more experts at the same time; lower estimates equal larger errors.	Competency Feigning	0.90* NA	0.83 NA	0.93 0.996
SEM	Standard error of measurement (SEM) measures the likely variability in the accurate measurement of a single score; larger scores equal greater errors.	Competency Feigning	1.15† NA	1.28 NA	1.28 0.18
95% CI	95% Confidence interval establishes the range of scores possible for a single score that is likely to occur most of the time (i.e., 95 of 100 times); larger scores equal greater errors.	Competency Feigning	2.25 NA	2.51 NA	2.51 0.35

\*Inter-rater reliabilities were reported only as percentages; this correlation represents test-retest reliability for nondelinquent cases.

†Based on unweighted scale averages ( $M = 10.14$ ,  $SD = 3.63$ ) for four small subsamples of competency cases ( $n = 58$ ).

of the ECST-R inquiries is not on the decision itself but rather on the reasoning underlying the decision.

The foregoing discussion focused on the congruence between competency measures and the *Dusky* standard. Beyond this critically important discussion, the relevance of a measure must also consider its appropriateness for the intended population (i.e., impaired defendants). For example, does the length and complexity of competency questions substantially exceed the defendant's ability to process this information? For normal (unimpaired) persons, the capacity to process information is generally limited to the magic number of  $7 \pm 2$  concepts.<sup>43</sup> For language, individuals use verbal chunking consisting of 6 to 12 syllables per concept.<sup>44</sup> Using the McCAT-CA as a benchmark with 1.34 syllables per word, the midpoint for unimpaired persons would be:  $7 \text{ concepts} \times 9 \text{ syllables} \div 1.34 \text{ syllables per word} = 47.01 \text{ words}$ . The lower limit for unimpaired persons is 22.38 words. Defendants with serious mental disorders or mental retardation are likely to have substantial deficits in capacity to process information. In the absence of specific data, one option would be to use the lower limit for normal persons (i.e.,  $\leq 22$  words) as the upper limit for competency measures used with potentially impaired defendants. As summarized in Table 1, two scales of the CAST-MR appear to meet this guideline, with understanding case events being particularly straightforward. In contrast, questions for the assist defense scale include preliminary information that increases the average length to 46.9 words. Likewise, two McCAT-CA scales are also problematic because of their word length: understanding (mean [ $M$ ] = 45.31

words) and reasoning ( $M = 39.88$  words). In direct contrast, the ECST-R took into account word length in the development of its items. As a result, the presented material is typically very short (i.e., fewer than 10 words) on the ECST-R competency scales.

### Error Rates and Competency Measures

A major strength of the three competency measures is the excellent data on their reliability and errors in measurement. As summarized in Table 2, trained practitioners are able to achieve a high level of inter-rater reliability on each measure, with exceptional estimates for the CAST-MR ( $r = 0.90$ ) and ECST-R ( $r = 0.93$  and  $0.996$ ). Because the reliability of traditional interviews cannot be established, the use of these competency measures addresses the scientific reliability of expert evidence.

The *Daubert* guidelines ask that experts address the error rates associated with their methods. One sound approach to ascertaining error rates is to estimate the accuracy of individual scores on competency measures. Calculated as the standard error of measurement (SEM), each competency measure produces small SEMs, indicating a high level of accuracy (Table 2). Especially useful for court reports and subsequent testimony is the 95 percent confidence interval. When an elevated score exceeds the benchmark by the confidence interval, the practitioner can testify regarding a very high likelihood that the defendant meets this classification. As reported in Table 2, expert ratings of defendants that exceed the cut scores by three or more points have at least a 95 percent likelihood of

being accurate. Stated in *Daubert* terms, the error rate is five percent or smaller.

An important consideration in establishing error rates is whether bogus (e.g., malingered) presentations will be mistaken for genuine incompetency. In this regard, the ECST-R is distinguished from the other two competency measures by its highly reliable scales that screen for feigned incompetency. As noted in Table 2, the ECST-R feigning scales have very high reliabilities ( $M = 0.996$ ) and exceptionally small 95 percent confidence levels ( $M = 0.35$ ).

### Classifications by Competency Measures

As an outgrowth of the previous section, practitioners must not only consider the relevance of the psycholegal constructs but also the meaning of its classifications. Simply put, how are these classifications established and what is their relevance to the *Dusky* standard? Melton and his colleagues were the first to raise the concern of whether competency measures “appear to permit gross incongruencies between item ratings and scale interpretations” (Ref. 32, p 154). Of interest, that criticism was leveled specifically at the ECST-R rather than being evaluated critically for competency measures in general. We will consider the scale classifications (interpretations) in the subsequent paragraphs.

The CAST-MR test manual provides little guidance for making classification of competent and incompetent defendants with mental retardation. While cautioning that the CAST-MR is only one part of the competence assessment, we note that the mean total score for the defendants with mental retardation was 25.6 for incompetence versus 37.0 for competence. Because of small sample sizes and large variability, they provide the following caution: “only a gross estimate can be made of the degree to which CAST-MR total scores discriminate between groups found to be competent versus those found to be incompetent” (Ref. 41, p 19). In addition, the lack of information about specific prongs is a limiting factor about the CAST-MR classifications.

The MacCAT-CA has the most problems of competency measures in establishing accurate classifications. Obviously, the group of hospitalized legally incompetent defendants should theoretically evidence clinically significant impairment, given their combined psychiatric and legal status. The figures reveal that this is not supported, revealing a flaw in the test. This is not the case for most defendants who

are actually incompetent and hospitalized (see Ref 40, Tables 4–6): the understanding scale: 33.2 percent clinically significant impairment, 15.9 percent mild impairment, and 50.9 percent minimal or no impairment; the reasoning scale: 41.3 percent clinically significant impairment, 13.8 percent mild impairment, and 44.9 percent minimal or no impairment; and the appreciation scale: 44.5 percent clinically significant impairment, 9.2 percent mild impairment, and 39.2 percent minimal or no impairment.

Although classifications based on the ECST-R evidence a high concordance with legal outcome (88.9%), classifications by ECST-R scales are based on construct validity and the use of normative data. The ECST-R manual provides extensive data on the accuracy of its measurements. What about the “gross incongruencies” criticism of the ECST-R of Melton and his colleagues<sup>32</sup>? They seem to stem mostly from apparent confusion over the meaning of an ECST-R rating of 3. As previously noted, a rating of 4 shows substantially impaired competency by itself, whereas a rating of 3 shows deficient competency but does not, by itself, show substantially impaired competency. However, the cumulative effects of a 3 rating can indicate substantially impaired competency. Indirectly, the Melton *et al.* commentary did raise a valid question as to whether consistent ratings of 2 (i.e., mild impairment but unrelated to competency) could result in classification as having severe impairment on the ECST-R competency scales. For two scales (FAC and RAC), such ratings would show only moderate impairment, which is typically associated with competent defendants. For the third scale (CWC), it is theoretically possible to score in the severe range based only on ratings of 2. In reviewing the ECST-R normative data, we did not find a single case of any of the competency scales where this occurred. Despite its extreme rarity (i.e., 0 for 356 defendants), practitioners may want to consider quickly screening ECST-R protocols for this remote possibility.

### Concluding Remarks

Forensic practitioners should supplement the previous analysis with careful reviews from other researchers and scholars. Grisso<sup>39</sup> provides a thorough review of the CAST-MR and the MacCAT-CA. Although the newest measure, the ECST-R is the only one of these competency measures to be reviewed by

the well-respected Mental Measurements Yearbook.<sup>45,46</sup> By combining these sources, practitioners will become knowledgeable regarding the strengths and limitations of competency measures.

Our informal observations suggest that forensic psychiatrists and psychologists are divided with respect to their use of competency measures. However, the historical divisions between psychiatry and psychology on the use of standardized assessments are gradually disappearing. As evidence of their growing importance, an American Psychiatric Association Task Force undertook a multiyear analysis of psychiatric measures resulting in a comprehensive textbook.<sup>47</sup> Beyond these general trends, specific contributions to competency measures have been multidisciplinary from the early efforts in the 1970s. If not based on disciplines, what accounts for this polarization? We believe that failures of both researchers and practitioners are to blame.

Researchers sometimes overestimate the ability of their standardized measures to evaluate complex clinical constructs. For instance, interview-based competency measures are typically composed of several dozen relevant constructs that are operationally defined. Even with exceptional care, these items can never fully capture the defendant's functioning with respect to the spectrum of competency-related abilities. For example, standardized observations of attorney-client interactions would be valuable. However, efforts in this direction have not been successful. As noted by Melton and his colleagues, "most attorneys have neither the time nor the inclination to observe, much less participate in, competency-to-stand-trial evaluations" (Ref. 32, p 148). Beyond complex content, we suspect there is some professional arrogance arising from the use of sophisticated research designs and psychometric rigor. The "patricidal tendency" of researchers to diminish the contributions of seasoned practitioners may play a relevant role.

Practitioners sometimes exaggerate the limitations of standardized measures while possibly overvaluing their own expertise. Some resistance is encountered from the either-or fallacy wherein practitioners erroneously assume that they must choose between their own individualized methods and psychometrically validated measures. As found by Aarons *et al.*,<sup>7,8</sup> we suspect there is some professional arrogance arising from views that practitioners are superior to researchers and their standardized methods.

Gutheil and Bursztajn<sup>48</sup> wisely counsel that forensic practitioners avoid even the appearance of "ipse dixitism" with respect to unsubstantiated opinions. Substantiation should embrace an array of relevant sources by knowledgeable experts. As part of this substantiation, reliable and standardized information from competency measures should not be routinely ignored by forensic practitioners. We must tackle directly the professional objections to evidence-based practice. Borrowing from Slade *et al.*,<sup>6</sup> are these measures useful, nonduplicative, and time-efficient? With professional experience and expertise, practitioners can make informed decisions in selecting the appropriate competency measure to evaluate specific competency-related situations.

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# Exhibit 59

# Exhibit 59

Siaosi Vanisi  
Case No. CR98-0516  
June 9, 1999 and June 15, 1999

Sanity Evaluation  
Nevada State Prison  
Carson City, Nevada

#### REASON FOR EVALUATION:

To determine whether or not the defendant is of sufficient mentality to be able to understand the nature of the criminal charge against him and to determine if he is of sufficient mentality to aid and assist counsel in his defense.

#### SOURCES OF INFORMATION:

Interview with the defendant on 6/9/99.

Interview with Sergeant William Stanley, Officer of the Day on 6/9/99.

Interview Senior Officer, Michael Proffer on 6/9/99.

Review of Nevada State Prison medical records on 6/9/99.

Telephone interview with Ronald Centric, D.O., on 6/14/99.

Interview with Steve Moonin, R.N., charge nurse in the Nevada State Prison infirmary on 6/15/99.

Review of Nevada State Prison mental health records on 6/15/99.

Interview with Mary O'Hare, psychiatric nurse on 6/15/99.

#### CONDUCT OF INTERVIEW:

I was escorted to a secured room where I met the defendant, Siaosi Vanisi, who was both in leg shackles and wrist bracelets. He stood at the side of the room as I entered and at my request sat at a bench opposite me. He offered me minimal eye contact, stared at the wall, and made no vocal utterances. I introduced myself to the defendant and advised him that our dialogue would not be confidential and would be shared with the prosecution, the defense, and the court. He declined to comment. When I asked him if he would be willing to speak with me, he declined to comment. When I advised him further that if he did not speak with me, I would be compelled to take information from other sources, he still refused to comment. Throughout this time, the defendant sat with hands clasped either staring at the floor or the wall and specifically avoiding my gaze.

He did not appear to be responding to any distracting auditory or visual stimuli. He made no unusual grimaces. There was neither evidence of choreiform or athetoid movements nor was there evidence of unusual muscle discharge. After several minutes of observing Mr. Vanisi, I left the interview room.

I next interviewed Sergeant William Stanley, the Officer of the Day at the prison at the time of my visit. Sergeant Stanley reported to me that the defendant had previously tried to dig out of his prison cell. He described an episode two weeks previously wherein the defendant attempted to close off visual access of his cell from the guards. When requested to remove the barriers, the defendant declined. After several warnings he was taken down by six officers, and the barriers



were removed. He then remarked to the officers, to paraphrase Sergeant Stanley, "You didn't have to do that. I would have taken them down." He questioned Sergeant Stanley about the whereabouts of other prison guards with whom he was more familiar. Sergeant Stanley also stated that in the moments prior to the defendant's interview with me he had a full and free conversation with one of the officers escorting him to the interview room. He discussed at that time a mutual acquaintance who had apparently played football with the escorting officer.

An interview with the senior officer, Michael Proffer disclosed the following. Several months ago while Officer Proffer was serving on the graveyard shift, the defendant was asking for medications and "acting crazy." According to Officer Proffer, he asked the defendant, "If you quit acting crazy, I'll give you what you want." The defendant then commented, "I can do that" and acted appropriately.

In my effort to obtain further information, I solicited a court order for the medical and mental health records of the defendant. Unfortunately, the court order was not sufficiently detailed to meet the requirements of the prison infirmary staff. I did meet with Donna Calhoun, Medical Records Coordinator I, who provided me medical records. The following encounters were reviewed:

- 5/8/99 "I am in good health, and I take some medications." According to the file, the patient had med sheets for Elavil 50 milligrams q h.s., Risperdal 0.5 milligrams increasing to 1 milligram.
- 5/11/99 The defendant stated, "I will kill myself if I don't get a TV."
- 5/27/99 Multiple complaints in particular a shoulder dislocation. Impression: factitious complaints.
- 5/31/99 "My laceration is infected." At the end of the evaluation, the defendant requested candy for examination of his arm from the nurse.

Physician orders include an order on 5/17/99 discontinuing psychiatric medications. A physical examination indicated scars on the wrist, thigh, and elbow, and that the defendant's tonsils were out. In the initial evaluation, the defendant denied ever attempting suicide or having any suicidal plans.

Regarding drug use, the defendant acknowledged using marijuana and methamphetamine infrequently.

Under family history, he acknowledged that his mother had diabetes mellitus and that she was on dialysis. On personal history, he acknowledged having a history of elevated blood sugar or diabetes.

There were a series of notes on 5/10/99. These include: "When I indicated medication in powder form, I was being facetious. I will acquiesce to whatever. . . Thank you."

On 5/11/99, the defendant submits, "I think I'm going to kill myself, cause I have no TV." Then something . . . "I kick you in the balls if I don't get a TV. Don't make me kill myself."

On 5/13/99, "If you listen to me, I can show you how to help me combat my hyperhidrosis problem. Please respond and return copy." "Mary, I want a special dict. Who do I talk to. Lunch can sure use the assistant (sic) of the hamburger helper. Please respond and return copy."

On 5/12/99, "My eyes have failed me at a young age. Will you please give me an eye exam and an ear exam. I need a hearing aid."

On 5/19/99, "Carol Viegner. If she is still around, please inform me on how to acquire reading glasses. Please respond and return copy."

On 5/19/99, "Please take me seriously. If you listen to me, I can show you how to help me combat my hyperhidrosis problem. Respond and return copy."

On 5/24/99, "Stephen, after you released me the CO hurt me badly. I have a knot that is the size of a doorknob under my chin. They dislocated my shoulder. Please help me treat the pain. Thank you. Return copy. Please also I have diarrhea."

On 5/30/99, "My laceration is infected. Will you please provide me with some first aid treatment. Thank you. Return copy for my records."

On 6/2/99, "Dr. Stephen: the CO's added more scars to my body on 6/1/99. Remind them that I am made out of the same molecular structure as they are made out of. Please advise on how to treat my laceration before it becomes infected. Please respond and return copy."

#### REVIEW OF MENTAL HEALTH RECORDS ON 6/15/99:

I reviewed the records from the Nevada State Prison, Washoe County Detention Facility, and interviewed psychiatric nurse, Mary O'Hare. The product of those reviews have been abstracted below.

#### INTERVIEW WITH MARY O'HARE:

In an interview with Mary O'Hare, psych nurse, on 6/14/99, Ms. O'Hare stated that Mr. Vanisi was first considered possibly bipolar disorder and was tried on antipsychotic and mood stabilizing agents, e.g., Depakote and Risperdal. However, he took the medications inconsistently and attempted to check the medicines and later distort them. Dr. Centric recommended that medications be discontinued.

**COMMENTS OF W. MACE KNAPP, PH.D.:**

The first document reviewed was a printed assessment from W. Mace Knapp, Ph.D., performed on 6/6/99. According to Dr. Knapp, Mr. Vanisi was placed in segregation because of "safe keeper from Washoe County Jail pending murder trial."

History of mental illness: none reported. Alcohol and drug use history: polydrug use.

Mental status exam. Appearance: bizarre. Mood and affect manic. Sensorium: no comment. Cognitive test normal. Intelligence normal. Thought processes speeded, pressured, jumps around. Thought content paranoid. Normal range for prisoner. Comments regarding appearance: still had mask on forehead. Only one marked tattoo. Tee shirt was modified to shoulder ties and symbol with hole. Facial expression: expressive. Anxiety, fear, agitation, depression, and sadness, anger, and hostility were checked as slight. Clothing was checked as unusual and bizarre. There were slight unusual physical characteristics. Abnormal body movements and amplitude and quality of speech were considered normal.

Continuing on with the mental status exam by Dr. Knapp, "No attempt to fake mental illness. Wanted to please me in order to talk more. States that he only has visual hallucinations when smoking marijuana like others do on acid."

Intellectual functioning: excellent. He remembers names easily. Orientation: perfect. Insight: interested in what psychologists analyze about him. Judgment: sings loudly. Twice got naked outside grounds. Memory: excellent. Stream of thought flow: increased.

Assessment of suicidal/homicidal ideation: none today. Serious mental illness but not psychotic.

Present problem: mania and serious behavioral misconduct. Criminal history pending trial for murder of UNR police officer.

Additional comments: Mr. Vanisi does not believe that he is mentally ill, but he is smart and motivated. Therefore, he is attempting to manipulate us into believing he is psychotic with a short-term goal of avoiding responsibility for recent misbehavior (digging under a fence, setting fires, refusing direct orders, etc.). This will produce a future forensic problem: Mr. Vanisi is motivated to avoid a death sentence and is smart and manipulative. I am required by ethics to educate him regarding his mental illness. This results in his increased ability to fake and exaggerate symptoms. For example, he tried to tell me today that his "manic depression" makes him unaware (equals not responsible) of what he is doing. I told him he was not telling me the truth and explained that bipolar disorder could result in a decreased ability to make rational reasonable decisions to control his impulses. He understood the difference immediately and applied it. Diagnostic impression: Axis 1: Bipolar disorder, manic severe, without psychosis, 296.43. Axis 2: Psychopathic deviation.

On May 17, 1999, all psychiatric medications were discontinued.

**REVIEW OF NEVADA STATE PRISON NOTES:**

In the Nevada State Prison notes on 5/17/99, "inmate reported to have snorted meds. Dr. Centric notified and med discontinued. Inmate seen . . . He denied snorting meds and asked to be placed back on meds. He was told that Ryder would check on him Friday. He remembered Friday's conversation. He spoke of various subjects but was appropriate and knowledgeable."

On June 6, 1999, a printed note by Dr. Knapp. "Mr Vanisi made numerous complaints about his treatment at NSP and also made numerous far fetched excuses for his misbehavior. He is agreeable to a behavioral contract like we had the first time he was at NSP. He appears to be ending the manic phase of his bipolar cycle. My impression in (sic) that he stays in a manic stage for about six weeks then to normal range mood for four to eight weeks and then to a depressive state for an unknown present length of time. We agreed that if he does not seriously misbehave (set fire, refuse direct orders), he will be issued a State TV and radio. Taking lithium is a requirement to get yard time returned. (No commitment was agreed to.) W. Mace Knapp, Ph.D. 6/6/99"

On 6/11/99, "Made reasonable request regarding TV cable. (Gave him one today.) Canteen restriction (I can't do anything about that punishment) and yard access. He has complied so far without behavioral contract and has not been a problem this week. Mr. Vanisi has sent a kite to Dr. Centric for a lithium evaluation pursuant to my recommendation. Assessment: he is calm and rational today. The remission normal phase in a cycle in mood. Plan: I will keep reinforcing his positive behavior with whatever incentives the prison permits. W. Mace Knapp, Ph.D."

On 6/13/99, "I recommend that Mr. Vanisi be seen immediately for a medication evaluation. He is willing finally to take a lithium-type medication, and he has been a danger to himself (shot for digging) and others assault. W. Mace Knapp, Ph.D."

**REVIEW OF CONSULTATION BY OLE THEINHAUS, M. D., PERFORMED AT WASHOE COUNTY DETENTION CENTER:**

On 9/30/98, a psychiatric consultation was performed by Ole Theinhaus, M.D. at the Washoe County Detention Center. Dr. Theinhaus reported that the inmate complained of mood swings and described highs and lows. Low episodes last several weeks to a month. He feels like not doing much of anything just riding out the wave. The highs are marked by inability to sleep, increased level of self-confidence, and thought racing. He is not sure but thinks he might have some extra normal powers like ESP at these times. He says such mood swings have been part of his life "all my life." He denies drug use but describes binge drinking especially during times of depression. On mental status, he is alert, cooperative, and appears oriented. There is no evidence of cognitive function. No auditory hallucinations. No auditory blank. Remaining progress not available. However, the presumed follow-up note stated . . . "stiltedness of his verbal discourse. Recommend stay off Depakote. Try 25 milligrams of Elavil h.s." An MAR report indicates that Depakote was administered in dosages of 500 milligrams in the morning, 1000 milligrams in the evening supplemented with Elavil 25 milligrams h.s. The Depakote was discontinued as of October 23, 1998.

**FURTHER REVIEW OF WASHOE COUNTY DETENTION CENTER FILE:**

There are several requests drafted 12/1/98, 12/7/98, 12/13/98, and 2/20/98 all requesting psychiatric medication.

**TELEPHONE INTERVIEW WITH RONALD CENTRIC, D.O., 6/14/99:**

In a telephone interview with Dr. Ronald Centric, he stated that he was never asked to do a full psychiatric assessment. However, in his contact with Mr. Vanisi, he never saw him as responding to extraneous stimuli. He volunteered that Mr. Vanisi was able to recall both his name and the name of the resident that had seen him six months previously. Dr. Centric reports that Mr. Vanisi was pleasant, oriented, and disclosed no homicidal or suicidal ideation at the time of his contact with him. Dr. Centric offered no psychiatric diagnosis coincident to his contact. He does recall that Dr. Theinhaus had placed Mr. Vanisi on 0.5 milligrams of Risperdal nightly, but Vanisi discontinued medications on his own.

**FORMULATION:**

The defendant was mute during my examination. However, at no time during the examination did he appear to be responding to distracting stimuli in the form of auditory or visual hallucinations. He was able to respond to my requests to sit down, indicating his ability to follow first order commands. His conversation with the guards would reflect a person who was oriented and one who had reasonable recent and remote memory. His ability to switch from the presumed psychotic to the rational state as reported by Officer Proffer and the dramatic change in his behavior from the time he was being escorted to the interview time until the time I saw him would reflect more of a volitional than an involuntary process. In addition, he has written a number of complaints to the clinical staff several of which seem to be apparent efforts to seek special privileges, e.g., a television set or candy for cooperation. In addition, his written requests are offered in a coherent fashion and are not consistent with anybody dealing with a thought process disorder. At no time do his written forms indicate a desire to kill himself, and he was able to respond to written questionnaires in a rational fashion. The striking contrast between his interview behavior with me and the observations of the two officers whom I interviewed plus the evidence of his medical file would strongly suggest willful manipulation.

All of the above is consistent with the pattern of malingering: *an intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as avoiding military duty, avoiding work, obtaining financial compensation, evading criminal prosecution, or obtaining drugs. Malingering should be strongly suspected if any combination of the following is noted:*

*"Medical legal context presentation, marked discrepancy between the person's claim, stress, or disability and the objective findings, lack of cooperation during the diagnostic evaluation and complying with the prescribed treatment regimen, the presence of antisocial personality disorder."*

The inmate has demonstrated a pattern of unstable moods and bizarre behavior. However, the pattern has a manipulative quality to it. Note the dramatic change in his behavior when with the guards and with me at my visit on 6/9/99. In addition his med seeking seems to be a reflection of an effort to get high rather than to pursue a therapeutic end. Although the inmate may have elements of bipolarity, his behavior appears to be largely willful and under volitional control.

**DIAGNOSES:**

- Axis 1: Malingering V65.2.  
Rule out bipolar disorder, NOS, 296.70.  
Polysubstance abuse by history.
- Axis 2: Presumed antisocial personality disorder, 301.70.
- Axis 3: Self-report of elevated blood sugar.
- Axis 4: Stressors: confronting incarceration.
- Axis 5: ?

**OPINION REGARDING COMPETENCY:**

*Although because of the defendant's lack of cooperation I was unable to specifically question him regarding his ability to understand the legal process, I can find no evidence of the defendant's incompetence based on the documents reviewed. As reflected in the defendant's written and reported oral communication and in numerous documented mental status examinations, he apparently has sufficient intelligence to grasp the significance of his situation, the charges, and the need to cooperate with counsel. From a psychiatric perspective, the defendant shows no positive indications of psychosis and shows multiple indications of malingering. On the basis of the above, I am of the opinion that the defendant is of sufficient mentality to be able to understand the nature of the criminal charge against him and is able to aid and to assist counsel.*



Thomas E. Bittker, M. D.

/jb

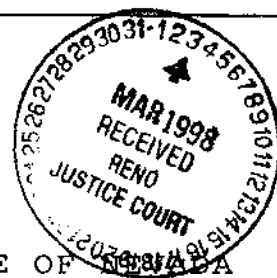
# Exhibit 60

# Exhibit 60

Department No. 2

CR 98-0516

'98 MAR -4 P3:20



IN THE JUSTICE'S COURT OF THE STATE OF NEVADA  
BY Bertram DEPUTY  
IN AND FOR THE COUNTY OF WASHOE

HONORABLE EDWARD DANNAN, JUSTICE OF THE PEACE

- - o o o - -

STATE OF NEVADA,

Plaintiff,

vs.

SIAOSI VANISI.

Defendant.

## PRELIMINARY EXAMINATION

February 20, 1998

Reno, Nevada

# ORIGINAL

APPEARANCES:

For the Plaintiff:

RICHARD GAMMICK  
Washoe County District Attorney  
DAVID STANTON  
Deputy District Attorney  
Washoe County Courthouse  
Reno, Nevada

For the Defendant:

MICHAEL SPECCHIO  
Washoe County Public Defender  
WALTER FEY  
Deputy Public Defender  
One S. Sierra Street  
Reno, Nevada

Reported by:

Lynda Clark, CCR #73

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AA02120

2JDC03555



## I N D E X

## STATE'S WITNESSES

DR

CR

REDR

RECR

VOIR  
DIRE

David K.

By Mr. Stanton

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By Mr. Fey

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Vainga K.

By Mr. Stanton

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Louis Hill

By Mr. Gammick

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Keith Stephens

By Mr. Stanton

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By Mr. Fey

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Sateki Taukiuvea

By Mr. Stanton

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Maria Louis

By Mr. Stanton

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Priscilla Endemann

By Mr. Stanton

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By Mr. Fey

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Namoia Tupou

By Mr. Stanton

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By Mr. Fey

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By Mr. Specchio

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Shamari Roberts

By Mr. Stanton

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By Mr. Specchio

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Carl Smith

By Mr. Gammick

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By Mr. Specchio

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Ellen Clark, M.D.

By Mr. Gammick

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