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1 notice seeking death penalty filed in this case. It was just
2 not filed under the time constraints of the new 250, but it is
3 on file and active at this time and we intend to pursue that.
4 I'm not sure --

5 THE COURT: But does that notice fulfill the
6 requirements of the new 250? The new 250 death aggravating
7 circumstance notice is more involved than the old Rule 250.

8 MR. GAMMICK: I believe our notice will meet that.
9 The other requirement that I know we have not met to date is
10 the one that requires a filing with the Court I believe five
11 days prior to trial laying out the witnesses and what the
12 evidence will be presented at a penalty phase.

13 That we can comply with when it comes time in
14 August, but as far as I know, we're required to make some kind
15 of statement at time of initial appearance, which can't be done
16 now.

17 THE COURT: No later than 30 days after the filing
18 of the Information or the Indictment, the State must file in
19 the District Court a notice of intent to seek the death
20 penalty. The notice must allege all aggravating circumstances
21 which the State intends to prove, which that's no change, and
22 allege with specificity the facts on which the State will rely
23 to prove each aggravating circumstance.

24 MR. GAMMICK: Okay. We'll review that and insure
25 that we do comply.

1 THE COURT: And then there's the 15-day's notice
2 for the amended notice, and so what I'm thinking is if I find
3 that there's good cause -- specifically make a record now that
4 there's good cause for you not to have met that 30-day, but as
5 of January 30th you're on notice that you must comply.

6 So the late notice provision which allows you 15
7 days to amend your notice of intent to seek death penalty
8 should be complied with in the new Rule 250.

9 MR. GAMMICK: Okay. We will do that, your Honor.

10 THE COURT: And then that was my concern, because
11 it's a little different. The notice requirement does appear to
12 be different than the original Rule 250, so just go ahead and
13 review that, but you have as though you were filing your
14 indictment as of January 30th to fulfill the dates.

15 MR. GAMMICK: I understand now.

16 THE COURT: Okay. And does that make sense to you,
17 Mr. Specchio?

18 MR. SPECCHIO: Your Honor, you're relying on the
19 language that says any case pending on January 30th -- or
20 actually, 30 days from December 30th?

21 THE COURT: Right.

22 MR. SPECCHIO: Because I think an argument could be
23 made that this case doesn't fall under the new rule, not that I
24 have any objection to doing it, but either way, we're fine with
25 what you just advised Mr. Gammick.

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1 I think an argument could be made that this case is
2 really an extension of the trial that began and stopped prior
3 to January 30th, but I'm not a legal scholar in that area, but
4 that's a possibility. But to answer the Court's question, I
5 don't have any problem with it, Judge.

6 THE COURT: Okay. The new rule in its application
7 does indicate that it applies to all new or pending cases,
8 including -- it says, provisions of this rule apply to cases in
9 which the death penalty is or may be sought or has been
10 imposed, including proceedings that have already started.

11 So I think in the interests of being sure that
12 there is no issue later, we'll follow the rule and make sure we
13 abide by it.

14 MR. SPECCHIO: That's fine, your Honor.

15 THE COURT: One of the things that are not required
16 in the new rule is all the briefings, all those special
17 hearings, although the clerk and I did set some hearing dates
18 down because we thought that was productive previously anyway,
19 even though it's not mandated by the rule.

20 I don't know if she's had a chance to come up with
21 some dates. We set this out a couple of times. You ready?

22 Also, does counsel wish to continue with the jury
23 selection process the way we did it in this matter earlier?

24 MR. GAMMICK: Your Honor, I talked to Mr. Hatlestad
25 and we're doing some research to ensure that a proposal that I

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1 have for the Court would be entirely legal, but considering the
2 difficulties that we had managing that many people at one time,
3 what I was going to suggest to the Court -- again, we are
4 making sure that this is entirely legal -- would be to, if
5 we -- if the Court decides with counsel that we're going to
6 order 200 jurors or whatever the venire panel will be, to break
7 that up into smaller panels, for instance, 75 or 80 people per
8 panel, call the first panel in, put a second and a third and a
9 fourth or however many additional panels we need on an on-call
10 basis, and then the Court set that when we get down to where
11 there's ten left in the first panel, we call the second panel.

12 And then same thing with that panel, if we get down
13 that far, if there's ten left, then we call the third panel,
14 regardless of the number we set, 200, 300, whatever.

15 By doing that, we're not doing any kind of
16 alphabetizing or alphabetical breakdown. We're still doing
17 random panels that meet -- Mr. Hatlestad seemed to feel that
18 this would be an appropriate method, but he is going to
19 double-check just to make sure, and that way would be smaller,
20 more manageable panels.

21 And if we do get a jury fairly early on, then we
22 don't even have to call the rest of the people, and it would
23 sure make all the gyrations we went through to try to manage
24 that many people at one time a lot simpler, and I think it
25 would make the process go a lot quicker, too.

1 THE COURT: So you're thinking of only calling 75
2 in the original panel but have a backup panel of 75, at least
3 one backup panel of 75?

4 MR. GAMMICK: Well, 75, 80. I'm thinking about the
5 seating in the courtroom and having extra places for them to go
6 and actually comes down to calling the panel, that they can be
7 managed a lot easier, a lot quicker instead of taking a half
8 hour to get them in and out of the courtroom and call roll and
9 go through all the things that we did with 135 people.

10 THE COURT: Right.

11 MR. GAMMICK: Just looking at smaller groups, but
12 still call a total that should be sufficient to seat a jury in
13 this case, considering the amount of media and everything it
14 has had.

15 And when we go to trial again on this case, I'm
16 sure it will have a lot of media coverage again. This case has
17 a lot of public interest. There's not much we can do about
18 that.

19 MR. SPECCHIO: Judge, I don't have any problem with
20 that. I think it makes sense. This room is really built for
21 about 75 or 80 people.

22 What I think we should do, though, if you're going
23 to use the questionnaire, is to swear all 150 of them or
24 however many, and then tell this group they're coming in the
25 following Monday, and the next one that they're coming in a

1 Monday after that, or any time called by the Court.

2 They may be called and told they're excused, but --
3 and the purpose being that they should all be admonished at one
4 time before they're let loose on the public.

5 THE COURT: Right.

6 MR. SPECCHIO: That's the only problem I would
7 have.

8 THE COURT: So what we would do, we did break it
9 down into two panels for filling out the questionnaire.

10 MR. SPECCHIO: Right.

11 THE COURT: So we do the same thing, but instead of
12 telling both panels to come back Monday morning at 10:00 a.m.,
13 we tell one panel come back Monday morning at ten.

14 MR. SPECCHIO: And the other to be on standby.

15 THE COURT: And the other panel we'd hold on to.

16 MR. SPECCHIO: I think that would -- we would not
17 have any objection to that.

18 THE COURT: Okay. That would certainly make it
19 easier on the court staff.

20 MR. GAMMICK: Another issue was just brought up. I
21 would very much like to revisit that questionnaire as to
22 whether or not the Court's going to use it, what subjects we're
23 going to cover, and whether or not those same questions will be
24 asked again. I think that caused a lot more grief than it
25 really shed light on.

1 THE COURT: Actually, I liked it, Mr. Gammick. It
2 helped me a lot.

3 MR. GAMMICK: I understand, your Honor, and I
4 understand the Court's preference for using them, but I would
5 like to revisit as to on what we're going to ask and how we're
6 going to ask it this time. We have more experience now with
7 this one.

8 THE COURT: Okay. Well, I think that's something
9 that can be raised in our pretrial motion hearing. The clerk
10 and I have set as -- we have a date that we're going to give
11 you for all pretrial motions to be filed. Then you all respond
12 to it in the regular course. Then we have a date set for
13 hearing on those motions.

14 And again, there's not really a necessity for me to
15 rerule on everything, but those things you'd like me to
16 reconsider based upon your experience so far in the case or any
17 new issues that the defense finds, please be sure to raise it
18 by that motion date.

19 Then she'll give us the date for hearing, and by
20 that date everyone has to have responded and submitted it to
21 the Court so that I'll know where you're going. If you want to
22 have it only saved for oral hearing, note that in your
23 submission. If you want me to go ahead and rule on it as we
24 did before without oral hearing, you can say that in your
25 submission.

1 Otherwise, all prior motions and rulings will
2 remain in effect. Unless you specifically request that I
3 revisit an issue or file a new issue, the rulings of the Court
4 from the prior -- from the prior hearings and trial shall all
5 remain in effect. Does anyone have any question about that?

6 MR. GAMMICK: No.

7 MR. SPECCHIO: No, your Honor.

8 THE COURT: Then the clerk will give us --

9 MR. GAMMICK: While the Court's making orders on
10 this, too, we would also request that all witnesses that have
11 been subpoenaed in this case, at least from the State side, be
12 held to their subpoenas for the new trial date. I'm assuming
13 that's going to be at 10:00 a.m. again.

14 THE COURT: Yes, it is.

15 MR. SPECCHIO: Same for the defense witnesses, your
16 Honor.

17 THE COURT: Okay. The Court will order that all
18 witnesses previously subpoenaed are held to those original
19 subpoenas. Their appearance in court is continued until the
20 date of the trial, which the clerk will now give us. The clerk
21 will give us all the dates at one time. If you have any
22 conflicts based on your schedule, please let the clerk know.

23 THE CLERK: All motions are to be filed by April
24 15th, 1999. The hearing on submitted motions will be June 1st,
25 1999 at nine o'clock. Jury selection will be August 30th at

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1 10:00 a.m. and 10:30. Jury selection of jurors that do not
2 come on Monday, the 30th, will be September 2nd at ten o'clock.

3 THE COURT: That's if we use a questionnaire.
4 That's the questionnaire, swearing of jurors, initial roll
5 calls.

6 MR. GAMMICK: Could I have those dates again,
7 please?

8 THE CLERK: Sure. Jury selection questionnaires,
9 August 30th at ten o'clock and 10:30. Additional jury
10 selection questionnaires, September 2nd at ten o'clock. Any
11 additional motions will be heard September 2nd at 11:00 a.m.
12 Any additional exhibits that need to be marked will be
13 September 2nd at 2:00 p.m. Trial will begin September 7th at
14 10:00 a.m.

15 THE COURT: That last hearing, September 2nd in the
16 morning, that's only if there's something that comes up right
17 before trial. All the motions that you've filed by April 15th
18 will all be resolved in June.

19 MR. GAMMICK: Your Honor, I would indicate at this
20 time that we intend to keep all exhibits that have been marked
21 so far marked in that order and just leave it as that, and if
22 we have any additional exhibits, we'll take care of it on the
23 2nd of September.

24 THE COURT: Okay.

25 MR. GAMMICK: And I would also ask, Friday when we

1 had our hearing, we had two exhibits marked, B and C, the
2 audiotape and the videotape. Those were originals. I would
3 ask for the Court permission to have those released at this
4 time so we could make copies for both the State and the
5 defense, and then we can return those to the Court once the
6 copies are made.

7 THE COURT: Any objection?

8 MR. SPECCHIO: No, your Honor.

9 THE COURT: Okay. You may -- the originals will be
10 provided to you for purposes of copying, and then provide the
11 originals back to the Court.

12 MR. GAMMICK: Yes, your Honor.

13 THE COURT: Is there any problem with this briefing
14 schedule?

15 MR. GAMMICK: If I may have just a moment, your
16 Honor, I don't believe so.

17 THE COURT: Go ahead and look.

18 MR. GAMMICK: The motions are due on April 18th?

19 THE CLERK: 15th.

20 MR. GAMMICK: 15th. Thank you.

21 MR. SPECCHIO: Right after you file your income
22 tax, come over and file.

23 MR. GAMMICK: Those dates look good with us, your
24 Honor.

25 THE COURT: Great. Thank you, counsel. Then we'll

1 see you -- yes, Mr. Specchio.

2 MR. SPECCHIO: Judge, in light of what happened on
3 Friday, the State -- we've kind of had an open agreement as far
4 as discovery is concerned. Is the Court going to consider an
5 order in this case that we get all of the tapes? I mean,
6 somebody has to compare the written with the oral so that we
7 don't do this in September again, because I can't take any more
8 shots in the paper about my incompetence.

9 THE COURT: At this time you're requesting a copy
10 of everything?

11 MR. SPECCHIO: Well, I just think some human being
12 has got to look, other than the one that transcribed, has got
13 to look at -- listen to the thing and watch the pages. I mean,
14 we've got about 2,000 pages of this stuff, and I'm sure there's
15 probably a lot of errors in there.

16 And if they're minor and don't mean anything, it's
17 no problem, but if it's of a significance that we ran into last
18 week, then I have a real problem again.

19 I'm just wondering if you want to at least consider
20 ordering us to get all the tapes of all the statements that we
21 have or, I don't know, somebody should be listening to these
22 things. I didn't have them or I would have listened, but I
23 think somebody should be doing that.

24 THE COURT: As I understand it, there was an open
25 file and anything you requested, the State would provide you a

1 copy of or you could listen to it wherever the evidence was
2 held. Do I understand that correctly?

3 MR. GAMMICK: Yes, your Honor, we did. We made the
4 tapes available. Any requests would have been honored to give
5 them to the defense. As I said, we didn't even copy them for
6 ourselves due to the volume of paperwork and everything.

7 These transcripts are not certified. We have seen
8 errors in them before. We're having a meeting this afternoon
9 to see if we can't remedy this situation. The damn budget gets
10 in the middle of it.

11 As far as furnishing, we've already talked about
12 just going ahead and copying all the tapes in this case, both
13 the state and the defense, and furnish them entirely. I know
14 we don't -- with the number of interviews that were done and
15 the number of tapes, I know we don't have the personnel or the
16 time for the detectives to sit down and go through each and
17 every single transcript in this case.

18 So if Mr. Specchio has ones he wants to check or
19 particular ones, we'll make -- we'll furnish him with copies of
20 the tapes. If they don't come out where they're
21 understandable, we'll make the originals available so they can
22 have an opportunity to at least go over and listen to them or
23 see them to see if there is any problem.

24 THE COURT: Is there any problem just copying every
25 tape that was made?

1 issue at the last hearing.

2 MR. GAMMICK: Your Honor, that is my concern.
3 In speaking with Mr. Specchio, I don't know if there is
4 really an issue here. But it has been raised on the record,
5 and I would rather address it sooner as opposed to later.
6 If there is any kind of evaluations or anything ordered, I
7 would like to do that early on rather than getting closer to
8 trial date. Whatever the Court and Mr. Specchio would like
9 to work out with that, I'm amenable to anything. Either
10 discuss it today or if you want a couple weeks or whatever
11 would be fine.

12 THE COURT: The only thing I thought is since
13 Mr. Specchio hasn't had an opportunity to visit with
14 Mr. Vanisi in the last month or so --

15 MR. SPECCHIO: Your Honor, if I could for the
16 record. I'd indicate the last time I spoke with Mr. Vanisi
17 at the jail was on July 21st. He was transferred I think a
18 couple of days later.

19 On August 11th, I did go to the prison to see
20 him. I left my office at 9:00 o'clock in the morning, I was
21 back in my office at 12:30, and I spoke with Mr. Vanisi for
22 12 minutes. So it took me three and a half hours round trip
23 and I got to talk to him for 12 minutes. That is one of the
24 problems that I have with his being at the prison.

25 I have not had a lot of time to talk to him

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1 since July 21st. Today is September 4th.

2 I think it would probably be best if I did talk
3 to him a few times at the jail before I submit any
4 recommendation to the Court as to that issue.

5 THE COURT: We would want that. I agree with
6 Mr. Gammick that we do need to clear this up either with
7 affirmative representations by you after you have had an
8 opportunity to discuss issues with Mr. Vanisi and that you
9 can assure the Court that you have no doubts about the issue
10 with regard to competency, or that you may still have some
11 lingering doubts and we'll order a psychiatric evaluation.

12 I currently have a Petrocelli hearing set for
13 September 28th prior to another case starting, another
14 murder case starting Tuesday. We haven't called the jury
15 for that day. So I think if we set a hearing in this matter
16 around 3:00 o'clock on the 28th, it will be the Petrocelli
17 hearing on that matter would be resolved. Are you
18 available?

19 MR. SPECCHIO: What day is that?

20 THE COURT: That is a Monday. It's actually
21 three weeks from Labor Day.

22 MR. SPECCHIO: I think that's fine, Your Honor.
23 I'll check my calendar when I go back. I didn't bring it
24 with me. I'll just call the clerk if that's not convenient.

25 THE COURT: If that is not available we'll get

1 Mr. Gammick and the clerk on the phone and try to come up
2 with another time.

3 MR. SPECCHIO: 3:00 o'clock on the 28th?

4 THE COURT: Yes.

5 MR. SPECCHIO: I think that's fine.

6 THE COURT: And Mr. Gammick, you can assist us.
7 If in talking to your staff -- Mr. Barb is handling the case
8 that we're doing the Petrocelli hearing on. If it looks
9 like that hearing will be concluded before 3:00, it would
10 assist the sheriff in transporting. If you determine they
11 are finished, we can have this hearing earlier in the day.
12 Please let us know.

13 MR. GAMMICK: That is currently scheduled on
14 the 28th, Your Honor?

15 THE COURT: Yes. Anything else, counsel?

16 MR. SPECCHIO: I think that's it, Your Honor.

17 MR. GAMMICK: Thank you, Your Honor.

18 THE COURT: Thank you. Court is in recess.
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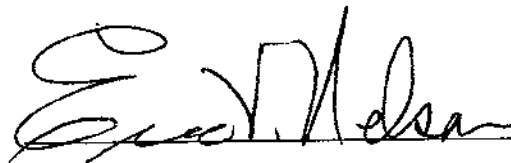
STATE OF NEVADA,)
)
COUNTY OF WASHOE.)

I, ERIC V. NELSON, Certified Shorthand Reporter
of the Second Judicial District Court of the State of
Nevada, in and for the County of Washoe, do hereby certify:

That I was present in Department No. 4 of the
above-entitled Court and took stenotype notes of the
proceedings entitled herein, and thereafter transcribed the
same into typewriting as herein appears;

That the foregoing transcript is a full, true
and correct transcription of my stenotype notes of said
proceedings.

DATED: At Reno, Nevada, this 14th day of
September, 1998.



ERIC V. NELSON, CCR No. 57

Exhibit 64

Exhibit 64

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CASE NO. CR98-0516
DEPT. 4

'98 OCT -1 AIO:12

BETTY J. LEWIS, CLERK
BY [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

THE STATE OF NEVADA, :
Plaintiff, :
-vs- : STATUS HEARING
SIAOSI VANISI, : September 28, 1998
Defendant. : Reno, Nevada
_____ :

APPEARANCES:

FOR THE STATE:

RICHARD A. GAMMICK
Washoe County District Attorney
DAVID A. STANTON
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

FOR THE DEFENDANT:

MICHAEL R. SPECCHIO
Washoe County Public Defender
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One South Sierra Street
Reno, Nevada

THE DEFENDANT:

SIAOSI VANISI

Reported by: Lesley A. Clarkson, CCR #182

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RENO, NEVADA, MONDAY, SEPTEMBER 28, 1998, 3:10 P.M.

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THE COURT: This is the time set for continued status hearing. I think our topic of conversation today was going to be the ordering or not of psychiatric evaluations.

Let the record reflect the defendant is present with counsel, and the State's represented.

Mr. Specchio.

MR. SPECCHIO: Yes, Your Honor.

THE COURT: Do you have any objection to the Court ordering psychiatric evaluation at this time?

MR. SPECCHIO: No, Your Honor. If the Court is so inclined, I have no opposition to it.

I would indicate to the Court that it's not our intention to go forward in that area, but if the Court wants to order it, we have no problem with it.

THE COURT: Upon my looking at the file and reviewing what was said at the last hearing, I think that for the abundance of caution, to make sure that there's no question later, prior to going forward with the oral hearings that we have set in November, I'd like to have a psychiatric evaluation and a determination that in fact Mr. Vanisi is competent to assist counsel and proceed. So I'm going to go ahead and do that.

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1 I'll appoint two psychologists or psychiatrists to
2 evaluate him with that in mind, and we will get a return date
3 towards the end of October. I want to get it in plenty of
4 time before our November hearing so that we can continue to
5 proceed the way we are.

6 MR. SPECCHIO: Okay.

7 THE COURT: I don't know if the court clerk today
8 has had a chance to get that date.

9 THE CLERK: Your administrative assistant gave me
10 the date of November 6th at three o'clock.

11 THE COURT: How does that look for counsel?

12 MR. SPECCHIO: Could I see a calendar, Judge?

13 THE COURT: Certainly.

14 MR. SPECCHIO: That's fine. That's Friday?

15 That's fine. Thanks, Judge.

16 THE COURT: Is that all right with you,
17 Mr. Gammick?

18 MR. GAMMICK: That would be fine, Your Honor.

19 THE COURT: Do you have any objection to this
20 procedure?

21 MR. GAMMICK: No, Your Honor, I have -- I don't
22 think we have a stake in this. I think it's between the
23 defense and the Court.

24 THE COURT: Is there anything else that we should
25 discuss today?

1 MR. STANTON: Your Honor, having had some
2 experience in the past couple of years with a couple of death
3 penalty cases that involved psychiatric evaluations, I'd ask
4 two things of the Court.

5 Number one is if you could establish on the record
6 the basis of you ordering it. Specifically whether or not
7 it's borne out of anything you have observed of the
8 defendant's demeanor and appearance and behavior in this
9 court. So that the record is clear, that what I can gather
10 from the Court in the previous hearings was things that had
11 been said in court as opposed to your observations of the
12 defendant, that you feel compelled an evaluation is
13 necessary.

14 THE COURT: That is in fact the Court's position.
15 I haven't observed anything about Mr. Vanisi that would lead
16 me to believe that he isn't able to assist counsel, that he
17 in any way isn't competent. It has nothing to do with my
18 observations of him in court or his demeanor.

19 It has do to with statements that have been made at
20 prior hearings that I think it's important to evaluate
21 Mr. Vanisi for these purposes, and it's only based on those
22 statements that I am ordering this.

23 MR. SPECCHIO: That's fine, Your Honor.

24 MR. STANTON: The second item, Your Honor, relative
25 to the return date, is that the date that the Court is going

1 to order that the reports be presented to this Court?

2 THE COURT: No, that's the date we will have an
3 oral hearing. If there's anyone that wants to contest that,
4 the determinations that are made by the psychologist or
5 psychiatrist, you have to notify the Court prior to that date
6 so that we can have the psychologists or the psychiatrists
7 present to testify at that time. We will order that the
8 reports be provided to us no later than October 28th, so that
9 you will have them in advance at least a week.

10 MR. STANTON: In addition, Your Honor, if the
11 State, or I'm assuming the defense, wants to traverse the
12 recommendations in there, would the Court order also include,
13 if that occasion arises, that the psychologist present to
14 counsel the tests that were administered as far as the
15 questions and the answers that were given by the defendant?

16 For example, if they were to administer the MMPI to
17 the defendant as part of their evaluation, that counsel be
18 able to, if necessary and if requested, request as part of
19 the Court order to that doctor to divulge the test itself and
20 the answers administered to any of the tests.

21 THE COURT: Normally I wouldn't order that. I
22 don't know of any reason why I wouldn't order the doctor to
23 divulge that. We will wait and see, though. If you are
24 requesting their presence, you can, when you request their
25 presence, indicate that you want to have a copy of their

1 tests.

2 Normally we require that the physician come to
3 court with their testing. If you need it for some reason in
4 advance, subject to their somehow, there's going to be some
5 indication why I shouldn't release it, I couldn't imagine why
6 I wouldn't.

7 MR. STANTON: Thank you, Your Honor.

8 MR. SPECCHIO: Your Honor, do you know who you are
9 going to order to do this?

10 THE COURT: You know, as you saw, I was in court
11 right up to the moment before you walked in, so I have no
12 idea who we have gotten a hold of. I know that we decided to
13 do this as long as there wasn't going to be an objection, and
14 now we will kind of confirm who it is. So I really don't
15 know who I am going to have.

16 MR. SPECCHIO: I should advise the Court there may
17 be some conflicts with certain practitioners in the area by
18 virtue of -- well, many things, but one, by virtue of the act
19 itself that Mr. Vanisi is alleged to have done.

20 THE COURT: Do you know -- do you have those names
21 off the top of your head of who would not be available to
22 conduct these?

23 MR. SPECCHIO: No, I don't off the top of my head.
24 If I heard them, I would probably know.

25 THE COURT: Do you have any knowledge, Mr. Stanton,

1 of anyone --

2 MR. STANTON: No, Your Honor.

3 THE COURT: -- that should not be appointed?

4 MR. STANTON: No, Your Honor, I don't.

5 I kind of understand the gist of Mr. Specchio's
6 comments, but I believe maybe if the Court, when they inquire
7 of the professionals that are on the short list, the Court's
8 short list, that you could advise them of the case name and
9 if the name, the attendant facts of it, I'm sure they
10 could -- and ask them contemporaneously if they have any
11 conflict with hearing it because of any affiliation with the
12 university, that I would imagine they can probably answer on
13 the front end.

14 THE COURT: Anything further?

15 MR. STANTON: Not from the State.

16 MR. SPECCHIO: Three o'clock on the 9th, Your
17 Honor?

18 THE COURT: Three o'clock on the 9th.

19 I have received your submissions but we haven't
20 finalized the written order. We are working on it.

21 MR. STANTON: I have the 6th, Your Honor.

22 THE CLERK: It is the 6th, Your Honor.

23 THE COURT: The 6th.

24 MR. SPECCHIO: What did I say?

25 MR. STANTON: The 9th.

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THE COURT: And I agreed.

MR. SPECCHIO: It's still Friday?

THE CLERK: Yes. The 6th, at three.

THE COURT: Anything further?

MR. STANTON: Not from the State, Your Honor.

MR. SPECCHIO: Nothing, Your Honor.

THE COURT: Thank you. Court's in recess.

(3:18 p.m., proceedings concluded.)

-o0o-

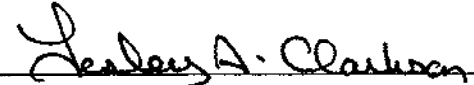
1 STATE OF NEVADA)
2) ss
3 COUNTY OF WASHOE.)

4 I, LESLEY A. CLARKSON, Official Reporter of
5 the Second Judicial District Court of the State of Nevada,
6 in and for the County of Washoe, DO HEREBY CERTIFY:

7 That I was present in Department No. 4 of the
8 above-entitled Court on Monday, the 28th day of September,
9 1998, and took stenotype notes of the proceedings had upon
10 the Status Hearing in the matter of THE STATE OF NEVADA,
11 Plaintiff, vs. SIAOSI VANISI, Defendant, No.
12 CR98-0516, and thereafter transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript is a full,
15 true and correct transcription of my stenotype notes of
16 said hearing.

17 Dated at Reno, Nevada, this 29th day of
18 September, 1998.

19
20 

21 Lesley A. Clarkson, CCR #182
22
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24
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Exhibit 65

Exhibit 65

TUES

1 Case No. CR98-0516

2 Dept. No. 4

FILED

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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

8 -oOo-

10 THE STATE OF NEVADA,

REPORT ON PSYCH EVAL

11 Plaintiff,

November 6, 1998

12 -vs-

Reno, Nevada

13 SIAOSI VANISI,

14 Defendant.

15 _____/

16 APPEARANCES:

17 For the Plaintiff:

RICHARD GAMMICK
District Attorney
Washoe County Courthouse
Reno, Nevada

18

19

20 For the Defendant:

MICHAEL SPECCHIO
Public Defender
One South Sierra Street
Reno, Nevada

21

22

23 The Defendant:

SIAOSI VANISI

24

25

Reported by:

Cindy Lee Brown, CCR #486

SIERRA NEVADA REPORTERS - (702) 329-6560

AA02424

RENO, NEVADA; FRIDAY, NOVEMBER 6, 1998; 3:00 P.M.

-oOo-

THE COURT: This is the time set for a status conference. Let the record reflect counsel is present along with Mr. Vanisi. It's Case Number CR98-0516.

I've had an opportunity to review the reports from the psychologists, psychiatrists that we re-appointed. Has counsel had an opportunity to review the report from Dr. Lewis and Dr. Rich?

MR. GAMMICK: Yes, Your Honor.

MR. SPECCHIO: Yes, Your Honor.

THE COURT: Okay. At this time the Court is prepared to make a finding with regard to the competency of Mr. Vanisi to assist counsel and proceed to trial.

Does counsel have any objection to that finding?

MR. GAMMICK: No, Your Honor.

MR. SPECCHIO: No, Your Honor.

THE COURT: Then the clerk will enter that finding in the minutes of the Court.

Counsel, how is everything else going?

MR. GAMMICK: Your Honor, the only other thing I'd request on the competency, and I'm sure the Court's doing it, is just to make sure the two reports are part of the official court record; that they do become entered there for

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1 future purposes.

2 THE COURT: Yes. Now, we normally hold the
3 reports in a confidential envelope. Do you want them held
4 someplace else?

5 MR. GAMMICK: No. I just want to make sure
6 they do stay with the record because this seems to be the big
7 issue at this time in other cases of competency and whether
8 or not it's been evaluated. I just want to make sure they
9 are available in the future.

10 THE COURT: It may make sense to go ahead and
11 have them marked as exhibits by the court clerk, and they're
12 admitted.

13 MR. SPECCHIO: That's fine, Your Honor.

14 THE COURT: Then that will be the order.

15 MR. GAMMICK: Your Honor, as far as everything
16 else, I know Mr. Stanton and Mr. Specchio have been in touch
17 on quite a few things. I believe we've worked out a lot of
18 the issues that we had before the motion hearings, as far as
19 witnesses and how we're going to proceed, and a lot of that's
20 been solved. What hasn't been will be, so everything's
21 moving fine.

22 The only other question that I have today is,
23 we did receive some correspondence with respect to
24 Mr. Vanisi. We did furnish that to Mr. Specchio. And in
25 that he talks about hiring a private attorney.

1 My understanding is to this extent he doesn't
2 really have the finances to do that. But I just want to
3 clear that up just for sure today if we can, so that we still
4 have the trial date in January. So we don't have any
5 problems with that.

6 THE COURT: Okay. Mr. Specchio?

7 MR. SPECCHIO: Yes, Your Honor. I've prepared
8 a copy of the letter. That's Mr. Vanisi's letter to his
9 wife, so I'm going to give that to him. I've advised him
10 that everything that he writes to anyone, any communications
11 are being provided to the State.

12 There is the issue with regard to the financial
13 status. I -- Mr. Vanisi is without funds, as far as I'm
14 concerned. I have spoken to his wife. I have spoken to him.
15 I don't think there are any assets in which he could retain
16 counsel. I have no problem if you want to address him.

17 THE COURT: Mr. Vanisi, stand up.

18 You understand that I have appointed counsel to
19 represent you?

20 THE DEFENDANT: You have appointed counsel.

21 THE COURT: Mr. Specchio was appointed to
22 represent you. Do you understand that?

23 THE DEFENDANT: Well, I understand you
24 appointing Mr. Specchio for me. I just want to know, are
25 there any other options that I can choose from?

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1 THE COURT: No. You can hire your own counsel,
2 if you so desire to do so. But other than that, the Public
3 Defender's Office and Mr. Specchio is who I have appointed to
4 represent you. They're very competent.

5 I understand Mr. Specchio has associated a
6 couple of, another two attorneys in on the case. You now
7 have three very competent attorneys working on your case.

8 THE DEFENDANT: Well, before -- I'd like to
9 just discuss the letter here.

10 THE COURT: I have not seen the letter.

11 THE DEFENDANT: Oh. I'll just pretty much
12 summarize the letter. The letter is simply just reflecting
13 how I feel and so on and so forth to my wife at the current
14 situation because my communication with her is very limited.
15 We're unable to see each other, to discuss certain situations
16 of where to go.

17 It's now October. What's the month? November,
18 and the trial is scheduled for January. So as I mentioned
19 that I -- my wife and I have very little communication to
20 where I want to proceed, so I wrote down a letter, you know,
21 just discussing, communicating with her through letters of
22 what I should do, of what decisions I should make and where I
23 should proceed, if I want to have the counsel that you
24 appointed for me.

25 My wife, on the other hand, doesn't coincide.

1 I'm comfortable with Mr. Specchio representing me. It's my
2 wife, on the other hand, who does not coincide with my
3 feelings. She wants to have me reconsider possibly selling
4 land that I do have at this point, which I need to get a hold
5 of.

6 So she wants me to get a private attorney.
7 That's her decision. That's what she wants. My situation
8 is, since the State is seeking the death penalty, I've got to
9 just, you know, for the sake of my wife because she is the
10 other half of me, I've got to just let her inter-lead into my
11 life or interpose or --

12 You know, normally in the beginning I told her,
13 No, Specchio is fine; I'll go with Specchio. But now I've,
14 you know, change of heart is where I'm at at this point.

15 I never listened to my wife, and I think it's
16 time that I should reconsider listening to my wife, her last
17 request or her request and see where we need to go. And
18 that's the purpose of the letter.

19 And, plus, I've heard that Specchio has also
20 counseled me that I should be careful of what I should write
21 down. But, you know, sometimes I've just got to -- I'm not a
22 private person to where I want to just -- so the letter was
23 just simply trying to communicate to her my feelings.

24 THE COURT: Mr. Specchio has given you good
25 advice. Anything you write down while you're in custody will

1 be reviewed by the State, and anything you say can and will
2 be used against you in the case. So remember that and follow
3 Mr. Specchio's instructions to you, whatever they may be.

4 I'm also going to tell you now that if you
5 decide you want to hire private counsel, you have to do it
6 immediately because your trial is in January. And although
7 Mr. Specchio and his team have preserved all of your rights
8 and have filed the motions any other lawyer would file, if
9 another attorney wants to get involved in this case, it's
10 going to have to be immediately.

11 And you're also going to have to seriously look
12 at the costs involved. It's not a simple inexpensive case
13 that your new attorney will be involved with. So I will not
14 continue your case just because you're looking around for
15 another lawyer or just because you think you might want to
16 hire somebody else.

17 If your wife or you want to hire someone, it
18 must be done immediately. It will not be the basis for a
19 request of continuance.

20 THE DEFENDANT: Your Honor, I'm not -- I know
21 for sure that I don't want to stand trial in January.

22 THE COURT: You do not know, or you do know?

23 THE DEFENDANT: I do know that I don't want to
24 stand trial in January. And if there is an option that I
25 have to represent myself for a later date, I will do so.

1 THE COURT: I won't give you another day, even
2 if you represented yourself. I'm not going to give you a
3 continuance. It's set. It's ready to go. If you want to
4 represent yourself, we can set this for a hearing and I'll
5 canvass you and see if you're competent to represent
6 yourself.

7 THE DEFENDANT: I didn't hear. What did you
8 say about the competency tests?

9 THE COURT: There is special things that you
10 have to understand to be competent to represent yourself. In
11 the case where the State is seeking the death penalty, it's
12 pretty difficult for someone to represent themselves. That
13 would be a very improvident decision for you to make. That
14 means it's a very bad decision for you to try to do that.

15 THE DEFENDANT: What would I need to qualify to
16 have the Court deem me as competent to represent myself?

17 THE COURT: Why don't you think about it this
18 weekend, talk to Mr. Specchio and see if you really want to
19 represent yourself. And we'll have a hearing next week, and
20 we'll see if you're competent to represent yourself, if
21 that's the decision you make.

22 Either way, I'm telling you right now, you're
23 not going to get a continuance. Either Mr. Specchio and his
24 team will be representing you, or you could be representing
25 yourself. Either way, you're going to trial in January. So

1 you're not going to get a continuance just because you change
2 attorneys.

3 Either making it yourself or finding somebody
4 else to represent you instead of Mr. Specchio, that's not
5 going to get you a continuance. The only thing that would
6 allow for a continuance is if there was a legal basis for
7 your case to be continued. Right now I see none.

8 THE DEFENDANT: Let me just --

9 THE COURT: Set this over for a hearing.

10 We're going to set it for a hearing. You think
11 about what you want to do, meet with Mr. Specchio this
12 weekend.

13 THE DEFENDANT: I have one more question, Your
14 Honor.

15 THE COURT: Uh-huh.

16 THE DEFENDANT: For some magical reason an
17 attorney appears tomorrow, what then -- how will that change
18 the scheduling for trial in January?

19 THE COURT: I'm sure they could still be ready
20 to go.

21 THE DEFENDANT: It would still be -- it would
22 still be -- so I just want to make sure that it's clear that
23 January trial is in concrete. It's already set in concrete.

24 THE COURT: Yes.

25 THE DEFENDANT: Nothing can change it.

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1 THE COURT: Unless there is a legal reason to
2 continue your case.

3 THE DEFENDANT: And is there a legal reason?
4 Can you disclose some of the legal reasons?

5 THE COURT: I can't think of one. We have all
6 your hearings scheduled. We have pretrial hearings already
7 set. Maybe if there was some motion that required it in
8 November, but I don't think that I know of any.

9 You know how many times you've been coming back
10 to see me every few months and we've been talking with your
11 counsel and the DA? That's why we've been doing that, so
12 that there would be no delays.

13 THE DEFENDANT: Yes, I understand the times
14 that I've come to visit you, Your Honor. I understand that
15 fully. I just wanted to see if there's -- what legal
16 condition that could extend the January trial, and I guess
17 I'll have to talk about that with Mr. Specchio.

18 THE COURT: Yes. And we'll see you back on
19 Monday morning.

20 THE CLERK: November 9th at 11:00.

21 THE COURT: Can counsel make that?

22 MR. GAMMICK: Your Honor, I've got two meetings
23 set right now at 10:00 o'clock, and both of them will
24 probably carry over.

25 MR. SPECCHIO: I have that same problem, Judge.

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1 I've got a department head meeting.

2 THE COURT: You have a county commission issue?

3 MR. SPECCHIO: Yeah. It's a department head
4 meeting with the county manager on it.

5 MR. GAMMICK: That's one of the meetings.
6 That's at 10:00 o'clock. And the other meeting I have is
7 with Senator Washington and some other people.

8 MR. SPECCHIO: I don't have to meet with any
9 politicians, Judge, but maybe Tuesday morning would be better
10 or even Thursday, Judge. Wednesday's the holiday, right?

11 THE COURT: Right, Wednesday's the holiday.
12 Can you make Tuesday at 11:00?

13 MR. GAMMICK: Yes, Your Honor.

14 THE COURT: Does that work out all right for
15 you, Mr. Specchio?

16 MR. SPECCHIO: I'll make it work, Judge.

17 THE COURT: Then we'll see you all back on
18 Tuesday morning.

19 MR. SPECCHIO: That's the 10th, right?

20 THE COURT: Correct.

21 MR. SPECCHIO: 11:00 on the 10th?

22 THE COURT: Not 11:00 on the -- never
23 mind. Yes, when the clerk told us. Let's give it to us
24 again.

25 THE CLERK: November 10th at 11:00 o'clock.

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1 THE COURT: Okay.

2 MR. SPECCHIO: I'll be here.

3 THE COURT: Thank you.

4 Court's in recess.

5 (Proceedings concluded at 3:14 p.m.)

6 -oOo-

1 STATE OF NEVADA,)

2) ss.

3 COUNTY OF WASHOE.)

4

5 I, CINDY LEE BROWN, Certified Court Reporter of
6 the Second Judicial District Court, in and for the County of
7 Washoe, State of Nevada, do hereby certify;

8 That I was present in the above-entitled court
9 on November 6, 1998, and took verbatim stenotype notes of the
10 proceedings entitled THE STATE OF NEVADA, Plaintiff, versus,
11 SIAOSI VANISI, Defendant, Case No. CR98-0516, and thereafter
12 transcribed the same into typewriting, as herein appears;

13 That the foregoing transcript is a full, true
14 and correct transcription of my stenotype notes of said
15 hearing.

16 Dated at Reno, Nevada, this 22nd day of
17 November, 1998.

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CINDY LEE BROWN, CCR #486

Exhibit 66

Exhibit 66

Case No. 98-0516

FILED

Dept. No. 4

'98 NOV 13 P1:52

BETTY L. LEE, CLERK
BY: [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,)	
)	
Plaintiff,)	HEARING REGARDING COUNSEL
)	
vs.)	November 10, 1998
)	
SIAOSI VANISI,)	Reno, Nevada
)	
Defendant.)	

APPEARANCES:

For the Plaintiff:

RICHARD ALLEN GAMMICK
District Attorney
DAVID L. STANTON
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant:

MICHAEL R. SPECCHIO
Public Defender
One S. Sierra Street
Reno, Nevada

The Defendant:

SIAOSI VANISI

Reported by:

ERIC V. NELSON, CCR No. 57

ORIGINAL

RENO, NEVADA, TUESDAY, NOVEMBER 10, 1998, 11:00 A.M.

-oOo-

THE COURT: This is the time set for Mr. Vanisi to make a determination if he wants to represent himself.

Mr. Specchio, have you had an opportunity to discuss his decision with the court last week --

MR. SPECCHIO: Yes, Your Honor.

THE COURT: -- with him?

MR. SPECCHIO: I have.

THE COURT: Is it your understanding that he wants to proceed with a request to represent himself?

MR. SPECCHIO: I don't think so. But I think maybe the court ought to address Mr. Vanisi.

THE COURT: Mr. Vanisi, you had an opportunity to consult with Mr. Specchio?

THE DEFENDANT: Yes.

THE COURT: Have you consulted with him?

THE DEFENDANT: Yes.

THE COURT: Is it your desire to proceed with an inquiry and represent yourself?

THE DEFENDANT: No, it's not, Your Honor.

THE COURT: You think it's best just to stay with the attorneys that you have and move forward?

THE DEFENDANT: Yes, I do, Your Honor.

THE COURT: Then we'll go ahead and do that,

1 Mr. Vanisi. We currently -- go ahead and you can be seated.
2 We have hearings set. Mr. Stanton.

3 MR. STANTON: Yes, Your Honor. If I could ask
4 the court to conduct just a brief additional canvass of
5 Mr. Vanisi.

6 My review of the Nevada Supreme Court's
7 addressing this issue also contemplates from between now and
8 the time of trial, maybe during trial into the penalty
9 phase, decisions by defendants to represent themselves and
10 that the Court absent some basis can completely deny that
11 request solely based on the fact that it would require a
12 continuance. Since Mr. Vanisi has expressed his unequivocal
13 desire to have counsel represent him from the Public
14 Defender's Office, I wonder if you could just conduct a
15 brief inquiry of Mr. Vanisi that he understands and knows
16 that from here on out, any request to change his counsel
17 that will result in a delay of the proceedings will be
18 denied on that basis alone.

19 In addition, Mr. Gammick brought up a fact
20 that at the last hearing there was some inquiry or intention
21 that was evidenced by a letter that we received and have
22 provided to defense counsel that Mr. Vanisi had expressed a
23 desire to other individuals about retaining his own counsel.
24 If the court could briefly inquire as to what his intent in
25 that regard is and that if he understands the ramifications

1 of not electing that decision now or addressing that issue
2 now, will potentially and most likely prohibit him from
3 substituting counsel at the last minute and cause a delay of
4 the trial.

5 THE COURT: I think I covered that at the last
6 hearing with Mr. Vanisi. We specifically discussed his
7 wife's desire to hire counsel or not, and I did indicate to
8 Mr. Vanisi there would be no continuances. If he wanted to
9 hire private counsel, he had to do it immediately. So I
10 have covered that aspect of it at the last hearing with
11 Mr. Vanisi.

12 And I think I covered, Mr. Vanisi, with you
13 that there won't be any continuances. We talked about that.
14 And the need to move forward with the trial date and that
15 this was your opportunity to elect to represent yourself and
16 that that wouldn't result in a continuance, but we would
17 just make the decision now. And is that your understanding
18 of what we talked about before?

19 THE DEFENDANT: Well, I understand that, you
20 know, today was to inform the court if I was going to
21 represent myself or if I was going to retain a private
22 attorney. And so I came today with the answer of I'm going
23 to stay with Specchio for this time.

24 If something were to arise in the future, then
25 I would have to address that in the court. Because I'm

1 limited on what I can do with criminal procedure and the
2 laws and the statutes of Nevada. So at this point my
3 addressing to the State is that at this point, that's what
4 we're doing. I'm going with Specchio. If anything else
5 arises, I will have to address that within that amount of
6 time.

7 But I do understand that January 11 is set, the
8 Court date is set at that time. So that's what I'm aware
9 of. That's what I have addressed, and you told me, and I
10 have understood it. Thank you, Your Honor.

11 THE COURT: Okay. Now one of the other pieces
12 that I want to make sure you understand is that the Nevada
13 Supreme Court has said that a timely request to represent
14 yourself will be considered by the court, but if you ask
15 after -- now you have decided you want to have an attorney
16 represent you, and for now it's Mr. Specchio, which I
17 understand that. If you were to ask me, for instance,
18 December 30th to represent yourself, I could and would deny
19 that request because it would require a continuance of your
20 trial.

21 Do you understand that?

22 THE DEFENDANT: Yes, I understand that you have
23 the discretion, Your Honor, to make that decision.

24 THE COURT: And you understand the Supreme
25 Court has basically told me that that's the way I should

1 exercise that discretion, if it would require a continuance,
2 would be to deny you either replacement attorney or
3 representing yourself at the last minute.

4 THE DEFENDANT: Yes, I understand that's what
5 the Supreme Court has informed you.

6 THE COURT: Now, I will tell you that remember
7 that I will certainly listen to any of your concerns that
8 may arise. And you should bring those concerns up to the
9 court if you have a significant concern. Again, I want to
10 remind you that your communications outside of the jail, and
11 I know Mr. Specchio has informed you of those communications
12 and the fact that your letters that you write will be
13 reviewed by the State. Remember that.

14 And we'll see you back at your next hearing.

15 Counsel have anything further? Anything
16 further?

17 MR. STANTON: Not from the State, Your Honor.

18 MR. SPECCHIO: Nothing further.

19 THE COURT: Thank you, counsel. We'll see you
20 back at the next hearing. Court is in recess.

21 (Recess adjourned at 11:05 a.m.)
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1 STATE OF NEVADA,)

2)

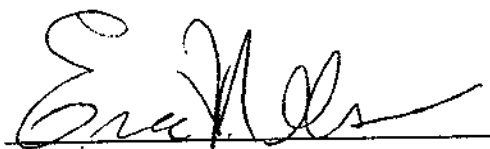
3 COUNTY OF WASHOE.)

4
5 I, ERIC V. NELSON, Certified Shorthand Reporter
6 of the Second Judicial District Court of the State of
7 Nevada, in and for the County of Washoe, do hereby certify:

8 That I was present in Department No. 4 of the
9 above-entitled Court and took stenotype notes of the
10 proceedings entitled herein, and thereafter transcribed the
11 same into typewriting as herein appears;

12 That the foregoing transcript is a full, true
13 and correct transcription of my stenotype notes of said
14 proceedings.

15 DATED: At Reno, Nevada, this 11th day of June,
16 1998.

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22
23 ERIC V. NELSON, CCR No. 57

Exhibit 67

Exhibit 67

FILED

99 JAN 12 PM 12:15

AMY H. HART

CASE NO. CR98-0516

DEPT. 4

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

THE STATE OF NEVADA,

Plaintiff,

-vs-

SIAOSI VANISI,

Defendant.

:

:

:

:

:

:

PRETRIAL HEARING

December 10, 1998

Reno, Nevada

APPEARANCES:

FOR THE STATE:

RICHARD A. GAMMICK
Washoe County District Attorney
Washoe County Courthouse
Reno, Nevada

FOR THE DEFENDANT:

MICHAEL R. SPECCHIO
Washoe County Public Defender
One South Sierra Street
Reno, Nevada

THE DEFENDANT:

SIAOSI VANISI

Reported by: Lesley A. Clarkson, CCR #182

ORIGINAL

SIERRA NEVADA REPORTERS (775) 329-6560

AA02446

RENO, NEVADA, THURSDAY, DECEMBER 10, 1998, 11:45 A.M.

-ooo-

THE COURT: Let the record reflect defendant and counsel are present.

Are we talking about tables?

MR. SPECCHIO: No, just the location of Mr. Vanisi during trial. We are going to have three lawyers here. And we want him at counsel table, he will want to be at counsel table. I'm just wondering if maybe we could put him on the end.

THE COURT: Would you want -- I certainly wouldn't presuppose where you would want him to sit, but you might want two lawyers and Mr. Vanisi and then put the lawyer on the end.

I don't think it matters to me. Does it matter to anyone else?

MR. SPECCHIO: Well, we can talk about it. I'll talk to these gentlemen about it. I think we will probably have one lawyer sitting back here.

THE COURT: That's one of the questions. As you can see, the tables are turned, and this is the way we intend to have them during the trial.

MR. SPECCHIO: This is fine.

THE COURT: But we are not going to have any chairs behind the extra chairs.

1 MR. SPECCHIO: These.

2 THE COURT: So just tell us how many you think you
3 need, if you need one.

4 MR. SPECCHIO: I think if we have three chairs at
5 counsel table, we will only need one chair in the back.

6 THE COURT: Okay. Then that's the way it will be
7 set up. And then we believe that there will be no chairs
8 behind the district attorney's seat.

9 MR. GAMMICK: That will be fine, Your Honor.

10 THE COURT: That's sort of the way we thought it
11 would work.

12 MR. SPECCHIO: We also didn't discuss the
13 possibility, Judge, of we are going to have a lot of
14 material. It's going to come over on carts.

15 THE COURT: That's where -- we thought we would
16 want to move those chairs out so you would have room to set
17 your cart up there.

18 MR. SPECCHIO: Would it be all right to have that
19 material in the courtroom rather than have to haul it all
20 back every night?

21 THE COURT: Yes. Courtroom will be secure. If you
22 want to -- we might work with where you stack it. Because I
23 would rather, I like my staff be able to come and go.

24 MR. SPECCHIO: Maybe, because you are going to have
25 arraignments.

1 THE COURT: Right.

2 MR. SPECCHIO: So if we could just, you know, maybe
3 at the end of the day put them against the wall, I think that
4 will be all right. Mr. Gammick I don't think has any
5 problem, his people will be on that side of the table anyway.

6 THE COURT: Right, and he can move his cart a
7 little easier, I think. They don't have to leave the
8 building. But I understand it's hard to haul it across the
9 street.

10 Mrs. Stone, who will be your court clerk for the
11 trial, and the two bailiffs that are going to be assigned
12 will be glad to work with you about how to take care of the
13 material. We will find a place for it.

14 Okay. We also, today, I wanted to talk about just
15 briefly, give you an indication of the courtroom security
16 determinations that were made by the Court and the court
17 detail.

18 We will have a weaponless courtroom. There will be
19 no weapons in the courtroom by anyone other than court detail
20 personnel and as determined by the sheriff. Everyone else
21 will check their weapons. The sheriff is responsible for
22 maintaining this. It's not a court, the Court isn't going to
23 be doing it. There will be a magnetometer outside the
24 courtroom doors, and the courtroom will be cleared every,
25 after arraignments before court starts, just so you can know

1 and notify your officers.

2 The old rule was in many cases unless you were in
3 uniform, but in this particular instance it's going to be no
4 weapons, uniform or not.

5 The security issues remain to be an issue for the
6 Court, and I want to make sure the record is clear that the
7 Court's goal is to have the jury believe that Mr. Vanisi is
8 not in custody. And we will make every effort to do that.
9 And I have been assured by the court detail that they will
10 make every effort to do that so the jury has no idea he is
11 being held in custody. If there is an issue that arises or
12 something appears to be not working, counsel again is
13 reminded that you should feel comfortable bringing that up to
14 the Court so that we can correct any problems that result.

15 I believe that during jury selection we will have
16 the jury panel move from the courtroom rather than the
17 parties. So if there's a break necessitated, the parties
18 will remain in the courtroom and the panel will be moved down
19 to another courtroom to be held.

20 We have a pretrial issue with regard to jury
21 questionnaires. It's the Court's determination that I will
22 allow for a pretrial questionnaire of the jury, which is an
23 expanded questionnaire over what we normally use. However, I
24 do not want this to be more than a page, perhaps two, but no
25 more than. And I have asked that counsel get together,

1 submit to the Court a proposal, or at the very least let me
2 know what your real requests are to be held in this
3 questionnaire. I'm especially concerned about the wording of
4 the questionnaire as it relates to pretrial publicity.

5 I'll need this response back from the State and the
6 defense no later than next Wednesday at noon, so that we can
7 get this jury questionnaire put together.

8 I anticipate utilizing the questionnaire by having
9 the jury panel brought in, the veniremen, on January 4 to the
10 jury commissioner's office, being admonished about the jury
11 questionnaire, sworn by the clerk, and then fill out the jury
12 questionnaire in the presence of court personnel.

13 The questionnaire will remain in the courthouse
14 then and will never be out, and the people filling out the
15 questionnaire will have presented identification and be truly
16 the veniremen that are called.

17 Then I propose giving the questions, filled out
18 questionnaire to counsel by five o'clock that day. That
19 would be January 4. And then we have pretrial hearings set
20 already for the afternoon of January 7, at which point if
21 there's any individuals that we can remove from our veniremen
22 list based upon their questionnaire or background check that
23 is conducted and presented to counsel, we will be able to do
24 that at that hearing.

25 I'm going to ask the jury commissioner to pull 150

1 people, and then we don't know how many of those will
2 actually appear to fill out the questionnaire. We are having
3 approximately 20 percent loss. And then we will reduce that
4 number down to who actually will appear on January 11 for
5 your jury selection.

6 We will be utilizing a modified individual voir
7 dire process in that we will do side bars if the question
8 requires a side bar discussion with the veniremen. That
9 would stop the rest of the panel from being tainted, from
10 hearing what the veniremen might say.

11 The method, just so that counsel knows, is the
12 court reporter will be up on the witness level throughout
13 jury selection, because we will have 42 or so people in our
14 pit area during the jury selection, and so we are going to
15 have them up there. And it also will be more convenient for
16 side bar. Everyone will go to the actual side bar, and we
17 will be on the record during the side bar discussions, but
18 the jury won't be hearing it.

19 The individual voir dire process that we will
20 utilize will be on a case-by-case basis and only as I see
21 it's necessary to stop the rest of the panel from being
22 contaminated by the statements of knowledge that the
23 individual jurors might have.

24 Jury confidentiality order. We have a jury
25 confidentiality order that's in effect in the county that was

1 issued by the chief judge. I require a slight modification
2 in that, in that I ask that jurors' names, addresses and
3 telephone numbers not be provided by, to outside people,
4 anyone outside of the particular attorneys trying the case.
5 And that those telephone numbers, addresses not be
6 memorialized by counsel.

7 We require that the jury questionnaires that you
8 receive, the copies be returned to the Court for shredding.
9 The originals are held, and they are held in the sealed
10 documents of the court. Anyone can get them if there's a
11 reason for it, but absent a reason they will be held somewhat
12 confidential for the jurors' benefit.

13 Those people who are not selected for jury duty,
14 that are actually excused for jury duty, are not called up
15 even into the panel, the 40 that we inquire, those are not
16 even held by the court. That's our usual policy. If someone
17 believes something else should happen with those, you need to
18 make a motion and talk about it on the January 7 date, if you
19 have any concerns about that.

20 The decision with regard to the motion in limine
21 regarding the State's DNA expert will be in writing, but, and
22 you will receive it later this week, my written
23 determination. But it's, I don't think it will impact the
24 witnesses that we plan on calling.

25 That was everything on my list of things that we

1 needed to talk about. I know counsel probably has some
2 concerns on their own lists.

3 So do you want to go forward, Mr. Gammick?

4 MR. GAMMICK: Thank you, Your Honor.

5 I would indicate for the record that we have
6 already returned the demonstrative evidence hatchet to the
7 clerk which was marked as Exhibit Number 5. I now will
8 present to the clerk photographs that were marked at the last
9 hearing labeled 4.B through 4.J, which were the photographs
10 that Dr. Clark testified to in court and the Court was going
11 to allow during the course of the trial.

12 THE COURT: Okay.

13 MR. GAMMICK: We have made -- we did have copies
14 printed of these and we have furnished them to defense,
15 except one photograph which we had a problem with, and that
16 will be done hopefully today or tomorrow.

17 THE COURT: Thank you.

18 MR. GAMMICK: I would also indicate that -- the one
19 that we didn't get to defense yet is 4.I, and he printed the
20 wrong photograph and we are getting that one reprinted, so we
21 should have that in the next day or two.

22 There is also four additional photographs that Dr.
23 Clark advised us after the hearing that she may need. We
24 went ahead and pulled those, we had those printed, we
25 furnished those to defense. If in fact Dr. Clark decides she

1 does need one or any of those, then we would ask the Court
2 for another hearing, if the Court deems that's necessary, and
3 establish the foundation and everything for those photographs
4 also.

5 They are basically the same as the Court's already
6 allowed, except there may be a little different angle or a
7 little different perspective on particular wounds. I'm not
8 even sure if Dr. Clark's going to need them at this time.

9 THE COURT: Will you know by the January 7 trial
10 date?

11 MR. GAMMICK: By January 11?

12 THE COURT: I mean the January 7 pretrial hearing
13 date that we have set aside.

14 MR. GAMMICK: We can contact Dr. Clark and see if
15 she's made up her mind by that time. If in fact we can have
16 her, if we do need any additional, if she decides she wants
17 to use any of those we anticipated, to be on the safe side,
18 furnish those to defense so they know what they are.

19 THE COURT: You should be prepared to rebut what,
20 if the defense has an objection. There was an initial motion
21 to exclude all the photographs. After the hearing I
22 granted -- denied the motion basically somewhat by the
23 culling down of the photographs and the viewing of the
24 photographs and my determination of their necessity. If you
25 want to add more to it you should be prepared to do that and

1 make a record so that I can see them in their total, because
2 it's the entire packet that you intend to use, and you should
3 be prepared to do that on Thursday the 7th of January.

4 MR. SPECCHIO: Judge, what time is that hearing on
5 the 7th?

6 THE COURT: It's set for 1:30, and it was set
7 initially, and it's blocked out the whole afternoon, so you
8 can do whatever you need to do.

9 MR. GAMMICK: I would also indicate for just
10 purposes of the record that on December 3 and December 4 our
11 investigators went to Reno Police Department and went
12 completely through their files, did find some additional
13 material. We have furnished that to Mr. Specchio this
14 morning. And we will go from there.

15 So as far as we are concerned, defense has
16 everything now. I explained to Mr. Specchio if anything else
17 comes up we are going to be surprised, too, because we have
18 been through it. And then we will also extend to
19 Mr. Specchio and Mr. Gregory the opportunity to come over to
20 our office and go through our file piece by piece if they
21 wish and make sure they do have everything.

22 I believe we have accomplished that on discovery, I
23 believe the statute requires discovery be furnished no later
24 than Saturday, which would be tomorrow. I believe that's
25 been complied with now with the exception of one photograph I

1 brought up we hadn't furnished them yet.

2 THE COURT: Okay. Mr. Specchio, do you have any
3 concerns or anything you'd like to apprise me of?

4 MR. SPECCHIO: Well, Your Honor, we are probably --
5 I have to see how this custody security thing is going to pan
6 out, but I do think we are going to have some problems, or at
7 least we might want to make a record. If I understand it,
8 there's going skirting around this table and that table.

9 THE COURT: Both tables, yes.

10 MR. SPECCHIO: And the defendant's going to have a
11 belly chain on and ankle bracelets.

12 THE COURT: As I understand, there will be some
13 sort of a waist restraint, electrical restraint, but it will
14 be under his clothing. His arms will be free during the
15 trial to write and pass notes back and forth.

16 MR. SPECCHIO: Well, I'm assuming, Judge, that I'm
17 supposed to be making some kind of a complaint, but I don't
18 think I can until I see what it will be, and then we will
19 voice it at that time.

20 THE COURT: Certainly you don't have to complain.
21 We hope this whole security issue works perfect and there's
22 nothing to complain about.

23 MR. SPECCHIO: That's fine.

24 THE COURT: So we will keep an open mind on that.

25 MR. GAMMICK: Your Honor, I did have one other

1 question. I apologize. I missed it.

2 If the, we are going to have the information in to
3 you by noon next Wednesday on the supplemental questionnaire.

4 THE COURT: Yes.

5 MR. GAMMICK: And you intend to give that to the
6 jurors on the 4th, are we going to have some time in between
7 to see what the Court proposes to give the jurors in case we
8 do have any comments or objections to make?

9 THE COURT: Actually I would like to have some -- I
10 think we actually have to put that on the record anyway, what
11 is ultimately determined. And I don't think -- we don't have
12 Mrs. Stone here, who kind of is the guru on the calendar, so
13 I can't really give you a definitive time and date right now.
14 If you all agree mostly on that, and I don't have a lot of
15 disagreement that you give me, we could even do it Wednesday
16 afternoon. But I have to look and see what else we are doing
17 next week.

18 So we will get back to you on when we will get
19 together, and you will have an opportunity to voice your
20 objections before I rule on it.

21 MR. GAMMICK: Well, I was looking at if the Court
22 wants them in by noon next week, the Court of course has to
23 have it in time to look at it, put together a questionnaire.
24 I just want to see that document the Court proposes to give
25 the jurors once you are done with it in case we have any

1 other comments.

2 THE COURT: Then you can decide if you want to
3 object to it or not.

4 MR. GAMMICK: Then we will see if we need a
5 hearing. We may be totally agreeable.

6 THE COURT: Is that procedure all right with you?

7 MR. SPECCHIO: I think that's fine, Judge. I still
8 extend the offer, if you want us to prepare it, it will speed
9 things up, just give me a call and we will prepare it. I'm
10 sure Dick would, too. So that we can have it reduced to
11 writing and know what we are talking.

12 THE COURT: Well, if you all can get together and
13 reduce something to writing by next Wednesday at noon, that
14 would be the best possible thing.

15 MR. SPECCHIO: What I am going to do, Judge, is
16 submit mine to the Court with a copy to Mr. Gammick, and
17 there will be probably 15 or 20 questions. And the ones he
18 agrees with, fine. The ones that he doesn't, he will advise
19 the Court, and vice versa. I'm sure he will do the same to
20 me.

21 MR. GAMMICK: We will do the same procedure, Your
22 Honor. I know the Court will fine glean it down to what the
23 Court will want to present. That's all I want to see, just
24 the final one, if we have any objections or questions or
25 issues with it.

1 THE COURT: We will go ahead and do that. We will
2 follow that, and we will give you a copy of the final form
3 that's proposed and then give you certain period of time to
4 voice your objections.

5 MR. GAMMICK: That will be fine, Your Honor. Thank
6 you.

7 THE COURT: Anything else?

8 MR. SPECCHIO: No. Judge, I should advise that
9 Mr. Rusk from the district attorney's office was kind enough
10 to provide me with my reading material for the weekend.

11 THE COURT: Is it Bates stamped?

12 MR. SPECCHIO: No, it isn't, Judge. It's just a
13 bunch of stuff, but I think we have it. I don't know yet.
14 I'll have to review it.

15 THE COURT: You can double check.

16 MR. SPECCHIO: I think with that, I'm going to rely
17 on Mr. Gammick's statement that we have everything. Which I
18 assume we do.

19 THE COURT: As he indicated, the file is open, so
20 at any time you --

21 MR. SPECCHIO: Exactly.

22 THE COURT: -- you can go over and look.

23 MR. SPECCHIO: I think, Mr. Stanton has been great
24 in providing all the stuff that we had.

25 THE COURT: Thank you, counsel.

1 STATE OF NEVADA)
2) SS
3 COUNTY OF WASHOE.)
4

5 I, LESLEY A. CLARKSON, Official Reporter of
6 the Second Judicial District Court of the State of Nevada,
7 in and for the County of Washoe, DO HEREBY CERTIFY:

8 That I was present in Department No. 4 of the
9 above-entitled Court on Thursday, the 10th day of December,
10 1998, and took stenotype notes of the proceedings had upon
11 the Pretrial Hearing in the matter of THE STATE OF
12 NEVADA, Plaintiff, vs. SIAOSI VANISI, Defendant,
13 No. CR98-0516, and thereafter transcribed them
14 into typewriting as herein appears;

15 That the foregoing transcript is a full,
16 true and correct transcription of my stenotype notes of
17 said hearing.

18 Dated at Reno, Nevada, this 2nd day of
19 January, 1999.

20 *Lesley A. Clarkson*
21 Lesley A. Clarkson, CCR #182
22
23
24
25

Exhibit 68

Exhibit 68

SVan1s12JDC03837

Case No. 98-0516

FILED

Dept. No. 4

JAN 11 1999

AMY HARVEY
By: *M. Stone*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,)	
)	
Plaintiff,)	HEARING
)	
vs.)	JANUARY 7, 1999
)	
SIAOSI VANISI,)	Reno, Nevada
)	
Defendant.)	
)	

APPEARANCES:

For the Plaintiff:

RICHARD GAMMICK
District Attorney
DAVID L. STANTON
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant:

MICHAEL R. SPECCHIO
Public Defender
STEPHEN GREGORY
JEREMY BOSLER
Deputy Public Defenders
1 South Sierra Street
Reno, Nevada

The Defendant: SIAOSI VANISI ORIGINAL

Reported by: ERIC V. NELSON, CCR No. 57

RENO, NEVADA, THURSDAY, JANUARY 7, 1999, 2:00 P.M.

-o0o-

THE COURT: This is the continued time in State vs. Vanisi. We'll start today's hearing I think with a canvass of Mr. Vanisi.

Mr. Vanisi, we have had a couple of hearings this week, Monday and earlier this morning, regarding the jury filling out some questionnaires and having the jury come in and fill out the questionnaires, and your attorneys have told me that you didn't care to be here, that you were waiving your right to be here for those hearings. We didn't do any business other than swearing those people to tell the truth and giving them the questionnaires.

Is that true; did you waive your right to be here for those hearings?

THE DEFENDANT: That's correct, Your Honor.

THE COURT: And your attorneys told you about it, and you didn't have any questions about what was going on?

THE DEFENDANT: I was fine with what they have told me.

THE COURT: Okay. Thank you. You may be seated.

Now today we have -- this is our statutory Rule

1 250 hearing. We have done pretrial hearings throughout this
2 case, and I'd like to first offer, give the opportunity to
3 defense, are there any additional motions that you would
4 like to make or be heard on today?

5 MR. GREGORY: Not at this time, Your Honor.
6 Thank you.

7 THE COURT: And does the State have anything
8 pending that you believe should be resolved today?

9 MR. GAMMICK: No, Your Honor.

10 THE COURT: Okay. Counsel, you have received a
11 list entitled Absent Juror List dated January 11th, 1999.

12 MR. GREGORY: Yes, Your Honor.

13 THE COURT: This list are the names of the
14 original jury panel that we called in this case, the list of
15 those people who have not appeared, either on Monday or this
16 morning to fill out the additional jury questionnaire. Is
17 there any reason that either party has not to proceed
18 without these absent jurors?

19 MR. GREGORY: No, Your Honor.

20 MR. GAMMICK: No, we have no objection to
21 proceeding without them, Your Honor.

22 THE COURT: So everybody understands these
23 jurors are going to be permanently excluded from our jury,
24 these potential jurors will be permanently excluded from our
25 jury pool.

1 MR. GREGORY: Yes, Your Honor.

2 MR. STANTON: Your Honor, may the State request
3 of the court that this list be made part of the record?

4 THE COURT: Yes. The clerk has -- let me state
5 for the record the names and the reasons why they were not
6 here were all prepared by the Jury Commissioner, and the
7 Jury Commissioner will certify the list and it will be filed
8 into the record.

9 MR. STANTON: In addition, Your Honor, when you
10 briefly spoke with Mr. Vanisi just a moment ago, you
11 explained to him the nature of the process that occurred
12 Monday and this morning. If I may ask of the court to
13 inquire of Mr. Vanisi that he is under the understanding
14 that in addition to the procedures that you outlined, that
15 one juror whose name appears on the absent juror list of
16 January 11th, juror by the name of Mary Haskell, was
17 stipulated to by both parties to be excused, and if he is
18 aware of that additional procedure that took place and
19 whether or not he has any objection to that.

20 MR. GREGORY: Court's indulgence. Mr. Vanisi
21 is aware of that circumstance, Your Honor, and he
22 understands it, and he has no problems with the way we
23 handled the matter.

24 THE COURT: Correct, Mr. Vanisi?

25 THE DEFENDANT: I agree.

1 THE COURT: Now there was also one other juror,
2 Mrs. Palmer, who arrived with all the children and all those
3 problems that I excused and counsel stipulated to that
4 individual.

5 MR. GREGORY: I apologize. I thought that was
6 the juror we were talking about.

7 THE COURT: No, this was the lady who was on
8 vacation, had to leave for a month trip, and it happened
9 right before the New Year's that we had a status conference.

10 MR. SPECCHIO: Can I have the Court's
11 indulgence?

12 THE COURT: Yes.

13 MR. GREGORY: We have no problems with either
14 stipulation.

15 THE COURT: Okay. Mr. Vanisi, you understand
16 that both of those people were excused by your counsel on
17 your behalf?

18 THE DEFENDANT: Yes, I understand.

19 THE COURT: And you didn't have any problem
20 with that?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Then the certified list will be
23 marked as an exhibit to the jury selection process by the
24 clerk and admitted as an exhibit in this file. It won't go
25 to the jury, but it will be part of the permanent record.

1 The other question I had for counsel is the
2 clerk is going to be reading the Information in this case,
3 and there are three also known as names on the Information.
4 Normally she reads the Information in its entirety, but we
5 usually get a stipulation from counsel with regard to the
6 also known as.

7 MR. GREGORY: Court's indulgence. May we
8 approach?

9 THE COURT: Yes.

10 (Whereupon, a bench conference was held among
11 Court and counsel.)

12 THE COURT: Mr. Gregory, do you want to put on
13 the record about that?

14 MR. GREGORY: We have no objections to the
15 aka's reflected on the Information, Your Honor.

16 THE COURT: The clerk will be reading the
17 Information as it is in its entirety. Anything else that
18 counsel has to bring up at this time?

19 I would like to have an idea from counsel if
20 you have looked at the jury questionnaires that were filled
21 out on Monday and if there is any -- if you think that we
22 should have another hearing tomorrow to excuse or explore
23 the possibility of excusing any of those jurors.

24 MR. GAMMICK: Your Honor, we have reviewed
25 those, and the difficulty we have with that is the way the

1 questions are worded, they don't really address the legal
2 bounds for selecting jurors. They are more in general type
3 questions, and also there are several answers that we have
4 found that are pretty inconsistent with the way they
5 answered them in the jury questionnaires where they have to
6 be explored. I don't believe we saw anyone that we would
7 request excusal at this time due to the questionnaire
8 because there are a lot of questions that need to be asked
9 as a result of those.

10 MR. BOSLER: We agree. The jurors indicate
11 they can't be fair, I think you have to talk to them in
12 person before we make legal challenges, Weatherspoon or
13 otherwise. I don't think we can do anything without the
14 jurors here.

15 THE COURT: So there is nobody that out of the
16 chute you stipulate to being excused from jury selection?

17 MR. BOSLER: Not at this point, Your Honor.

18 MR. STANTON: There are two jurors I think
19 probably whose questions should be taken in chambers,
20 though, based upon their responses. If indeed they get
21 called, I think specifically based upon their responses to
22 the questionnaire that will require one-on-one interaction.

23 THE COURT: Now what I'd like you to do is let
24 the defense team know who those two people are that you
25 think, Mr. Stanton, that is going to take place with.

1 The other thing is because of the circumstances
2 involved in this case, we won't be doing that in chambers,
3 we'll be doing it in here. So I will work on the logistics
4 of when that questioning will take place based on the whole
5 panel will have to move out and counsel and Mr. Vanisi will
6 remain in the courtroom. Rather than trying to move Mr.
7 Vanisi into chambers to do this in chambers and all counsel
8 in chambers. It will be too crowded. We will have to move
9 the panel out to do it.

10 The way I anticipate that we will do this is if
11 they actually get called as one of our members of our set
12 panel. Is that the way everyone wants to wait to do that
13 until they actually come out of the box? Does everyone
14 agree with that?

15 MR. STANTON: State does, Your Honor.

16 MR. BOSLER: Yes, Your Honor.

17 THE COURT: At the request of counsel to have
18 four alternates, I have decided I will go along with your
19 request. So we will have a jury of 12 plus four alternates,
20 so there will be 16 people on the ultimate jury, and as you
21 know, we have 14 chairs. So we'll have 14 regular chairs,
22 then we will have two extra chairs on the side.

23 Any logistics issues about how you are going to
24 move evidence around and what you are going to do, you are
25 going to have to take into effect that you have a couple of

1 extra jurors up there. If you want to look at the way it's
2 going to be configured with the bailiff later, feel free to
3 come by and look at it and figure out the logistics how you
4 want to use and do your evidence.

5 Okay. Is there anything further?

6 MR. GAMMICK: I believe we're scheduled for two
7 o'clock tomorrow afternoon to bring evidence in and mark it
8 at that time.

9 THE COURT: Yes.

10 MR. GREGORY: Court's indulgence. That's
11 correct, Your Honor. Your Honor, we do have a concern and
12 that is how security is going to be handled for Monday as
13 far as Mr. Vanisi is concerned. We don't want a spotlight
14 put on him, obviously, and because he is surrounded by DIRT
15 team members or the way he is dressed or the leather
16 shackles on his feet. It is my understanding they decided
17 not to use that.

18 THE COURT: That is correct. It is my
19 understanding that you brought clothes in today?

20 MR. GREGORY: We did indeed, Your Honor.

21 THE COURT: He will be dressed in civilian
22 clothing. I would ask that you would meet the transport
23 team wherever they tell you they want you to meet up with
24 him so that you can walk into the courtroom with him.
25 However, none of the potential jurors will even be on this

1 floor until Mr. Vanisi and you are here and at counsel
2 table.

3 So there will be no transporting of Mr. Vanisi
4 while the jury is out and about. If we have to take a
5 recess, the jury is going to be removed en masse by the
6 bailiffs that I have to assist in the jury and the Jury
7 Commissioner staff to another courtroom. During jury
8 selection the court -- the jury room will be utilized by the
9 security team to keep Mr. Vanisi in this area so he is not
10 walking the halls running the risk of running into an errant
11 potential juror. If it takes us all day, that is kind of
12 the way we'll work it. We'll make sure that we hold on to
13 the jury panel at all times.

14 MR. GREGORY: And I have no problems with what
15 the Court has just outlined. However, I would have an
16 objection to him being surrounded by the jurors who are
17 present with the DIRT officers. I'm not asking where are
18 they going to position themselves, but I assume it will be
19 discreet enough that no one will conclude that Mr. Bosler or
20 myself is in custody. They may conclude that Mr. Specchio
21 is in custody.

22 MR. SPECCHIO: With my record.

23 THE COURT: I don't anticipate any of the
24 people -- the gentleman who is sitting in front of the bar
25 is a DIRT team person, and he will not be in front of the

1 bar. The only people in front of the bar will be my two
2 bailiffs. One will be sitting at the chair next to Marci
3 Stone, and the other will be sitting where the bailiff is.

4 MR. GREGORY: And the rest of the DIRT team
5 will be spaced in the audience?

6 THE COURT: Wherever. They are not going to be
7 in front of the bar.

8 MR. GREGORY: You also indicated something
9 about the skirted tables?

10 THE COURT: They figured -- they decided not to
11 do that. So Mr. Vanisi will not be chained or shackled
12 unless the tables are somehow skirted and it is completely
13 outside the view of the jury. So it is not going to happen,
14 as I understand it, at this stage. If they decide for
15 security reasons they need to modify that, they will modify
16 it in such a way that there will be no view of the custodial
17 status of Mr. Vanisi to the jury. And you will have an
18 opportunity to see what it is before the jury comes in so
19 you can make any objections that you might want to have.

20 MR. GREGORY: Thank you, Your Honor.

21 THE COURT: Anything to add, Deputy?
22 Lieutenant, Sergeant?

23 THE SERGEANT: Sergeant.

24 MR. STANTON: Just got a field promotion.

25 THE COURT: At least I didn't say captain.

1 MR. STANTON: Your Honor, I'd just like to make
2 the record and to inquire of the Court. The State I believe
3 provided to the court on Monday or Tuesday the State's
4 proposed jury instructions in this case. Has the Court
5 received those?

6 THE COURT: Yes, I have received those.

7 MR. STANTON: We provided to defense counsel
8 copies on the same date and time as provided to the court.
9 For the record, to date we have not received any proposed
10 jury instructions from the defense. I believe the local
11 court rule requires that by 5:00 o'clock tomorrow, and I'd
12 ask the court if indeed the court would enforce that local
13 rule in this case.

14 MR. SPECCHIO: At this juncture, Your Honor, we
15 don't anticipate to submit any additional instructions.
16 That may change between now and the conclusion of the trial,
17 but at this juncture we have no additional instructions to
18 offer.

19 THE COURT: Okay. If there comes a time during
20 the defense that you think something has happened that it is
21 important to offer an additional instruction, please submit
22 that to the court. If it has something to do with strategy
23 and you are worried about giving away your strategic case
24 for some reason, you can offer it in camera with an
25 explanation of why it is in camera.

1 MR. SPECCHIO: That is fine, Your Honor.

2 THE COURT: But I don't want any surprises on
3 the jury instructions.

4 MR. SPECCHIO: I don't anticipate any.

5 THE COURT: So I guess you are not going to get
6 any, Mr. Stanton.

7 MR. STANTON: Thank you, Your Honor.

8 THE COURT: Anything further?

9 MR. STANTON: Not from the State.

10 MR. GREGORY: Not by the defense, Your Honor.

11 THE COURT: Tomorrow at two o'clock, as I
12 understand it, it is going to be counsel only; is that
13 correct, Mr. Vanisi does not wish to be present?

14 MR. SPECCHIO: It is just to mark the evidence,
15 Your Honor. I don't think he needs to be here. It is an
16 inconvenience for everybody but for no reason. All they are
17 going to do is mark it.

18 THE COURT: Correct.

19 MR. SPECCHIO: You are not even going to be
20 here. So nothing can be done with it. I don't think it's
21 necessary that he be here.

22 THE COURT: Mr. Vanisi, if you for some reason
23 want to be present, then we would hold this as an open court
24 session, which means I would be present, you would be
25 present, and we'd do it all on the record. But it is kind

1 of a time consuming issue if you do it all on the record.
2 It takes a little bit more time.

3 If you waive your appearance, I will not be
4 present either, and the attorneys will just meet with the
5 court clerk. They get to look at the evidence whichever
6 side is offering evidence, and they watch as the Court clerk
7 marks the individual exhibits so that everybody knows what
8 the exhibits are and what number goes with which exhibit,
9 but nothing will be admitted or done.

10 Do you understand that.

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Would you waive being present
13 during that period?

14 THE DEFENDANT: And I can take the day off,
15 Your Honor. Thank you, Your Honor.

16 THE COURT: I'll be doing other things, but you
17 get the day off.

18 Anything else?

19 Then, counsel, I'll see you for the next court
20 session Monday at 10:00 a.m., and you will be back with the
21 clerk tomorrow. Court is in recess.

22 (Recess taken at 2:19 p.m.)
23
24
25

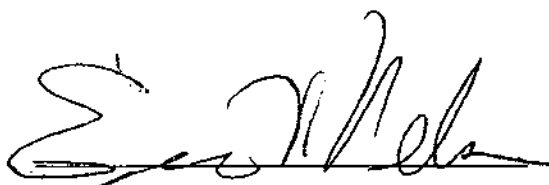
STATE OF NEVADA,)
)
COUNTY OF WASHOE.)

I, ERIC V. NELSON, Certified Shorthand Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That I was present in Department No. 4 of the above-entitled Court and took stenotype notes of the proceedings entitled herein, and thereafter transcribed the same into typewriting as herein appears;

That the foregoing transcript is a full, true and correct transcription of my stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 11th day of June, 1999.



ERIC V. NELSON, CCR No. 57

Exhibit 69

Exhibit 69

FILED

1

Case No. CR98-0516

Dept. No. 4

'99 JAN 28 P2:32

[Handwritten signature]

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-ooo-

THE STATE OF NEVADA,

Plaintiff,

-vs-

SIAOSI VANISI,

Defendant.

HEARING TO RESET
TRIAL DATE

January 19, 1999

Reno, Nevada

APPEARANCES:

For the Plaintiff:

RICHARD A. GAMMICK
District Attorney
DAVID L. STANTON
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant:

MICHAEL R. SPECCHIO
Public Defender
STEVE GREGORY
Deputy Public Defender
One South Sierra Street
Reno, Nevada

The Defendant:

SIAOSI VANISI

ORIGINAL

Reported by:

KRISTINE A. BOKELMANN, CCR #165

1 RENO, NEVADA, TUESDAY, JANUARY 19, 1999, 10:02 A.M.

2 -oOo-

3
4 THE COURT: Let the record reflect the defendant is
5 present with Mr. Gregory and Mr. Specchio. The State is
6 present with counsel.

7 We are gathered now to reset this case for trial.
8 When I was speaking with your appellate deputies in a
9 conference call on Friday, I had suggested a potential date of
10 August 30th. They were going to talk to counsel. Did you have
11 a chance to look at that date or think that might work?

12 MR. SPECCHIO: Your Honor, I think the next week is
13 Labor Day. I think I'd ask for the week following that.
14 August is our worst month. We can go June, July. And August
15 is, because of shortage of help because of vacations, August is
16 a bad time, and I think --

17 THE COURT: Well, August 30th is the day school
18 starts, so it is your -- probably your staff would have --
19 school-age children will certainly be back. It is the
20 beginning of the school year.

21 The Memorial Day does fall in there, just like we
22 had this holiday during this trial setting, but we can give you
23 three weeks minus one day without bumping any other murder
24 cases or any civil cases that have been set for a long time.

25 If we go into June, we're in a little different

1 situation and we can't give you three weeks in July.

2 MR. SPECCHIO: When is Labor Day? Is it the
3 following week?

4 THE COURT: It's the Monday after August 30th.

5 MR. STANTON: September 6th.

6 THE COURT: You have five days of trial, then you
7 have Labor Day, four days of trial, and then five more days, so
8 you'd be able to have 14 days set aside.

9 MR. SPECCHIO: All right.

10 MR. GAMMICK: Your Honor, we would ask for the
11 earliest date possible.

12 THE COURT: Let me tell you my theory, okay. We
13 had a lot of publicity about the mistrial, and my feeling is --
14 I did discuss this briefly with Judge Breen also, the senior
15 judge in our district.

16 My feeling is that I would rather try it -- start
17 it today, if I had my druthers. I'd rather begin immediately.
18 We can't do that. The defense has asked for a minimum of 60
19 days.

20 We go into 60 days, and we are still dealing with
21 the publicity issue of the publicity of why we had a mistrial.
22 My belief is that if we go into August, which is a good date,
23 August, September, we've lost the initial impetus of the
24 publicity, and I think we'll be able to select a jury.

25 I don't want to do it -- if we can't do it

1 immediately, I don't want to do it so soon that we not only
2 lose the ability to continue with it on short notice, but we
3 add the added issue of more publicity.

4 I'm concerned about the jury selection and how long
5 it will take us anyway. And the longer time fades with regard
6 to publicity, I think we're better off, as long as it's not too
7 long. I obviously want to get this trial off.

8 That being said, Mr. Gammick, go ahead and tell me
9 what you think.

10 MR. GAMMICK: I'm not -- I understand the Court's
11 calendar and I understand there are a lot of things coming up
12 in here. The Court mentioned June.

13 I don't see where we're going to need three weeks
14 with this case. We anticipated resting today, with yesterday a
15 holiday. Defense anticipated a day for the guilt phase, so
16 we're looking at just over a week for the guilt phase, and then
17 if there's a penalty phase, I know neither one of us will have
18 a lot of additional information to put up, so we're looking at
19 a day or two days with a guilt phase. So I'm even more
20 comfortable than I was before that this trial should not take
21 more than two full weeks.

22 THE COURT: Well, you had six days to defense case,
23 six trial days in picking the jury and trying your case. If we
24 add an additional day, depending on how soon we go for jury
25 selection, because we may have to do more individual voir dire,

1 I want to be sure I have the days built in.

2 So there we're at seven with the defense take one.
3 That's eight. If the jury deliberates more than three or four
4 hours, we are basically eating up our ninth day. Then
5 depending on the verdict, if there is a guilty verdict, then we
6 may or may not have to have an extra day built in there for
7 preparation for the guilt phase, depending on what date, time
8 the jury returns its verdict.

9 That could be ten. And then you'd be into your
10 third week with one day for guilt -- or for penalty phase and
11 the defense two days is what I built in for penalty. I didn't
12 know if you would need that much. That puts us at 13 days, and
13 then deliberations.

14 So basically from the Court calendar, I really feel
15 I have to block out three weeks.

16 MR. GAMMICK: Okay.

17 THE COURT: I can't start another jury trial. I
18 can do lots of other things, but I can't really have anything
19 but in terms of jury work for those three weeks.

20 MR. GAMMICK: Understood. Did the Court mention
21 also that you had some time in June or is that --

22 THE COURT: We don't have.

23 MR. GAMMICK: Oh, okay.

24 THE COURT: We don't really have time anywhere. I
25 mean, we planned on you all going in January for a long time,

1 but we can move things. And certainly this case takes
2 precedence over other matters. Our last murder trial will be
3 resolved around the end of May. We have murder trials every
4 month, as you know --

5 MR. GAMMICK: Understood.

6 THE COURT: -- in this department, so -- and many
7 of those are set for two weeks, which gives us trouble trying
8 to set a three-week trial in the middle of that. So we're kind
9 of basically in murder trials through May.

10 So we could put you in June, but it would require
11 juggling, and if that's better for counsel, if you think June
12 is better than the end of August, we can go back and look at
13 the calendar.

14 MR. GAMMICK: I would express the same concern that
15 Mr. Specchio did, is having a three-day weekend in the middle
16 of this trial did cause some problems with some of the jurors
17 already having travel arrangements made because they were
18 looking at that three-day weekend.

19 I'm just not so sure that may not cause us grief
20 again in the fall, and if we are going to start then, I don't
21 know what the Court's calendar looks like with maybe doing that
22 on September 7th, which would be the day after Labor Day, which
23 will get everybody back and we wouldn't be faced with that
24 issue again, make for a four-day week. And I'm not sure what
25 the Court has, if you have enough room after that. I'm not

1 trying to be obstinate here this morning.

2 THE COURT: No, no, I understand.

3 MR. GAMMICK: We would like to get this in as soon
4 as we could, everything considered.

5 THE COURT: Well, the clerk doesn't see any problem
6 with that, if you want to wait until September 7th.

7 MR. SPECCHIO: I'd prefer that, your Honor, to the
8 August 30th date.

9 THE COURT: Or do you want us to look at June?

10 MR. SPECCHIO: For the same reason that Mr. Gammick
11 just stated.

12 THE COURT: Okay. We can either do it then or we
13 can look into June. The clerk will just have to -- she's got
14 the calendar here and she's trying to juggle it, but September
15 7th we have lots of things set in that three weeks but nothing
16 of urgency, and certainly nothing that would take precedence
17 over this case.

18 MR. GAMMICK: May I have just a moment, your
19 Honor?

20 THE COURT: Yes.

21 MR. GAMMICK: May I have just one more quick
22 moment, your Honor?

23 THE COURT: Yes.

24 MR. GAMMICK: Your Honor, we can agree with the
25 September 7th trial date.

1 THE COURT: Okay. The other date we were coming up
2 with was June 1st, but as the clerk just said, we'd probably
3 have vacation problems then, too, because the school just gets
4 out.

5 MR. GAMMICK: Mr. Specchio also advised me he's got
6 some time in June. We've got another murder case. We have so
7 many of these going now, the September 7th would probably be
8 the best day.

9 THE COURT: So we can hold that for both counsel
10 and the defense. Nothing else is in there, so we're out far
11 enough your trial team can still be in place, Mr. Specchio?

12 MR. SPECCHIO: We don't have anything after August
13 1 at this point, so we're okay.

14 THE COURT: All right.

15 MR. SPECCHIO: Actually, July 30th, whenever the
16 last day in July is, is where we are right now as far as all of
17 them. I think there's 11 that are stacked between now and
18 then.

19 THE COURT: I know I have five or six of them here,
20 so --

21 MR. SPECCHIO: Right, I know, I know. I think
22 there's four or five in here.

23 THE COURT: With your office.

24 MR. SPECCHIO: With my office, right.

25 THE COURT: Now, we've reviewed Rule 250 and as we

1 talked about Rule 250 before, it didn't apply when we were
2 starting before January 31st, but I do believe the new Rule 250
3 applies because of the continuance.

4 The clerk gave you, with your transcripts that were
5 filed this morning from Friday, applications, Mr. Specchio.
6 These are just draft application forms that we've used in other
7 cases that are currently pending.

8 I don't know what the application form is going to
9 look like once the district judges meet and are able to discuss
10 it. If you have any -- I'd appreciate it if you looked at it
11 and gave me some comments on it anyway.

12 But I think if the trial team fills these out,
13 we're fulfilling the statutory requirements and it covers all
14 the bases that we have to cover. And then any comments you or
15 your staff have, I'd like to take to the judges' meeting in
16 February just so we can talk about it. But the draft is what
17 I'm using in this department.

18 MR. SPECCHIO: I've looked it over, your Honor. It
19 seems all right.

20 THE COURT: Okay. Great. Now, so I'm going to ask
21 that you fill those out. Your staff get them back and file
22 them with the court clerk. Get them directly to Mrs. Stone and
23 she'll take care of the filing of them.

24 MR. GAMMICK: Your Honor, I would also just mention
25 for the record, since we do come under the new Rule 250 now,

SVan1s12JDC03805

1 that there were dates that we did not comply with that would be
2 impossible to comply with at this time, and I believe those are
3 dates of notice, dates of filing of the notice, those types of
4 things that we were not required to do at the time this case we
5 followed the Rule 250 that was in effect. We cannot meet those
6 dates under the new Rule 250. We will comply with the
7 provisions if we can.

8 For instance, I believe now there's a requirement
9 that we file with the Court for the penalty phase witnesses and
10 evidence. We will do that. We will do everything we can
11 comply with, but there are things we cannot comply with under
12 the new rule.

13 THE COURT: Now, what we did, Mr. Gammick, in
14 another case that's in the same boat, sort of in between the
15 two rules, is the new rule doesn't go into effect until January
16 30th. So what I said was that the State had from January 30th
17 forward to rectify the record within the time periods as though
18 you were filing your indictment on January 30th, if that makes
19 sense.

20 We have a requirement that some notices be filed
21 within ten days, some -- I think there's one for 30 days, so I
22 know that you indicated that you believed you had fulfilled
23 those requirements anyway, but I'd like to see a written notice
24 filed on those.

25 MR. GAMMICK: I'm not -- we do have a written

1 night of January 12th, January 13th, sometime shortly
2 after midnight, about a quarter to one or so.

3 Were you in the area-- Or maybe even closer to
4 1:00. Were you in the area of university?

5 A Yes, I was. I had come from the Day's Inn,
6 which is located at Wells and 7th up on 9th to the
7 university.

8 Q And do you know where the kiosk is located?

9 A Yes, I do. The visitor information booth
10 kiosk?

11 Q Yes.

12 A Yes.

13 Q Did you go through that area?

14 A Yes, I did. I entered the campus on I
15 believe it's 9th Street.

16 Q Did you see a University of Nevada-Reno
17 Police Department car there?

18 A Yes, I did, sir.

19 Q And would you--

20 As you were approaching that vehicle, would you
21 describe what you discovered?

22 A As I reached the top of the stairs coming
23 off 9th Street, it appeared as though there is a--
24 the parking lot builds up, so my view was somewhat
25 obstructed.

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SVan1s12JDC03768

1 Upon closer view it looked as though the officer
2 was looking under his car, because it was leaking
3 fluid. Finally when getting there, I noticed that the
4 officer was face down beside his car.

5 Q And you say you thought the car was leaking
6 fluid. Did you discover what that fluid was that you
7 were seeing?

8 A He was bleeding, yes, sir. It was the
9 officer's blood.

10 Q Do you recall whether or not his car door
11 was open or closed at that time?

12 A The car door was open.

13 Q What did you do immediately?

14 A The first thing I did was felt his pulse,
15 trying to check and see if he was still alive. At
16 that point I went to the information kiosk, pounded on
17 the door to see if there was anybody there.

18 Realizing there was nobody there, I then went to
19 a phone located close to Manzanita Lake to dial 911.

20 Q Okay. Before you went to the telephone did
21 there come a time that you used the radio inside of
22 the car?

23 A I used the radio inside the car following
24 making the call to 911.

25 Q You made the telephone call first, then

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AA02333 455

2JDC03768

1 went back?

2 A Then I went back to the officer, rolled him
3 over, was looking for more signs, trying to
4 resuscitate him. It was at that point I then got back
5 in the-- or I got into the car for the first time, I
6 should say, and then used the police radio.

7 Q Was the officer awake at that time or
8 conscious?

9 A No, the officer was not.

10 Q Okay. At the time that you got into the
11 car did you notice any paperwork, notebooks, anything
12 like that?

13 A There was I believe a metal clipboard with
14 some paperwork on top of it located-- It's a bench
15 seat in the car, if I remember right, or there is a
16 lump. It was sitting on the lump or somewhere in that
17 area I recall, because it was near the officer's
18 radio.

19 Q By any chance did you see a coffee cup
20 anywhere in the car?

21 A Yes, I did. I saw a coffee cup located in
22 a cup holder in the center console of the vehicle.

23 Q After you made your 911 call and then made
24 the call on the radio did police officers start
25 arriving at the scene?

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AA02334 456

2JDC03769

SVan1s12JDC03769

SVan1s12JDC03770

1 A I could hear the sirens of the police car
2 when I got off the police radio and returned to the
3 officer. They started arriving within seconds of
4 literally getting off the radio. Within 30 seconds
5 they were on site.

6 Q At the time you were approaching the car
7 did you see anybody leaving the scene?

8 A I can't say definitely at any point
9 arriving. I did first recall seeing people on a more
10 eastern end of the campus near the nursing school.

11 I really-- It looked like two people, but I
12 very well could have seen the shadow that was here--
13 this was before realizing the officer was down.

14 Q Okay. Let me show you photo number 8 and
15 ask, understanding that the officer is on his back at
16 this time--You already said you did roll him over--is
17 this the way you found the car and the location of the
18 officer at the time you arrived at that scene?

19 A Yes. The officer-- His face was located
20 where the bulk of the pool of blood is right there,
21 and I rolled him over from that position onto his
22 back.

23 Q Okay. And then it appears that his shirt
24 has been opened up by--

25 The paramedics worked on him?

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AA02335 457

2JDC03770

1 A Yes. He was in uniform at the time.

2 MR. GAMMICK: That is all the questions I have
3 at this time. Thank you.

4 THE COURT: Mr. Fey.

5 MR. FEY: Nothing, Your Honor. Thank you.

6 THE COURT: Thank you. You are excused.

7 THE WITNESS: Thank you.

8 THE COURT: Okay. Call your next witness.

9 MR. GAMMICK: Call Patricia Misito, please.

10 Your Honor, for the Court's timing there are two
11 more witnesses.

12 THE COURT: Okay. Ma'am, if you will come right
13 over here and raise your right hand, I will swear you
14 in.

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

17 THE COURT: All right. Please be seated.

18
19 PATRICIA MISITO,
20 produced as a witness herein, having
21 been first duly sworn, was examined
22 and testified as follows:

23 ///

24 ///

25 ///

MERIT REPORTING (702) 323-4715

AA02336

458

2JDC03771

SVan1s12JDC03771

DIRECT EXAMINATION

BY MR. GAMMICK:

Q Would you please state your name, spell your last name.

A Patricia Misito, M-i-s-i-t-o.

Q And what is your profession or occupation?

A I'm a clerk at the 7/Eleven on Baring Boulevard.

Q Is that located in Sparks, Nevada?

A Yes, it is.

Q And I would call your attention to January 13th, 1998 at about 11:40 in the evening. Were you working then?

A No, it was 10:15.

Q Okay. Let's make it about 10:15 in the evening. Were you working there?

A Yes.

Q Did something unusual happen at the store?

A Yes.

Q What is that?

A A man came in, wearing a turtleneck shirt around his face, proceeded to come up-- I had a customer at the counter. He proceeded to come up when I had the drawer open to give the change.

He said, Can you help me out while you have the

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AA02337 459

2JDC03772

SVan1s12JDC03772

1 drawer open? I looked up. He picked up his shirt,
2 showed me the gun, took the gun out, held it to his
3 side. I took the drawer out of the register, put it
4 on the counter, said, Help yourself.

5 He took the money, asked if I could help him out
6 any more. I said, No, I don't have the key to the
7 safe. And then he said-- took rest of the money, and
8 he left.

9 Q Okay. Let's start with the man that came
10 up to your counter. Do you see him in court today?

11 A Yes, I do.

12 Q Would you please indicate where he is
13 seated, what he's wearing.

14 A He's right there with the red shirt on.

15 MR. GAMMICK: Would the record reflect
16 identification of the defendant, Your Honor?

17 THE COURT: All right, it will.

18 BY MR. GAMMICK:

19 Q And you say that he lifted up his shirt,
20 then pulled out a gun. I would like you to look at
21 exhibit number 6, and I will ask if you recognize
22 that.

23 A (Looking.) I believe it was silver, the
24 gun.

25 Q Okay. How about the shape and everything,

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AA02338

41.0

2JDC03773

SVan1s12JDC03773

1 is that the same type of gun?

2 A It was squared.

3 Q And let me show you what--

4 Does the store have a camera surveillance system
5 in it?

6 A Yes, it does.

7 Q And does it take photographs?

8 A It takes video.

9 Q A video snapshot-type affair?

10 A Well, it takes like VCR, video.

11 Q Do you know whether or not there was any
12 video taken that night?

13 A Yes, there was.

14 Q Do you see any photographs that were made
15 from the video?

16 A I seen it right after it happened. It was
17 blurry at the time.

18 Q Okay. Let me show you what has been marked
19 as number 2 and ask if you recognize that photograph.

20 A No, this isn't our store. This is-- I
21 believe this is the other store. In our store he
22 stood right in front of the counter. He didn't go
23 anywhere else.

24 Q Okay. That is why we have these
25 rehearsals.

MERIT REPORTING (702) 323-4715

AA02339 461

2JDC03774

SVan1s12JDC03774

1 There is no doubt in your mind this is the man
2 that came in, stuck the gun in your face, and took
3 money?

4 A Yes, it is him.

5 MR. SPECCHIO: Which one of us?

6 THE WITNESS: The man with the red shirt on.

7 MR. SPECCHIO: Oh, okay. I was out of town,
8 judge. I wasn't here that day.

9 THE COURT: Okay. The DA will verify that.

10 MR. SPECCHIO: All right. I will bring the
11 affidavit.

12 THE COURT: Is that it then?

13 MR. GAMMICK: Yes, I have no further questions,
14 Your Honor.

15 THE COURT: Mr. Fey.

16 MR. FEY: Just briefly.

17
18 CROSS-EXAMINATION

19 BY MR. FEY:

20 Q Did he pull the gun out of his pants?

21 A He pulled on it, held it to his side. I
22 had a customer at the counter. He held on it on the
23 customer.

24 Q The gun was not pointed at you?

25 A No. He did not point it at me.

MERIT REPORTING (702) 323-4715

1 Q So that picture that you just saw today,
2 have you previously seen that picture before?

3 A The one from the other store, yeah. I seen
4 it on television, yes.

5 Q That particular picture you have seen on
6 television?

7 A Yes.

8 Q That may or may not be the same person that
9 you saw, is that right?

10 A He's the person I saw.

11 Q You're identifying the defendant but not
12 the picture, is that correct?

13 A Well, that is not-- That is not in my
14 store.

15 Q You said he was wearing a turtleneck up
16 around his face?

17 A Right.

18 Q Did that ever come down?

19 A No. He had it right to here.

20 Q Okay. So the turtleneck is covering my--
21 I'm doing it with my tie. I hope I don't blind you
22 with it. It's up like this, so you didn't see the
23 bottom half of his face?

24 A No, but I recognize his eyes and
25 cheekbones.

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SVan1s12JDC03776

1 Q Was he wearing a heat?

2 A No.

3 Q Was he wearing a wig?

4 A No.

5 Q Okay.

6 A I believe it was-- That is the way he
7 looked, just like that.

8 Q Essentially from the eyes north is what you
9 saw?

10 A Uh-huh.

11 Q Correct?

12 A Yes.

13 MR. FEY: Thank you. No further.

14 THE COURT: Mr. Gammick, anything else?

15 MR. SPECCHIO: I have one question.

16

17 CROSS-EXAMINATION

18 BY MR. SPECCHIO:

19 Q Can you identify the gun that was shown to
20 you as being the gun that the man had, or does it look
21 like it?

22 A I believe it to have been a stainless steel
23 gun.

24 Q As opposed to the one you see in the
25 picture?

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AA02342

464

2JDC03777

SVan1s12JDC03777

1 A Right.

2 MR. SPECCHIO: I have no further questions.

3 THE COURT: Anything else, Mr. Gammick?

4
5 REDIRECT EXAMINATION

6 BY MR. GAMMICK:

7 Q Ms. Misito, was part of your testimony
8 based not only on what you could see of the upper face
9 but on the size of the person?

10 A Yeah, I knew it was a big man in front of
11 me.

12 MR. GAMMICK: May I request the defendant stand,
13 Your Honor?

14 THE COURT: Mr. Specchio.

15 MR. SPECCHIO: No, we will all stand, judge.

16 THE COURT: Mr. Vanisi, will you please stand.

17 (The defendant stood.)

18 BY MR. GAMMICK:

19 Q Do you know the man in the red jump suit,
20 who is standing in front of you today, as the person
21 who pulled the gun on you and took the money?

22 A He's him.

23 MR. GAMMICK: That is all I have.

24 THE COURT: Anything else, Mr. Fey or Mr.
25 Specchio?

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2JDC03778

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1 MR. FEY: Nothing further.

2 MR. STANTON: Your Honor, before the witness
3 leaves may I have the record indicate we had a
4 physical demonstration of the clothing or shirt pulled
5 up, but no one for the record every stated how far.

6 If counsel has no objection, I think Ms.
7 Misito's verbal description is just below the bridge
8 of the nose is where he had the shirt.

9 THE COURT: It was between the tip of the nose--

10 THE WITNESS: It was about here when he was
11 coming in. I thought he was doing it-- I thought he
12 was pulling it down because it was cold out, but it's
13 definitely him.

14 MR. STANTON: I just wanted the record to
15 reflect what she physically demonstrated.

16 THE COURT: Thank you, Ms. Misito.

17 Is she free to go?

18 MR. SPECCHIO: Sure.

19 MR. GAMMICK: Yes.

20 THE COURT: Next witness, Mr. Gammick.

21 MR. GAMMICK: The State will call Diana Shouse,
22 please.

23 THE COURT: Ms. Shouse, if you can come up to my
24 left, I will swear you in.

25 Please raise your right hand and be sworn.

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2JDC03779

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

THE COURT: Please be seated.

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

DIRECT EXAMINATION

BY MR. GAMMICK:

Q Would you please state your name and spell
your last name, ma'am.

A Diana Shouse, S-h-o-u-s-e.

Q What is your profession or occupation?

A Ladies manager at K-Mart. I quit the other
job.

Q We can back up. January 13th, 1998 what
were you doing?

A I was a cashier at Jackson Food Stores.

Q And where is that located?

A On Clearacre and McCarran.

Q Is that in Reno, Nevada?

A Reno or Sparks.

Q One of them?

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1 A It's right there on the border line.

2 Q Is there a Texaco station--

3 A Uh-huh.

4 Q --at that intersection?

5 I would like to call your attention to about
6 10:35 that night, January 13th. Did something unusual
7 happen?

8 A I was robbed.

9 Q Okay. Explain what happened.

10 A A guy came in, just laid a gun on the
11 counter in the palm of his hand, told me to empty the
12 register, stay calm, because I was flipping.

13 Q And then what?

14 A I opened the register, put it all in a
15 paper bag, opened the other one, the other register,
16 for him, showed him that one was empty, and he left.

17 Q Okay. You say you were flipping. What
18 does that mean?

19 A I was shot before, and when I seen the gun,
20 I just backed up and went--

21 Q Were you scared?

22 A Yeah, big time.

23 Q Okay. And that is why you gave him the
24 money?

25 A Oh, yeah. He could have had anything in

MERIT REPORTING (702) 323-4715

AA02346 468

2JDC03781

SVan1s12JDC03781

1 that store he wanted.

2 Q Okay. Do you see that man in court today?

3 A Yes, I do, sitting right there.

4 Q Would you please--

5 MR. SPECCHIO: Let's narrow this down again,
6 judge.

7 THE COURT: What is he wearing?

8 THE WITNESS: He's wearing the red shirt.

9 MR. GAMMICK: May the record reflect the
10 identification of the Defendant Vanisi, Your Honor?

11 THE COURT: All right. I think she has excluded
12 the Public Defender and his deputy.

13 MR. SPECCHIO: Whew.

14 BY MR. GAMMICK:

15 Q Does your store have a camera surveillance
16 system?

17 A Yes, it does.

18 Q Not your store, but Jackson's at that time?

19 A Yes.

20 Q Let me show you number 2 and see if you
21 recognize this photograph.

22 A That is him leaving the store and me behind
23 him.

24 Q Okay. That was taken that night?

25 A Yeah.

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AA02347 469

2JDC03782

SVanisi12JDC03782

1 Q Now, it says 23-- I believe the hour 23?

2 A Uh-huh.

3 Q Which would be 11:00 p.m. Do you know why
4 it is an hour off?

5 A Because of Daylight Savings Time.

6 Q Okay. The camera wasn't changed?

7 A Right.

8 Q As you sit here today, is there any doubt
9 at all that this is the man that came into your store,
10 put the gun on your counter, and you gave the money
11 to, and he left?

12 A Absolutely positive.

13 MR. GAMMICK: Thank you. That is all I have.

14 THE COURT: Mr. Fey or Mr. Specchio.

15 MR. SPECCHIO: Can we just have the Court's
16 indulgence, Your Honor?

17 THE COURT: Yes.

18 MR. SPECCHIO: (Looking.)

19 MR. FEY: May I approach and get an exhibit,
20 Your Honor?

21 THE COURT: Uh-huh. (Handing.)

22 MR. FEY: (Looking.) Thank you, Your Honor. No
23 questions for this witness.

24 THE COURT: Thank you, Ms. Shouse. You are
25 excused, and you are free to go.

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AA02348 470

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SVanisi12JDC03784
1 MR. GAMMICK: That is all the evidence the State
2 has to present at this time.

3 After we have a ruling from the Court I am going
4 to request that all of the exhibits be returned to the
5 State so we may furnish the defense with copies and
6 have them in preparation for trial.

7 THE COURT: That is the State's case then.

8 Mr. Specchio and Mr. Fey, have you advised Mr.
9 Vanisi of his right to testify in these proceedings
10 and call witnesses and introduce evidence on his own
11 behalf?

12 MR. SPECCHIO: We did all that stuff, judge.
13 And we are prepared to advise you that Mr. Vanisi will
14 not make a statement at this time, and we are prepared
15 to submit the matter, Your Honor.

16 THE COURT: All right. Submitted then, Mr.
17 Gammick and Mr. Stanton?

18 MR. GAMMICK: We will submit the matter also,
19 Your Honor, based upon the evidence you have seen.

20 THE COURT: Based upon the testimony of the
21 numerous witnesses called by the State both this
22 morning and this afternoon, I find there is probable
23 cause to believe that Mr. Vanisi committed the crime
24 of Murder in the first degree on the person of Sgt.
25 George Sullivan and that he committed two counts of

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AA02349 471

2JDC03784

1 Robbery With the Use of a Deadly Weapon or actually
2 three robberies With the Use of a Firearm and also
3 Grand Larceny. And he is bound over for trial on all
4 five counts.

5 The status continues as no bail.

6 The record will reflect that all of the exhibits
7 provided to me by the State are being returned to Mr.
8 Stanton.

9 And that is it, and we will be in recess.

10 Thanks.

11 MR. GAMMICK: Thank you, Your Honor.

12 (The proceedings were concluded.)

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AA02350

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SVan1s12JDC03786

1 I, EDWARD DANNAN, Justice of the
2 Peace of Reno Township, sitting as Committing
3 Magistrate in Reno, Washoe County, Nevada do hereby
4 certify;

5 That LYNDA CLARK, CSR #73, a Certified
6 Shorthand Reporter, was duly appointed and sworn by me
7 to report the proceedings had in the Preliminary
8 examination in the case of the STATE OF NEVADA,
9 Plaintiff, versus EDWARD VANISI, Defendant;
10 that the witnesses were first duly sworn and their
11 testimony taken in stenotype notes and thereafter
12 transcribed into typewriting as herein appears;

13 That when the examination of the witnesses
14 and the presentation of evidence was closed, it
15 appearing from the evidence adduced at said Preliminary
16 Examination that there was probable cause and
17 sufficient evidence to believe that the said
18 EDWARD VANISI, defendant, committed the said
19 crimes as charged; that said defendant,
20 EDWARD VANISI, was therefore bound over to the
21 Second Judicial District Court for trial.

22 
23 _____

24 Justice of the Peace of Reno
25 Township, sitting as Committing
Magistrate in Reno, Washoe County,
Nevada.

MERIT REPORTING (702) 323-4715

AA02351

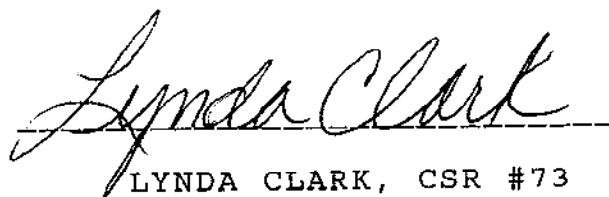
473

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 I, LYNDA CLARK , a Certified Shorthand
5 Reporter, do hereby certify that I was duly appointed
6 and sworn by the Magistrate Reno, Washoe County,
7 Nevada to report the proceedings in the within-
8 entitled cause, that I was present on the 20th day of
9 February, 1998, at the hour of 9:00 a.m., of the
10 said day and reported the proceedings had in said
11 cause in stenotype notes, which were thereafter
12 transcribed under my direction.

13 That the foregoing transcript, consisting of
14 pages 1 through 232, both inclusive, contains a full,
15 true and complete transcript of my said stenotype
16 notes and is a full, true and correct record of the
17 proceedings had at said time and place.

18 DATED: At Reno, Nevada, this 28th day of
19 February, 1998.

20
21
22 
23
24 LYNDA CLARK, CSR #73
25

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AA02352

424

2JDC03787

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Exhibit 61

Exhibit 61

FILED

98 APR -9 P12/33

Case No. CR98-0516

Dept. No. 4

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,

Plaintiff,

-vs-

SIAOSI VANISI,

Defendant.

ARRAIGNMENT

March 10, 1998

Reno, Nevada

APPEARANCES:

For the Plaintiff:

RICHARD A. GAMMICK
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant:

MICHAEL R. SPECCHIO
Public Defender
One South Sierra Street
Reno, Nevada

Parole & Probation Department:

ROBIN MCGAHUEY

The Defendant:

SIAOSI VANISI

Reported by:

KRISTINE A. BOKELMANN, CCR #165

ORIGINAL

1 RENO, NEVADA, TUESDAY, MARCH 10, 1998, 9:06 A.M.

2 -oOo-

3
4 THE COURT: First matter, Siao Si Vanisi.

5 MR. SPECCHIO: Ready, your Honor.

6 THE COURT: Mr. Vanisi, I'm handing a copy of the
7 Information filed February 26th, 1998, to your attorney. I'd
8 ask that you review it with him.

9 MR. SPECCHIO: We're familiar with the contents,
10 your Honor. We're prepared to waive the reading.

11 THE COURT: Is your client's name correctly
12 spelled?

13 MR. SPECCHIO: It is, your Honor.

14 THE COURT: Are you ready to go forward with entry
15 of plea?

16 MR. SPECCHIO: We are.

17 THE COURT: How are you going to plead?

18 MR. SPECCHIO: The defendant will stand mute, your
19 Honor, at this time.

20 THE COURT: Mr. Vanisi, please stand. You
21 understand that this is the time for your entry of plea in
22 District Court?

23 THE DEFENDANT: Yes, I understand.

24 THE COURT: Okay. You're represented by counsel,
25 Michael Specchio and Walter Fey of the Public Defender's

SVan1s12JDC03448
1 Office. You understand that?

2 THE DEFENDANT: Yeah, that's correct.

3 THE COURT: Are you comfortable with their
4 representation thus far?

5 THE DEFENDANT: Thus far, yes.

6 THE COURT: How do you plead to the charge?

7 THE DEFENDANT: I'd like to stand mute, your Honor.

8 THE COURT: Okay. The Court will enter a not
9 guilty plea on your behalf. Counsel, in addition to the
10 Information, the State has filed a notice of intent to seek the
11 death penalty on February 26th, 1998. Have you reviewed a copy
12 of that?

13 MR. SPECCHIO: We have, your Honor.

14 THE COURT: You understand the contents?

15 MR. SPECCHIO: Yes, ma'am.

16 THE COURT: At this time the Court is ready to set
17 a briefing schedule and a trial schedule.

18 MR. GAMMICK: Your Honor, if I may, since the State
19 has raised the intent to seek the death penalty, pursuant to
20 Rule 250 I'm required to enunciate the aggravators we intend to
21 pursue at this time, if I may do that.

22 THE COURT: Yes.

23 MR. GAMMICK: Since I filed notice of intent to
24 seek the death penalty, we intend to pursue the following
25 aggravating circumstances: Number one, we will present

SVan1s12JDC03449

1 evidence that the murder of Sergeant George Sullivan by the
2 defendant was in the commission or attempting to commit the
3 crime of robbery with the use of a deadly weapon.

4 Number two, we will present evidence that the
5 murder of Sergeant George Sullivan was committed upon a peace
6 officer or that he was killed while engaged in the performance
7 of his official duty or because of an act performed in his
8 official capacity, and that the defendant knew or reasonably
9 should have known that the victim was a peace officer.

10 The first aggravator is pursuant to NRS 200.033
11 (4)(a). The second aggravator I've just read is pursuant to
12 NRS 200.033 (7).

13 The third one is we will present evidence that the
14 murder of Sergeant George Sullivan was committed by the
15 defendant and it involved torture, mutilation of the victim
16 pursuant to NRS 200.033 (8) as well as case law.

17 Number four, evidence that the murder of Sergeant
18 George Sullivan was committed by the defendant upon the victim
19 because of the actual or perceived race, color, or national
20 origin of Sergeant George Sullivan, NRS 200.033 (11). The
21 intent says 030. I would correct that to NRS .033 (11).

22 Those are the four aggravators we intend to pursue
23 at this time. We also reserve the right under the statute to
24 file an additional notice of intent on any further aggravators
25 if we discover further evidence and they would be appropriate

1 in this case. Thank you.

2 THE COURT: Okay. Counsel, the Court has picked
3 two potential trial dates for this case. We've chosen --

4 THE CLERK: September 8th or November 2nd.

5 THE COURT: Counsel wish to be heard as to your
6 preference as to those two trial dates?

7 MR. SPECCHIO: November 2nd would be better for us,
8 your Honor.

9 THE COURT: Any objection from the State?

10 MR. GAMMICK: Your Honor, we would like to have a
11 firm trial setting date if we could, please, so that it does
12 not get continued or have any difficulties.

13 In the last 15 years of trying cases, I've found
14 that November and December are almost impossible, particularly
15 a case of this magnitude due to the fact that people are
16 getting ready for the holidays, children are getting out of
17 school for vacations, et cetera, et cetera. So it does create
18 quite a problem with sitting a jury pool.

19 Also for in a trial that may run more than a week,
20 which I expect this one will run, so I'm not so sure the
21 November date would work for those reasons. We are prepared to
22 go to trial any time, but then I'm also looking at those
23 concerns. Also the fact we sought the death penalty in this
24 case.

25 I believe the defense needs some latitude for

1 preparing on whatever they need to prepare for due to all of
2 the appellate issues that do arise. So we can shoot for
3 November, but I'm not so sure that would be a firm date. I
4 would be more inclined to ask for January if in fact the Court
5 would be willing to go for a firm date setting so we don't move
6 it.

7 MR. SPECCHIO: We will stipulate to a January date,
8 your Honor.

9 THE COURT: We don't move trial dates here. We
10 don't --

11 MR. SPECCHIO: Then don't set it in November,
12 Judge.

13 THE COURT: If that's the date, that's the date.
14 We've also set a briefing schedule so you all have lots of time
15 to come in in advance and we can be sure that the briefs are
16 done.

17 I agree with Mr. Gammick, if it were going past the
18 first part of November, I don't think we'd be able to seat a
19 jury. We set this date assuming that this case would be tried
20 in 11 days, which would be the first two weeks of November,
21 which is two weeks before Thanksgiving or any holiday periods.

22 So you think you can do it or do you want to go --
23 if you want to go into January, we'll have to go back to the
24 drawing board in terms of dates and we'll have to set this
25 over.

1 MR. SPECCHIO: I would think we'd better go to
2 January, your Honor, because there's an awful lot of witnesses
3 in this case and there's an awful lot of investigation yet to
4 be done on the defense side. November could be iffy.

5 THE COURT: Okay. You understand we are prepared
6 to try this case in much shorter time?

7 MR. SPECCHIO: I understand that.

8 THE COURT: Okay. And you'd waive any speedy
9 trial --

10 MR. SPECCHIO: I advised Mr. Vanisi about the
11 60-day rule, your Honor. We're prepared to waive the 60-day
12 rule.

13 THE COURT: Mr. Vanisi, do you understand that you
14 have a right to have your case tried within 60 days? If 60
15 days is not realistic, you have a right to have your case tried
16 quickly, as soon as possible.

17 We've offered a trial date to your counsel of
18 September, which is six months. If you're not -- if you don't
19 want the 60 days, you can have one within six months. Do you
20 understand you have these rights?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Do you understand once you waive that
23 right, you cannot complain about the trial setting that you
24 receive? In fact, your counsel is looking at January. It may
25 be February. I don't know when we'll come up with a date. But

1 if we go out past the first of the year, it will be out past
2 the first of the year. You understand that?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: And do you waive your right to have a
5 trial within 60 days or quicker time?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: Okay. The Court will accept your
8 waiver. We'll set this over for setting of trial date.

9 THE CLERK: March 11th at nine o'clock.

10 MR. SPECCHIO: Judge, you want to bring him back
11 here tomorrow?

12 THE COURT: We have to come up with a trial date
13 and we can't do it with a whole gallery of everyone waiting
14 because we have briefing schedules we have to do. Either of
15 you have any problems with your briefing, you're asking for a
16 January date, so we're talking about motion hearings in
17 November.

18 MR. SPECCHIO: We're going to file about 50
19 motions, Judge. It will probably take us 60 to 75 days to do
20 that.

21 THE COURT: Okay. So we'll be looking at some
22 hearings in the mid -- in the summertime, you think, or
23 September?

24 MR. SPECCHIO: I would imagine summer. August to
25 September is probably realistic.

1 THE COURT: Okay. We'll go ahead -- I want to get
2 a firm setting, so we'll see you back tomorrow.

3 MR. SPECCHIO: I've got a meeting tomorrow, as does
4 Mr. Gammick, your Honor, at nine o'clock.

5 THE COURT: We can set it over another day. What's
6 good?

7 MR. SPECCHIO: Would it be nine o'clock? Friday
8 would be okay or Thursday probably would be okay, too.

9 MR. GAMMICK: Thursday I'll be in Las Vegas, your
10 Honor, for a sentencing commission meeting. Friday would be
11 fine.

12 MR. SPECCHIO: Friday would be all right.

13 MR. GAMMICK: Or Tuesday, Wednesday, Thursday of
14 next week, or Monday. Whatever the Court --

15 THE CLERK: March 19th at nine o'clock.

16 MR. SPECCHIO: That's next week, right?

17 THE COURT: Yes. We'll see you back at that time,
18 Mr. Vanisi.

19 MR. SPECCHIO: Thank you, your Honor.

20 (Proceedings concluded.)
21
22
23
24
25

1 STATE OF NEVADA,)
2 COUNTY OF WASHOE.) ss.

3
4 I, KRISTINE A. BOKELMANN, Certified Court Reporter
5 of the Second Judicial District Court, in and for the County of
6 Washoe, State of Nevada, do hereby certify:

7 That I was present in the above-entitled court on
8 March 10, 1998, and took verbatim stenotype notes of the
9 proceedings as herein appears;

10 That the foregoing transcript is a full, true,
11 and correct transcription of my stenotype notes of said
12 hearing.

13 Dated at Reno, Nevada, this 7th day of April, 1998.

14
15 Kristine A. Bokelmann
16 KRISTINE A. BOKELMANN, CCR #165
17
18
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20
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22
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24
25

Exhibit 62

Exhibit 62

3/28/18 12JDC04065

Case No. CR98-0516

Dept. No. 4

'98 AUG 10 P12:38

[Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-000-

THE STATE OF NEVADA,
Plaintiff,
vs.
SIAOSI VANISI,
Defendant.

STATUS HEARING
AUGUST 4, 1998
Reno, Nevada

APPEARANCES:

For the Plaintiff:

RICHARD GAMMICK
DAVID STANTON
Deputies District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant:

MICHAEL SPECCHIO
Deputy Public Defender
One South Sierra Street
Reno, Nevada

The Defendant:

SIAOSI VANISI

Reported by:

ERIC V. NELSON, CCR No. 57

ORIGINAL

RENO, NEVADA, TUESDAY, AUGUST 4, 1998, 10:00 A.M.

-oOo-

THE COURT: Good morning, counsel.

MR. SPECCHIO: Good morning, Your Honor.

MR. GAMMICK: Morning, Your Honor.

THE COURT: This is the time set for a status hearing in Case No. CR98-0516. The Court has received numerous motions, some of which we have ruled upon, and I'm sure you haven't had a chance to look at that. That was an order that was prepared this morning.

MR. STANTON: I just received it, as I believe Mr. Specchio has.

MR. SPECCHIO: Yes, Your Honor.

THE COURT: I know you haven't had a chance to look at it. I can tell you those things that I have reserved ruling on that I would like to hear oral argument on and when I thought we could do that. I didn't think you came prepared to do oral arguments this morning, and some of them I think you are going to need witnesses for. We can go through all the motions that were submitted, and I can tell you which ones I have ruled on in the written order this morning. If that makes sense to counsel. Any problem with that?

MR. STANTON: No problem for the State, Your Honor.

1 MR. SPECCHIO: That is fine, Your Honor.

2 THE COURT: There was a motion in limine
3 regarding prosecutorial misconduct. That has been ruled on
4 in the written order. Motion for production of samples,
5 procedures reports of all DNA testing, that was ruled on in
6 the order. Motion for discovery has been ruled on in the
7 order. Motion in limine re courtroom security has been
8 ruled on in the order. Motion in limine re custody status
9 of the defendant, that has been ruled on.

10 Motion in limine re gruesome photographs has
11 not been ruled on. I think it is important for me to know
12 which photographs we're talking about.

13 We have hearings set for the week of
14 Thanksgiving, and I assume that counsel would be ready to go
15 forward with the evidence on that Thanksgiving week to
16 provide me with the photographs you think you want to use.
17 Right, Mr. Stanton?

18 MR. STANTON: Yes, Your Honor.

19 THE COURT: So I'd like to set a hearing on
20 that for November 24th at 10:00 a.m.

21 The motion regarding hearing, having a hearing
22 to determine the competency of witnesses under the age of 14
23 years has been ruled on in the written order. Motion in
24 limine regarding prior bad acts we'll come back to.

25 Motion in limine regarding the arrest of the

1 defendant, I think the sum and circumstances of that will
2 require a witness. So I'm going to set that for hearing
3 also on November 24th at 10:00 a.m.

4 Motion to expand jury admonition sort of
5 granted in the order. You have a copy of the jury
6 admonition that I use and that I plan to use.

7 MR. GAMMICK: Your Honor, if I may make an
8 inquiry as to the prior motion concerning the arrest of the
9 defendant?

10 THE COURT: Correct.

11 MR. GAMMICK: We have an out-of-state witness
12 for that one from Salt Lake City at this time. We had him
13 here to testify at a preliminary hearing. He was sworn at
14 that time. If the Court is willing to take that testimony
15 for the circumstances or if we need to make arrangements to
16 bring him in specifically for this hearing.

17 THE COURT: That is why I set it on the 24th is
18 I thought the issue was raised by the defense sufficient
19 that we probably ought to have that hearing. I'd rather
20 have it before the trial and just get it out of the way.

21 MR. GAMMICK: Okay. The only reason I'm
22 raising this, right before Thanksgiving, we have not been in
23 contact with him. I don't know if we will have any
24 difficulty bringing him down at that time.

25 THE COURT: If it turns out you need to do

1 something, I'm flexible on that. I just thought that would
2 be a good time. It is the Thursday before Thanksgiving. So
3 if that works.

4 MR. GAMMICK: Sure. If we can have him here we
5 will, but we will advise the Court.

6 THE COURT: If Mr. Specchio wants to stipulate
7 that the testimony from the preliminary hearing and
8 cross-examination was sufficient for purposes of this
9 motion, then you can submit that to me also.

10 MR. SPECCHIO: We might be able to do that,
11 Your Honor.

12 THE COURT: We were at the jury admonition. In
13 the order I have contained what the admonition will be that
14 we'll give the jury. The motion for a proper number of jury
15 venue men. That is contained in the written order. It
16 indicates what that will be.

17 The motion for additional peremptory challenges
18 is handled in the order. Motion to sever is handled in the
19 written order.

20 Motion in limine regarding gang affiliation,
21 I'd like to have that set for November 24th at 10:00 a.m. I
22 don't know exactly what that evidence is going to be.
23 Again, I think that is the same witness that you are talking
24 about, but I'm not sure. So we'll set it at the same time.

25 Motion to avoid death prone jury, I have set a

1 hearing on this for November 24th at 1:30, at which time
2 we'll discuss all the specifics of the jury selection
3 process that will be utilized. Motion to preclude
4 photographs and television coverage is also set for that
5 November 24th at 1:30 hearing.

6 Rule of exclusion is handled in the written
7 order.

8 Individual voir dire is set again at 1:30 on
9 November 24th, at which time we'll make the decision with
10 regard to all the parameters of the selection of the jury.

11 Motion for early jury list is granted. You
12 will get that. It's in the written order.

13 Motion for all background information on
14 prospective jurors is handled in the written order. Motion
15 in limine regarding criminal history of the defendant, I'm
16 reserving ruling on that until I hear the evidence at the
17 November hearings.

18 Motion for jury questionnaire is handled in the
19 written order, but I would notify counsel that in that order
20 you have 30 days to provide your proposed questionnaire, and
21 then I'll determine whether or not I'm going to utilize it.
22 The prosecutor certainly can prepare their own if you decide
23 you want to do something like that or suggest modifications
24 to the one submitted by the defense. I'm not even sure I'm
25 going to give it, but I want to see what you want before I

1 make a decision.

2 MR. GAMMICK: Your Honor, if I may ask on that
3 one for clarification. If defense proffers theirs in 30
4 days, are we going to have time to review it? That is my
5 only concern is a chance to look it over and see if we agree
6 or disagree it.

7 MR. SPECCHIO: I'll do it in 15 days, Judge.

8 THE COURT: We'll make sure. I won't rule on
9 it unless we have a response from you or an indication from
10 your office that you have no objection. Even if you don't
11 have an objection, I'm not sure I'm going to do it. I still
12 want to look at it.

13 MR. GAMMICK: Understood, Your Honor. Thank
14 you.

15 THE COURT: Motion in limine regarding arrest
16 of defendant, I'm setting that again on the November 24th at
17 10:00 a.m. I think that's a good time to handle everything
18 that happened in Salt Lake.

19 The motion for an order to exchange expert
20 witnesses is handled in the written order. Motion to compel
21 State to designate trial witnesses is handled in the written
22 order.

23 Motion in limine regarding State's DNA expert
24 is set for oral hearing on November 24th at 3:30 p.m.

25 Motion to disqualify certain potential jurors

1 is handled in the order that you received today. Motion to
2 allow jury consultants and psychologists at counsel table is
3 handled in the written order.

4 And that leaves us the issue for today that I'd
5 like to talk about is the motion in limine regarding prior
6 bad acts. I don't know when you might want to hear that.

7 MR. GAMMICK: Your Honor, we laid out the facts
8 very detailed in a response motion. We have been to
9 preliminary hearing. At this time we have no acts that
10 would be considered prior bad acts that aren't sum and
11 substance of all the events that happened in January of
12 1998. So I believe at this time it would be a moot issue.

13 If we run across something else that was not
14 brought up in our facts dissertation or anything else, then
15 we'll bring it forward to both the Court and defense. The
16 only thing I can think of that would possibly even come
17 under this umbrella would be the comments made by the
18 defendant to his cousin that he had approached some, quote,
19 gang members in California to ask them about going out and
20 killing other people. Again, that was his statements that
21 flow into the entire set of events that happened here in
22 Reno as they were presented at the preliminary hearing, and
23 that's the only thing that I can think of that would even
24 come up in this context at this time.

25 THE COURT: But you are not agreeing that that

1 is 48.045 evidence?

2 MR. STANTON: I think in our motion, Your
3 Honor, in my opposition to that motion, we argued to the
4 Court that that's part of the res gestae and part of the
5 State's burden to prove an intent to kill. That evidence
6 reflects the defendant's intent.

7 And along with what Mr. Gammick said, I think
8 the other facts that I guess arguably are to be presented by
9 the defense is PBA or 48.045 conduct is the same statements
10 made in Salt Lake City by the defendant's relative to intent
11 to kill people in Salt Lake City, which is somewhat similar
12 to his comments in Los Angeles, but he made the same or
13 similar comments in Salt Lake City as well.

14 THE COURT: Now, the witness who heard the
15 statements in Los Angeles, that person testified at the
16 preliminary hearing?

17 MR. STANTON: Yes, it's the same person that
18 heard both.

19 THE COURT: The same cousin.

20 MR. STANTON: Cousin by the name of Vianga Kini
21 Kini. Mr. Kini Kini stated that his -- he was not a
22 percipient witness to the events that took place in Salt
23 Lake City, as far as hearing the conversation with the
24 defendant. He was told by the defendant that that's indeed
25 what had transpired. He heard the defendant make the

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1 comments in Salt Lake City about soliciting efforts to carry
2 out his intent of killing people and stealing from them to
3 give back to his community.

4 THE COURT: Mr. Specchio.

5 MR. SPECCHIO: Your Honor, my only suggestion
6 would be that maybe you reserve ruling on that until this
7 issue is really ripe at trial. I think we'll have to
8 probably deal with this during trial.

9 There is a real question as to how much of this
10 the Court is going to allow in as far as statements
11 secondhand and firsthand statements. I think rather than
12 try to deal with this now in the context that none of us are
13 really sure of how it is going to come down, it would
14 probably be best to reserve this at this time. That would
15 be my suggestion.

16 THE COURT: I can do two things. I can reserve
17 it until the trial and then order that counsel for the State
18 not put any of this evidence on in front of the jury until
19 we have an out of court out of the presence of the jury
20 hearing. Or we can set it for that November 24th date when
21 you are going to have the actual witnesses here, and I can
22 hear the testimony in the context of exactly what's going to
23 come in. I don't care which way we do it.

24 MR. STANTON: I would like, since this isn't --
25 at least from the State's perspective, this isn't going to

1 be a factual scenario that's changing between now and trial.
2 I mean, basically what we have we have already presented,
3 and we can't contemplate under any circumstances that the
4 nature, the quality and the form of the evidence is going to
5 change. It is what it is. We have presented it, and it's
6 really not our intent to massage it, manipulate it or
7 present it in some other fashion. We're presenting it
8 straight forward the way it was presented at prelim.

9 So since it's not going to change, I think it
10 probably would be appropriate maybe in the November date,
11 give Mr. Specchio further time to review what was presented
12 in the police reports on it to understand the nature and the
13 context of it, and as the Court indicated, if there is any
14 further questions by the Court or by Mr. Specchio, hopefully
15 somewhere around that time period Mr. Kini Kini will be
16 available.

17 There are actually two witnesses from Salt Lake
18 City. They are both from that same family. Vianga is a
19 truck driver, and he apparently has moved back to Texas. So
20 with some consideration or latitude or flexibility from the
21 Court, I'm sure we can accommodate pretrial testimony in a
22 hearing fashion to determine any additional questions that
23 anyone might have of him.

24 THE COURT: Okay. I think we have to have a
25 hearing and I have to have the witness testify. I want to

1 hear the evidence and Mr. Specchio to hear the evidence in
2 front of the Court before I rule on it. I don't see any
3 reason why we can't do it in November also. So I'm going to
4 go ahead and set that for the November date.

5 MR. SPECCHIO: That is fine. Unless they don't
6 want to bring him in November. We know he is going to be
7 here for trial.

8 THE COURT: Right.

9 MR. SPECCHIO: If they want to bring him,
10 whatever.

11 THE COURT: We can get it done then.

12 MR. SPECCHIO: It doesn't make any difference.

13 THE COURT: Why don't we tentatively set that
14 for November 25th then at 10:00 a.m. That is the next day.
15 If you need some -- if you have certain witnesses on some of
16 these motions that I have set at certain times that you'd
17 like to have some accommodation, Mr. Stanton, please get
18 together with Mr. Specchio and come on up and we'll do
19 whatever we can. I just lumped things that I thought would
20 be the same witnesses or similar witnesses at the time
21 frames and what I guesstimate would be the lengths of time
22 for the arguments in coming up with these dates and times.

23 So if it needs to happen on the 25th, that's
24 fine. You are currently set for the 23rd, 24th and 25th.
25 Based on what's been served so far, I don't think we're

1 going to need that Monday. I'm basically taking you off of
2 needing to be here on Monday, and we're holding Tuesday and
3 Wednesday before Thanksgiving solely for you.

4 MR. SPECCHIO: Your Honor, in that regard, I
5 have spoken with Mr. Stanton. They still have some more
6 responses to file. After I get those, I may be prepared to
7 submit some additional procedural type motions.

8 THE COURT: That is fine.

9 MR. SPECCHIO: We'll probably just deal with
10 these meaty ones on the 24th and 25th, I would think.

11 THE COURT: I hope so. Everything that I can
12 handle without oral motion, you will get a written order on
13 before the date of the November 24th and 25th hearings.

14 MR. SPECCHIO: I should alert the Court, Your
15 Honor, there is about between 8 and 14 additional motions
16 that we're looking at. We're trying to -- they are not
17 going to be filed unless we believe they really have to be
18 filed. But that would be the outside parameters of how many
19 motions will be filed. Somewhere between -- we're going to
20 try not to file any more, but we don't want to short change
21 Mr. Vanisi.

22 So we're examining between 8 and 14 as
23 tentative motions to be filed. If they are going to be
24 filed, they will be filed within the next 10 or 15 days.
25 Other than that, we're going to stand pat on the motions

1 that have been filed. Then when we get their responses, we
2 will see how many we can submit to the Court.

3 THE COURT: Just make sure any motions you have
4 with regard to the jury selection, I want to resolve all
5 those issues in November.

6 MR. SPECCHIO: There won't be any more issues
7 regarding the jury.

8 THE COURT: Mr. Stanton, I don't know if you
9 have any motions so far.

10 MR. STANTON: At this juncture, we can't
11 contemplate any to be raised at this juncture. I do note
12 there are 13 motions left to be answered by the State. The
13 responsive dates, basically our due dates are between the
14 14th and 16th of August.

15 Save and except for the change of venue, I
16 think most of them are relatively straight forward. The
17 change of venue I think is an issue that is resolved when we
18 actually have the jury in front of us.

19 So I can't contemplate much or any motions at
20 this juncture from the State's perspective. I would
21 indicate to the Court there are a couple matters outside of
22 pleading form that are occurring in the background that
23 should be brought to your attention.

24 Mr. Specchio has, and I have been advised along
25 with Mr. Specchio about the custody status of Mr. Vanisi.

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1 He was requested pursuant to a couple conversations I had
2 with Captain Don Means, who is the head of the jail, or at
3 least the division - Sheriff Kirkland is actually the head
4 of the jail - but he had apparently talked to me and Mr.
5 Specchio about transferring the defendant to the Nevada
6 State Prison during the interim of this case for security
7 reasons and the difficulty that it was presenting housing
8 him at the county jail.

9 Apparently that was accomplished and the
10 current status of affairs as we sit here today.
11 Mr. Specchio has informed me he is going to be requesting
12 the Court to change that status and to have him brought back
13 down here.

14 It's the State's perspective as it relates to
15 any defendant, that the custodial status of a defendant
16 awaiting trial, sentencing, whatever, is the sole purview of
17 the executive branch of the Sheriffs's Office and that
18 absent some specific authority to, and an opportunity at
19 least I think for the legal counsel for the Sheriff's
20 division, the civil division of the District Attorney's
21 Office, to at least have an opportunity to review that and
22 express something to the Court if indeed the Court were to
23 entertain an order as to whether or not they have any legal
24 remedies or rights in that regard.

25 THE COURT: Well, I think there is some

1 authority that says that the Sheriff has a great deal of
2 latitude. However, the Sheriff also has to make the
3 defendant available for his counsel. So I think that's a
4 balancing test that is utilized.

5 I think it comes up mostly in federal court
6 where you can be held in a facility across the country
7 awaiting trial. That is where the case law that I'm
8 familiar with. I'm not sure much happens here. I can't
9 think of a Nevada case on point.

10 MR. STANTON: No, I can't in the past 10, 15
11 years, recall either seeing a decision that had been
12 published or running across one that occurred before my
13 tenure in the D.A.'s office about that issue. I know that
14 it has occurred in the federal system. I see those in the
15 advance sheets.

16 I just, before the Court rules on it, I would
17 just ask as a courtesy to counsel for the Sheriff's office
18 to have an opportunity to explore that and to address it to
19 the Court, their rights.

20 THE COURT: What I think I would prefer to have
21 happen is have a meeting with the Sheriff with Mr. Specchio.
22 Maybe there is some accommodation. I don't know what the
23 issue is for Mr. Specchio.

24 MR. STANTON: I think it is access.

25 THE COURT: It is access?

1 MR. SPECCHIO: Judge, I have seen Mr. Vanisi 25
2 times since February in the Washoe County Jail. I can tell
3 you, I'm not going to see him 25 times between now and
4 January if I have to go to Carson City. I just don't have
5 the luxury of every time I need to see him or my
6 investigator needs to see him, that we have to drive to
7 Carson City.

8 Judge, I don't want to have to ask for a
9 continuance in this case, but if I'm going to have to see
10 him 30 miles away, there is no way we're going to be able to
11 do what we're going to have to do in this case.

12 I'm going to ask that he be transferred back.
13 I advised Captain Means that I would do so. I mean, he is
14 in the shoe. He is locked up 23 hours a day. He can't be
15 that much trouble for them.

16 My position is I'm going to ask that he be
17 ordered back here. I'm going to ask that you order the
18 prison to provide both Mr. Stanton and myself copies of the
19 evaluation that they have done on Mr. Vanisi, if in fact one
20 was done. We believe there was one. And if the State wants
21 to argue about or have their counsel present authority or
22 otherwise to the Court, let them do it while he's here, not
23 while -- he's been down there for a little over two weeks, I
24 think, and I haven't had access to him for two weeks.

25 The closer we get to trial, the more access I'm

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1 going to have to have with him. I think I have seen him at
2 least 25 times, and I'm almost sure that my investigators
3 have seen him that many times. I just can't go to Carson
4 City. I wish I could every time. That's at least once a
5 week. I just don't have that luxury of that time.

6 And one thing I don't want to do is come in
7 here in November or December and say, Judge, I'm going to
8 have to continue this trial because I haven't had access to
9 him. I don't want to do that.

10 THE COURT: Okay. What is this evaluation?
11 Are you familiar with that, Mr. Stanton? Do you know that
12 was done?

13 MR. STANTON: No, I don't know for certain
14 what's done. But I know that as a matter of protocol, when
15 a defendant is committed or placed for housing in the Nevada
16 State Prison, that they do as a matter of course an intake
17 evaluation. That part of that evaluation includes physical
18 examination as well as mental examination. Whether it was
19 done in this case, I don't know. I'm assuming it was done.

20 THE COURT: He wasn't actually placed in the
21 Warden's -- they are just housing him just like they used to
22 house the federal prisoners.

23 MR. STANTON: Correct.

24 THE COURT: They never did them on federal
25 prisoners.

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1 MR. STANTON: I believe they do that on
2 everybody that they are housing.

3 MR. SPECCHIO: I think that is correct, Your
4 Honor.

5 MR. STANTON: For a liability perspective as to
6 where to house them and what precautions, if anything. For
7 example, if a federal prisoner is suicidal and they don't
8 know it or don't take reasonable efforts to determine that
9 the person is, they obviously might be concerned about
10 liability if someone were to do something or for that matter
11 do an intake evaluation relative to any security concerns
12 with other inmates they have that they wouldn't otherwise
13 know about, I think it is done as a matter of protocol.

14 THE COURT: Any objection to getting that?

15 MR. STANTON: No, I have no legal basis that I
16 know of, Your Honor.

17 THE COURT: I order the Department of Prisons
18 provide copies of the evaluation to counsel for the State
19 and the defense. I'm going to order that copies of those
20 evaluations be ongoing so that if there is an update after
21 the entry of the order, counsel will be notified, and I'm
22 going to expand that beyond the evaluations to any
23 disciplinary action or notes that are taken by the prison
24 officials with regard to his custodial status will be
25 provided to counsel.

1 MR. SPECCHIO: Your Honor, in addition to that,
2 one of the reasons that I'm asking for this copy of the
3 evaluation to me, we, the State and myself have received
4 various reports regarding some bizarre behavior on behalf of
5 Mr. Vanisi. From talking gibberish to washing himself in
6 his own urine to dancing naked. I mean, stuff that I do on
7 Saturday night but stuff that's not of the norm.

8 And for that reason, I stress to the Court that
9 I think maybe you want to bring him back down here and maybe
10 the Court might want to deliver an evaluation, since we have
11 enough time between now and the trial date to determine --

12 THE COURT: Competency? Are you concerned
13 about that?

14 MR. SPECCHIO: Well, I don't know. I guess a
15 guy can dance naked and wash himself in his own urine and be
16 competent as anybody else. I don't know. I don't know how
17 valid these statements are.

18 THE COURT: Are you hearing these from the
19 Sheriff's office or from the prison?

20 MR. SPECCHIO: I have heard them from inmates,
21 and I don't want to put anybody on the spot, guards at the
22 prison. Now how valid that is, I couldn't -- I don't
23 necessarily believe the guards or the inmates, nor do I
24 disbelieve them. But it came from two different sources,
25 which tells me -- and I think Mr. Stanton as well has heard

1 some statements regarding bizarre behavior. Coming from
2 those two different sources tells me maybe there is a seed
3 of truth and maybe we better be looking into this.

4 THE COURT: Well, I don't know about
5 competency. I don't know if it really affects his
6 competency, but I think you should look into it, but it may
7 affect your penalty phase if you get to a penalty phase. So
8 you need to investigate that.

9 MR. SPECCHIO: That is another reason I have to
10 have him here, Judge, as opposed to Carson City.

11 THE COURT: You couldn't look at him and have
12 someone investigate this in Carson City?

13 MR. SPECCHIO: Judge, the more -- the farther
14 away he is, the more expensive it is for me, and the less
15 access I have to him.

16 THE COURT: I see.

17 MR. SPECCHIO: In light of the seriousness of
18 these -- I mean, he's been here for six months in this jail.
19 All of a sudden they had to transfer him.

20 As far as I know, there's been one cell
21 extrication problem that wasn't entirely his fault. Other
22 than that, I know of no problem other than the fact that
23 they don't like him because he is an alleged cop killer.
24 And I don't think that is enough reason to -- I have to have
25 him here.

1 Sooner or later, you are going to get him here
2 for me. Whether we do it now or later and if it is too far
3 later, I just have too many other duties other than this
4 particular case to have to set aside every Friday to go see
5 Mr. Vanisi in prison. That's the problem that I have.

6 THE COURT: I want to hear from the Sheriff. I
7 want to know what the actual problems are and how serious
8 the situation is and have counsel have an opportunity to
9 hear those problems. I also must say, I agree with
10 Mr. Specchio, Mr. Vanisi is going to be back here at some
11 point, and it's just an issue of how long he's going to be
12 housed in Washoe County. We don't want a continuance of
13 this trial.

14 MR. STANTON: No, Your Honor, if I could
15 address a couple things. Number one is the order that the
16 Court entered relative to the production of the documents
17 from the prison, can the State have an opportunity -- the
18 one thing that you mentioned was notes. That is a concern
19 of the State's as far as the notes that exist in the file.

20 THE COURT: If it's something that would be
21 work product, I don't know if there would be. See, my
22 concern is that while he is housed down there there may
23 be -- I know that the prison regularly enters notes in their
24 jackets. Those notes of statements or things they observed
25 could ultimately be utilized by the State, and I want to be

1 sure the defense has it in a timely fashion so they know
2 what is there.

3 MR. STANTON: You are not talking about notes
4 the officers may personally possess but notations to his
5 jacket file.

6 THE COURT: Anything discoverable by the State
7 for utilization, especially to get to a penalty phase. I
8 think there are comments frequently or notations that become
9 relevant at the sentencing phase. I want to be sure the
10 defense has that, at the same time that the State has it.

11 MR. STANTON: Okay. In addition, Your Honor,
12 relative to the competency issue that has been brought up
13 now and part of the record, it would be extremely critical
14 for the State that any issues of competency, whether they
15 exist, they don't exist, the nature or the quality of the
16 evidence be placed on the record. Therefore, if there is an
17 investigation, if there is any facts one way or the other, I
18 think it is incumbent upon all the parties to fully develop
19 that for this record.

20 And we would request that if competency is an
21 issue with Mr. Specchio in this case based upon his
22 investigation, that the formal written motion that triggers
23 that process take place, and in the alternative, if the
24 investigation determined that it not, that some record be
25 made whether it be in camera under seal with Mr. Specchio

1 and Your Honor, that would be sufficient for the State. But
2 I don't think we can bring it up in the context of this
3 hearing and then down the road not answer the question that
4 has been raised one way or the other.

5 THE COURT: Okay. What I'm anticipating doing
6 is setting a date in September wherein, early September -
7 I'm not talking about late September - wherein we can
8 address the issues with regard to his custodial status in
9 the Nevada State Prison or here.

10 MR. SPECCHIO: You are going to leave him there
11 that long, Judge?

12 THE COURT: Well, I'm kind of out of time,
13 Mr. Specchio. I don't know.

14 MR. SPECCHIO: Why don't you order him back
15 here, and then let's have the hearing while he's here rather
16 than -- so I can at least have access to him?

17 THE COURT: I want to hear from Captain Means
18 why he got moved.

19 MR. SPECCHIO: We're voicing our objection,
20 Your Honor, because I'm not going to go to the prison to see
21 him until this hearing. Because I don't have time to do
22 that.

23 MR. GAMMICK: Your Honor, if I may just for the
24 record here. We're not interfering with accessibility to
25 the defendant. We don't care where the defendant is housed.

1 The Sheriff has a serious concern, and I appreciate the
2 Court wanting to hear from the Sheriff's Department as to
3 what their concerns are.

4 But I want to make sure the record accurately
5 reflects that the defendant is not across country or in
6 another nation. He's 30 miles away in Carson City, and it
7 was my understanding at every hearing we have been at
8 there's been another attorney. Wally Fey from the Public
9 Defender's Office was even allowed at his being the lead
10 attorney in this case. He is not here this morning, but
11 there are two attorneys on this case, plus investigators
12 from the defense side.

13 So I don't want to leave this record saying
14 that he is totally inaccessible and we're hiding him some
15 way when that is not the case in fact. And I think the
16 Sheriff needs to get something in on this as to what their
17 concerns are and why they had to move him. We do know about
18 the one incident which we have furnished to defense. I
19 don't know if there were other problems or what the concerns
20 are.

21 MR. SPECCHIO: There are no other lawyers in my
22 office on this case, Your Honor. I am sole counsel for
23 Mr. Vanisi.

24 MR. GAMMICK: Well, we have never been served
25 with that, Mr. Fey was off this case, because at preliminary

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1 hearing, Mr. Specchio made the statement Mr. Fey was the
2 lead counsel.

3 MR. SPECCHIO: And the preliminary hearing I
4 think was in February, and he's been off the case since
5 March.

6 THE COURT: Okay. Well, you are the attorney.

7 MR. SPECCHIO: Yes.

8 THE COURT: Certainly we have already gone
9 through the death qualified requirements. So we're under
10 control in that regard.

11 This is what I'm going to do. Today I'm going
12 to contact Captain Means and find out if an accommodation
13 can be made without an order. If that can't happen, then we
14 will have to have a hearing, and I'll weigh the competing
15 interests here.

16 And the Sheriff needs to be represented, and
17 that's just the reality here. Before I enter an order
18 compelling the Sheriff to house any defendant in any
19 particular way or manner, I want to hear from the Sheriff to
20 make sure I'm weighing the proper elements.

21 I don't know when I can set that hearing. I
22 was thinking the beginning of September. I understand your
23 concern, Mr. Specchio. You will just get called about when
24 the hearing is set.

25 I do have the next two weeks off, starting on

1 Wednesday, and we have some time. So I have to look at the
2 calendar and see when we can have that hearing, if we need
3 it. Perhaps through informal discussions with Captain Means
4 we can resolve this.

5 But counsel have any objection to the Court
6 contacting Captain Means personally?

7 MR. SPECCHIO: Not at all, Your Honor.

8 MR. STANTON: Not at all, Your Honor.

9 THE COURT: I'll go ahead and do that. The
10 record will also reflect the State is not presenting any
11 position with regard to the housing of the defendant. As I
12 understand. You are merely putting me on notice that you do
13 not represent the Sheriff on this issue; is that correct?

14 MR. STANTON: That is correct, and I think they
15 are a real party in interest to this issue.

16 THE COURT: But you are not taking a position.

17 MR. STANTON: I think Mr. Gammick correctly
18 stated our position, we could care less where Mr. Vanisi is
19 housed.

20 THE COURT: Anything else coming up that I need
21 to be told about?

22 MR. SPECCHIO: Yes, Your Honor. I haven't read
23 the Court's order, but there's an issue regarding discovery
24 that we're going to have to deal with as well. If you want
25 to do it.

1 THE COURT: We can do it now. The written
2 order indicates that you both abide by the reciprocal
3 discovery rules and that I noticed that this is an open file
4 case. I don't know what you are missing and what the
5 discovery problems are.

6 MR. SPECCHIO: What I would like to do, Your
7 Honor, if this is acceptable to the Court, is I would like
8 to send a letter to the State asking for certain specific
9 items of discovery. One of which I have already been
10 advised I can't have, and that's the personnel file of
11 Sergeant Sullivan, the decedent. I want to have access to
12 that to look at. I don't want copies of it. I just want to
13 look at it and possibly copies of it. But at this point I
14 want to review it.

15 There is also a list of -- a number of items
16 that I would like to look at. Some of it, some of which has
17 already been provided. As a matter of fact, I might have
18 sent them a letter already. I don't think we would expand
19 on that.

20 And I would like them to respond to that, and
21 whatever items they say no to, I think we should have a
22 hearing on it. So I would suggest we proceed. The rest of
23 the stuff they provided for me. And that's really the only
24 discovery issue.

25 THE COURT: So you sent a letter specifically

1 requesting items that you think they have in their
2 possession?

3 MR. SPECCHIO: Yes, Your Honor.

4 THE COURT: And now has the State responded to
5 that letter?

6 MR. GAMMICK: No, Your Honor, we have a letter
7 that was dated July 20th, 1998, from Mr. Specchio. At first
8 opportunity we intend to arrange a meeting with
9 Mr. Specchio, sit down and go through these item by item.
10 Anything we reach agreement on, of course, will be resolved.
11 Things that we don't -- because in this letter there is also
12 testing requested that we have no intent of doing at this
13 time. So we need to sit down with Mr. Specchio and just
14 figure out exactly what is expected on each item.

15 For any items we come to impasse, then after we
16 have the meeting, then we will reduce it to writing. But I
17 have always found that face-to-face is better to get issues
18 resolved, and then we will reduce it to writing any issues
19 that we cannot come to agreement on, such as Sergeant
20 Sullivan's personnel file, we can come back into court and
21 discuss those items at that time.

22 But I think those are going to be -- I mean,
23 that is the only item I'm aware of right now where we're at
24 an impasse. So I don't expect a full blown, long, drawn out
25 hearing on this matter, because I think there will be very

1 very few items. Only one at this time. And I think we can
2 get most of the rest of this resolved.

3 THE COURT: The written order indicates that
4 anything that could be evidence of exculpatory nature,
5 submit to the Court in camera. If you get to the issue
6 where it's exculpatory, you can submit that order to me in
7 camera and I'll make a determination. I won't release it
8 without a hearing and letting you know. I don't know if
9 that is the nature of this personnel file. I'm not sure
10 exactly what.

11 MR. SPECCHIO: Your Honor, I have no problem of
12 your reviewing the personnel file and --

13 THE COURT: I don't know what would be --
14 because I'm not as familiar with either theory of the case,
15 I don't know exactly what would be exculpatory just off the
16 top of my head in Sergeant Sullivan's personnel file.

17 MR. SPECCHIO: I think you would know.

18 THE COURT: You mean it would just jump out at
19 me?

20 MR. SPECCHIO: I think it would probably jump
21 out at you. If you want to do it that way, that is fine.
22 If you say there is nothing exculpatory in there or nothing
23 that I can have, that will be the end of the hunt. But I
24 think I better do it.

25 THE COURT: Okay.

1 MR. SPECCHIO: Otherwise somebody two years
2 from now is going to tell me I should have.

3 THE COURT: That is what the written order
4 says. If the State doesn't think there is anything that
5 fulfills the requirements as in the written order, then you
6 can set it for hearing. Or Mr. Specchio will ask it be
7 heard because he will tell me no, this is in camera stuff,
8 you should be looking at it, Judge, and you on the part of
9 the State would be saying, no, it isn't, we're not going to
10 give it to you, Judge, and then you can decide.

11 But if you are comfortable with the written
12 order those things you come to an impasse on, and you want
13 to submit it to me in camera, then you won't have to have
14 another hearing. You will be able to do it pursuant to the
15 written order that you have received.

16 MR. GAMMICK: I think the first issue we're
17 going to wind up addressing on this is we do not have
18 Sergeant Sullivan's personnel file. I'm not sure UNR is
19 going to be willing to give that personnel file up.

20 We're not even at square one yet. We have not
21 reviewed the personnel file. We're not aware of any
22 exculpatory information being in that file.

23 I can state that right now that we're not aware
24 of any information in there that would be exculpatory to the
25 defendant. We haven't seen it. We haven't asked the State

1 for it. Like I said, I'm not even sure they are going to be
2 willing to give it up. We may be back here for a full blown
3 hearing with the State interests here, the State of Nevada,
4 not necessarily our prosecution.

5 THE COURT: Right. If you don't have it and
6 you can't get it, if you make an effort and you aren't -- it
7 is not afforded to you and you document that, then you
8 notify Mr. Specchio of that, and his next move is to
9 subpoena, and there will be a motion to quash the subpoena,
10 and we'll all be in here on that.

11 MR. GAMMICK: We'll go through that routine,
12 Your Honor.

13 THE COURT: Note it and Mr. Specchio wants to
14 keep going with it if he can.

15 MR. STANTON: There are two cases that the
16 Nevada Supreme Court has addressed access by defense counsel
17 at pretrial to a police officer's personnel file.
18 Obviously, the factual -- maybe not obviously, but the
19 factual situations are somewhat different in those cases.
20 Stinnett, S-t-i-n-n-e-t-t, there is a Stinnett one and a
21 Stinnett two. I don't know the citation off the top of my
22 head. But in that case, it was a police officer in a
23 narcotics case that had arrested the defendant, and
24 apparently there had been a preexisting relationship between
25 the police officer and the defendant from a police

1 officer-arrestee perspective. They address in there some I
2 think pretty straight forward guidelines about when defense
3 counsel gets access to a police officer's personnel file.

4 In this case, under the facts of this
5 circumstances, I don't know if the defense could ever make a
6 threshold inquiry to be able to get access to it. I can
7 tell the Court, as Mr. Gammick says, we have not looked at
8 the file, we don't plan to make any request to investigate
9 the file or to review it, because as far as the State's
10 perspective, there was no nexus between Sergeant Sullivan
11 and the defendant whatsoever prior to his murder.

12 And absent that, I think it boils down to a
13 fishing expedition, which I respectfully submit that the
14 Stinnett case conclusively answers as to whether or not they
15 get it and whether the State has the burden of even
16 inquiring of the State of Nevada, specifically the
17 University of Nevada, Reno, to disclose and produce that
18 document.

19 THE COURT: Did Stinnett go to the United
20 States Supreme Court?

21 MR. STANTON: I don't believe so, Your Honor.
22 But my knowledge of the case, basically Stinnett one and
23 Stinnett two was that Nevada, Carson City, was where it
24 stopped and ended.

25 THE COURT: It is always nice if the United

1 States Supreme Court affirms our state court. That is
2 always nice.

3 MR. STANTON: I don't know whether cert was
4 applied for in either one of those cases.

5 THE COURT: Thank you.

6 MR. SPECCHIO: I'm not so sure Stinnett
7 applies, Your Honor. That dealt with the arresting officer
8 as opposed to a victim.

9 THE COURT: I understand the distinction.
10 Thank you, Mr. Specchio.

11 Do you understand the procedure we'll do here?
12 If Mr. Gammick and you will meet.

13 MR. SPECCHIO: I think that is fine.

14 THE COURT: So you will have to trigger this,
15 Mr. Specchio.

16 MR. SPECCHIO: I'll call him tomorrow morning.

17 THE COURT: Anything else?

18 MR. GAMMICK: Your Honor, if I could just, to
19 make sure that we're all playing on the same sheet of music.
20 Today we have received 40 defense motions, and the Court has
21 ruled on the ones you have already laid on the record. I
22 didn't want to go through that again.

23 I just want to make sure or at least get it on
24 the record we've received 40 motions. We have responded to
25 the ones Mr. Stanton applied to, and the next ones are due

1 August 14th, ten days from now.

2 THE COURT: Right. I don't know how many they
3 filed, but I know that we ruled on 28, either issued an
4 order or set a hearing on 28. So that makes sense based on
5 what Mr. Specchio said.

6 MR. STANTON: I have 13 outstanding motions to
7 date, and I'm sure we will get a motion with regard to
8 Sergeant Sullivan's personnel file.

9 THE COURT: Actually I think we're moving well
10 ahead of anticipation. I'm really pleased about the number
11 that were submitted before today's hearing. I'm real
12 pleased with the progress we're making.

13 MR. SPECCHIO: That is all well and good,
14 except I don't agree with anybody's numbers. I have got 42
15 filed.

16 THE COURT: I don't know how many total. I
17 just know I ruled or set hearings.

18 MR. SPECCHIO: I have 42 that I filed. I
19 received 24 responses.

20 MR. GAMMICK: So that is something for us to
21 talk about and see where we're missing here.

22 MR. SPECCHIO: We'll have a meeting and go over
23 a couple of things.

24 THE COURT: Okay. We know that we have handled
25 28 of them here. But we don't look at them until you submit

1 them usually, unless it happens to pop out of the file while
2 we're looking at the others. We really aren't looking for
3 ones that haven't been submitted yet.

4 MR. GAMMICK: The only other thing I would
5 request, Your Honor, is not a rush thing within the next few
6 hours, but if we could get a transcript of today's
7 proceedings within the next couple of days so we can make
8 sure we get all the dates and times of the various hearings.

9 THE COURT: Okay. Appreciate it. Actually,
10 now this is a 250 case, and so the court reporter is on
11 notice with regard to the requirements. But I'll be glad to
12 give you from the Clerk, we'll give you a copy of the court
13 minutes that lay out exactly which hearings will be held, if
14 that's of help to you.

15 MR. GAMMICK: Thank you, Your Honor.

16 THE COURT: I don't know if the court reporter
17 can get it to you outside the statutory requirements or not.

18 MR. STANTON: That's fine. The Court minute
19 order will suffice.

20 THE COURT: We'll make sure we'll work on that,
21 and we'll have that to you before tomorrow.

22 Anything further?

23 MR. STANTON: Not from the State, Your Honor.

24 MR. SPECCHIO: I have one more, Judge.

25 THE COURT: Mr. Specchio has one more,

1 Mr. Stanton.

2 MR. SPECCHIO: Your Honor, I don't think I have
3 tried a death penalty case before this Court before. So I'm
4 not sure whether or not -- some of the judges follow the old
5 Rule 250 and conduct in camera hearings or meetings with the
6 defendant. I don't know if you do that.

7 THE COURT: I hadn't planned on doing that.

8 MR. SPECCHIO: If you want to do that, I would
9 indicate we would have no objection. It sometimes proves
10 beneficial record wise.

11 THE COURT: I hadn't really planned on that,
12 but I'll look around and see about an in camera.

13 MR. SPECCHIO: Some of the judges hold them
14 before trial, some during trial. I'll leave it to the
15 Court's discretion.

16 THE COURT: We'll let you know. I think in the
17 November hearings, when we set the procedure for selecting
18 the jury, we can go over any other issues that you might
19 believe are important to go over prior to the jury trial
20 beginning, any logistics or any issues that any of you have
21 we can talk about that in November. Anything further?

22 MR. GAMMICK: No, Your Honor.

23 THE COURT: Okay. Thank you. Court is in
24 recess.

25 -oOo-

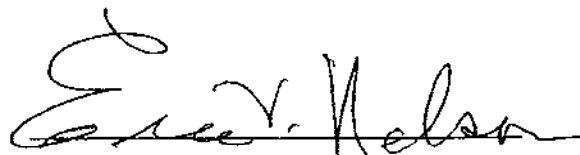
STATE OF NEVADA,)
)
COUNTY OF WASHOE.)

I, ERIC V. NELSON, Certified Shorthand Reporter
of the Second Judicial District Court of the State of
Nevada, in and for the County of Washoe, do hereby certify:

That I was present in Department No. 4 of the
above-entitled Court and took stenotype notes of the
proceedings entitled herein, and thereafter transcribed the
same into typewriting as herein appears;

That the foregoing transcript is a full, true
and correct transcription of my stenotype notes of said
proceedings.

DATED: At Reno, Nevada, this 8th day of
August, 1998.



ERIC V. NELSON, CCR No. 57

Exhibit 63

Exhibit 63

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12JDC03953

FILED

Case No. CR98-0516

Dept. No. 4

'98 SEP 15 P1:38

[Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,)	
)	
Plaintiff,)	STATUS HEARING
)	
vs.)	SEPTEMBER 4, 1998
)	
SIAOSI VANISI,)	Reno, Nevada
)	
Defendant.)	
)	

APPEARANCES:

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The Defendant:

SIAOSI VANISI

Reported by:

ERIC V. NELSON, CCR No. 57

ORIGINAL

SIERRA NEVADA REPORTERS (702) 329-6560

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RENO, NEVADA, FRIDAY, SEPTEMBER 4, 1998, 9:00 A.M.

-oOo-

THE COURT: This is the time set for a status conference. Let the record reflect the defendant is present with counsel, Mr. Specchio. The plaintiff is represented by the District Attorney. We have Mr. Vanisi.

And I have received the memos, letters that you two have been sending back and forth in August. Do you want to codify the issues raised in those memos at today's hearing? I don't know how close you are to that or if you wanted me to put a court and cause on these, if you are really stipulating to all of this. I didn't know.

MR. GAMMICK: The only memos I'm aware of, Your Honor, would be -- well, I guess we have done two sets. One would be with respect to the jury questionnaire that was proposed.

THE COURT: Right.

MR. GAMMICK: The other one would be with respect to the meetings we had concerning evidence with the crime lab. We did meet as we advised the Court we would. The crime lab people were there, our office, Mr. Specchio, his investigators. We went through the entire list and the concerns he had sent.

We clarified some of the issues. Some of the

8Vanisi12JDC03954

1 things were to be tested and results furnished, and I think
2 we have pretty well clarified all of that except the records
3 of Sergeant Sullivan from UNRPD. I believe we're still at
4 odds on that. But I think everything else is working its
5 way out.

6 THE COURT: The question I think I have is do
7 you want -- do you accept everything that Mr. Specchio put
8 in his memo to you on August 14th that he gave to the Court?
9 Do you want me to make that part of the record in terms of
10 the record of the discovery as to what your agreements are
11 back and forth?

12 MR. GAMMICK: As to his latest memo concerning
13 all of the different evidentiary items, the ones he no
14 longer wishes tested because explanations were given for
15 those and the ones that we have agreed to test, we're in
16 total agreement with that. As I say, the only thing we're
17 still at odds at are the records of Sergeant Sullivan from
18 UNRPD. That's the only issue we're aware of.

19 THE COURT: We'll make the August 14th, 1998
20 memo, letter from Mr. Specchio where he cc'd the Court, and
21 the letter was addressed to Mr. Gammick and Mr. Stanton,
22 we'll make that part of the record with regard to the
23 discovery issues.

24 Now, also in that, as I understand it, the
25 issue with regard to Sergeant Sullivan's personnel file, it

1 still must be presented to the Court. Is November -- is the
2 November time line all right for presentation of that issue?

3 MR. SPECCHIO: I would think so, Your Honor.
4 We'll just -- we just want to look at it or have the Court
5 look at it to determine whether or not there is anything
6 that we should pursue in that file.

7 THE COURT: We can resolve that then at the
8 November hearing schedule that we already have. And if we
9 receive any submits, as we discussed before, we'll just rule
10 on those as they come in.

11 MR. SPECCHIO: We'll probably do that, Your
12 Honor, within the next three weeks, probably submit as many
13 of the motions as we possibly can.

14 THE COURT: That's fine. Now the jury
15 questionnaire issue, I think I'd like to hear argument. I
16 will tell you that I'm probably not disposed to give the
17 questionnaire that the defense is requesting. It is awfully
18 long. But I want to hear argument because I want to hear
19 the necessity for more than what's been argued thus far.

20 But I think November is plenty of time to make
21 that determination. The Jury Commissioner wouldn't pull a
22 panel this early anyway. So we can talk about that, and
23 certainly logistic issues that Mr. Gammick raised in his
24 return letter to me on August 26th were issues that would
25 have to be resolved. They are not insurmountable but they

1 are issues that have to be resolved.

2 Anything further?

3 MR. SPECCHIO: Custody of Mr. Vanisi, Your
4 Honor.

5 THE COURT: As I understand it, the -- Captain
6 Means, is it?

7 THE DEPUTY: Yes, ma'am.

8 THE COURT: Please don't repeat to him that I
9 couldn't remember what his title was.

10 -- has assured me that Mr. Vanisi will remain
11 in the Washoe County Jail for the remainder of the time
12 period, as long as there's no problems, no significant
13 issues that arise or personality problems with this. But
14 for the time, as far as I understand it, he believes that
15 they can adequately protect Mr. Vanisi and handle him here
16 in the Washoe County Jail. Anything else?

17 MR. GAMMICK: May I have just a moment, Your
18 Honor?

19 THE COURT: Yes.

20 MR. SPECCHIO: Your Honor, was the Court
21 inclined to order any psychiatric evaluations in this case?

22 THE COURT: Do you want to explore that issue
23 or do you want to wait a little while while he is back here?
24 I could set a review in two or three weeks while you have an
25 opportunity to visit with Mr. Vanisi. You did raise the

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 10 of 26

Electronically Filed
Jan 14 2015 12:20 p.m.
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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

1 house touch the hatchet?

2 A The boys, her brothers.

3 Q Which ones did you see touch the hatchet?

4 A First Masi and then Bill.

5 Q And how old is Masi, and how old is Bill?

6 A I don't know their age.

7 Q Approximate.

8 A Masi is 12. Bill is probably 15 or 16.

9 Q Okay. When you were driving over to the
10 Mormon Church, what did the defendant do when you got
11 to the church?

12 A We all got out of the car.

13 Q Okay. And how long did you stay at the
14 church?

15 A For about three, five minutes.

16 Q Okay. When you left, who went with you?

17 A It was just me and Laki.

18 Q So the defendant stayed there?

19 A Yes.

20 Q And when was the last time you saw the
21 defendant after dropping him off at the church?

22 A That was the last time.

23 Q Okay. Did he ever tell you that he killed
24 the police officer at the university?

25 A No.

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AA02251

373

2JDC03686

SVan1s12JDC03686

1 Q Did he ever tell you his feelings about
2 white people?

3 A No.

4 Q Did he ever tell you any more detail about
5 why he wanted to kill a police officer?

6 A No.

7 Q And there has been testimony of a white
8 bag, plastic bag. Did you ever see the defendant with
9 that?

10 A No.

11 Q Do you know what was in that bag?

12 A The belt.

13 Q Okay. The police officer's belt?

14 A Yes.

15 Q Do you know who had that bag?

16 A No.

17 Q Do you know how it got to the North Rock
18 address of Losa's?

19 A No.

20 MR. STANTON: I have no further questions of
21 this witness at this time.

22 THE COURT: Mr. Fey, any questions for Ms.
23 Endemann?

24 MR. FEY: Just briefly. I might want to get a
25 time breakdown.

MERIT REPORTING (702) 323-4715

AA02252

374

2JDC03687

SVan1s12JDC03687

CROSS-EXAMINATION

BY MR. FEY:

Q Ms. Endemann, you remember being interviewed by the police officers?

A Yes.

Q Okay. And the day that you took the defendant over to the church in the evening, was that the same evening that the police interviewed you, or was that the evening before? Do you recall?

A That was the same evening.

Q The same evening.

You don't recall about what time that was?

A No, I don't.

Q Okay. So was it dark yet?

A Yes.

Q All right. And before that you had been with the defendant over at the Mormon Church, or you saw the defendant over at the Mormon Church, isn't that right, like on Sunday? Is that right?

A Yes.

Q Okay. The dance, was that Saturday night?

A Yes.

MR. FEY: Thank you. No further.

THE COURT: Anything else?

MR. STANTON: No, Your Honor.

MERIT REPORTING (702) 323-4715

AA02253

375

2JDC03688

SVan1s12JDC03688

1 THE COURT: Thank you, Ms. Endemann. You are
2 excused.

3 Is she free to go?

4 MR. STANTON: Yes.

5 MR. FEY: No objection.

6 THE COURT: Next witness.

7 MR. STANTON: The State would call Namoa Tupou.

8 THE COURT: Okay. Sir, if you will come up to
9 my left, I will swear you in up here.

10 Please raise your right hand and be sworn.

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

13 THE COURT: Please be seated.

14
15 NAMOA TUPOU,

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

19
20 DIRECT EXAMINATION

21 BY MR. STANTON:

22 Q Sir, could you please state your complete
23 name and spell your first and last name for the court
24 reporter.

25 A Stephanois, S-t-e-p-h-a-n-o-i-s, Namoa

MERIT REPORTING (702) 323-4715

1 Tupou, T-u-p-o-u.

2 Q And your middle name, could you spell that.

3 A N-a-m-o-a.

4 Q And your last name again?

5 A T-u-p-o-u.

6 THE COURT: T-u what?

7 THE WITNESS: --p-o-u.

8 BY MR. STANTON:

9 Q Do have you a nickname?

10 A Namoa, N-a-m-o-a.

11 Q And is that the proper way to address you
12 here today?

13 A Sure.

14 Q Namoa, I would like to direct your
15 attention to the table to my left, the individual
16 sitting in the middle of the table with the red pant
17 suit on, do you recognize that person?

18 A Oh, yeah.

19 Q How do you know that person?

20 A I met him in church--

21 Q Okay.

22 A --Sunday. We played basketball.

23 Q Okay. By what name do you know him by?

24 A Pe.

25 Q Do you know any other names?

MERIT REPORTING (702) 323-4715

AA02255 377

2JDC03690

SVan1s12JDC03690

SVan1s12JDC03691

1 A Nope.

2 Q Ever heard the name George?

3 A No.

4 Q How about Siaosi Vanisi?

5 A Yeah.

6 Q When was the first time you met him?

7 A Sunday.

8 Q Do you remember what day that was?

9 A No, I don't.

10 Q Did you talk to the police about this case?

11 A Yes, I did, two detectives.

12 Q From that date, as the framework, how many

13 days prior to that was the first time you met the

14 defendant?

15 A Three.

16 Q And it was at church?

17 A Yeah.

18 Q What is the church that you met him at?

19 A The Church of Jesus Christ Latter Day

20 Saints.

21 Q Do you know the address?

22 A On Buena Vista.

23 Q Where is that in relation to the University

24 of Nevada?

25 A It's very close.

MERIT REPORTING (702) 323-4715

AA02256 378

2JDC03691

1 Q What side of the campus is it on, do you
2 know?

3 A It's toward the McQueen-- It's toward the
4 post office.

5 Q So would it be fair to say that is the west
6 side?

7 A Yeah, the west side.

8 Q And do you remember what time of day it was
9 when you first met the defendant?

10 A It was in the morning session of church.

11 Q Playing basketball?

12 A No, I met him the first day at church.

13 Q Okay. And how did he first appear to you?
14 How was he dressed, and how did he look?

15 A He looked good. He sounded good. He
16 sounded very--

17 Q Does he look-- Did he look then like he
18 looks today in court?

19 A No.

20 Q Describe how he looked when you first saw
21 him.

22 A He was normal, I guess.

23 Q Okay. How was his hair? Was his hair any
24 different when you saw him?

25 A It was combed, yeah.

MERIT REPORTING (702) 323-4715

AA02257 379

2JDC03692

SVan1s12JDC03692

SVan1s12JDC03693

1 Q Did he have a wig on?

2 A No, he didn't.

3 Q Did you ultimately see him wear a wig?

4 A No, I didn't.

5 Q Okay. Did you see him with a hatchet?

6 A No, I didn't.

7 Q At no time?

8 A Nope.

9 Q Do you remember talking to the police about

10 him-- seeing him with a hatchet?

11 A Yes, I do.

12 Q Okay. When did you--

13 Were you truthful with the police?

14 A Yes.

15 Q Okay. But the first time you saw him at

16 the church he didn't have the hatchet with him?

17 A No.

18 Q And didn't have a wig?

19 A No, he didn't.

20 Q You were in a church setting?

21 A Yes, sir.

22 Q Anything unusual about when you first

23 encountered him at church?

24 A No, sir.

25 Q When was the next time you saw the

MERIT REPORTING (702) 323-4715

AA02258 380

2JDC03693

1 defendant?

2 A Monday morning when we played basketball.

3 Q Okay. And the same church as where you
4 played basketball at?

5 A Yes, sir, in the gym.

6 Q How was he dressed at that time?

7 A Normal, I guess. He had a jacket on and
8 some jeans.

9 Q Did he have the wig on?

10 A No, sir.

11 Q Okay. And did you see him with a hatchet?

12 A No, I didn't.

13 Q Was there anything unusual that happened
14 when you played basketball with him that day?

15 A We just played basketball.

16 Q Did he talk to you about doing anything
17 unusual or hurting anybody?

18 A No, sir.

19 Q Did there come a time where you were told
20 by the defendant that he wanted to kill a police
21 officer?

22 A No, sir.

23 Q Do you remember telling the police that?

24 A No, sir.

25 Q You never told the police that?

MERIT REPORTING (702) 323-4715

AA02259

381

2JDC03694

SVan1s12JDC03694

SVan1s12JDC03695

1 A I can't remember.

2 Q Pardon me?

3 A I can't remember.

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

5 about it.

6 A I don't think I did.

7 Q Okay. Are you certain?

8 A Yeah.

9 Q Okay. Did you ever tell the police that

10 you saw him with a hatchet?

11 A Can you repeat that again?

12 Q Did you ever tell the police that you saw

13 the defendant with a hatchet?

14 A No, I didn't.

15 Q You never told the police that?

16 A No, sir.

17 Q You are certain?

18 A Yes.

19 Q Sir, did you ever see the defendant with a

20 wig on?

21 A No, sir.

22 Q Did you ever tell the police you saw the

23 defendant with a wig?

24 A Nope.

25 Q If you told the police that you saw the

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AA02260

38
2JDC03695

1 defendant with a hatchet, that he told you that he
2 wanted to kill a cop, and you saw him with a wig on,
3 were you truthful to the police?

4 A I didn't tell the police that. I didn't
5 say anything.

6 Q Okay. Do you remember the detectives'
7 names that interviewed you?

8 A No, sir.

9 Q Detectives Dreher and Depczynski, does that
10 ring a bell?

11 A Yeah, kind of.

12 Q Were you truthful to the police?

13 A Yes, I was.

14 Q So you never saw him with a hatchet, and he
15 never told you that he wanted to kill a police
16 officer?

17 A That is correct.

18 Q Did you see the defendant after or Tuesday?

19 A Yes, I did.

20 Q And did he look different on Tuesday than
21 you had seen him before?

22 A He was very quiet. He didn't speak much.
23 We were supposed to play basketball that morning at
24 church.

25 Q Okay. And is that where you saw him?

MERIT REPORTING (702) 323-4715

AA02261

243

2JDC03696

SVan1s12JDC03696

SVan1s12JDC03697
1 A Yeah.

2 Q And had he changed his appearance from when
3 you had seen him earlier?

4 A Not that I noticed-- Not at first. I
5 didn't notice at first, but then he-- Yeah, he did.

6 Q How was it that he changed his appearance?

7 A He had a-- He cut his sideburns.

8 Q Okay. And anything else?

9 A That was all I noticed.

10 Q When was the last time you saw him?

11 A That Tuesday night.

12 Q Okay. And where was that at?

13 A At church.

14 Q And what was the reason that you were at
15 church?

16 A Oh, I had gone there late. We were
17 supposed to have practice for a luau, and I had gotten
18 there late. And that was the last time-- I got there
19 late. Everyone was about to leave, and that is when I
20 saw him.

21 Q Okay. Did you talk to him?

22 A Yeah, I did.

23 Q Okay. What was the gist of your
24 conversation with him at that time?

25 A Talked with him about sports.

MERIT REPORTING (702) 323-4715

AA02262

284

2JDC03697

1 Q That is it?

2 A That was about it.

3 Q How was he acting or behaving?

4 A Normal. It seemed normal to me.

5 Q How would you describe your relationship
6 with the defendant?

7 A I don't know him that well.

8 Q Okay. And prior to that week or the three
9 or four days before you had never seen him before?

10 A No, I didn't.

11 Q Have you ever seen him after Tuesday?

12 A No, sir.

13 MR. STANTON: No further questions.

14 THE COURT: Mr. Fey.

15 MR. FEY: Court's indulgence.

16 (Defense counsel conferred briefly.)

17

18 CROSS-EXAMINATION

19 BY MR. FEY:

20 Q You met the defendant on Sunday morning, is
21 that correct, sir?

22 A Yes, sir.

23 Q And that was at church in the Mormon
24 Church?

25 A Yes, sir.

MERIT REPORTING (702) 323-4715

AA02263

383

2JDC03698

SVan1s12JDC03698

1 Q Where is that located? Is that at the
2 university?

3 A Yes.

4 Q The one just west of the university?

5 A Right.

6 Q On that occasion I think you indicated that
7 is the first time you had met him?

8 A Yes, sir.

9 Q All right. You saw him again on--

10 A Monday morning.

11 Q --Monday morning when you and he decided to
12 play basketball. And how long did that encounter
13 last?

14 A I can't recall.

15 Q Okay. An hour? Less an hour?

16 A Probably an hour and a half, I guess.

17 Q And then he went away, and you went away as
18 far as--

19 A Yes.

20 Q Then did you see him again late in the
21 afternoon on Monday or the evening?

22 A No.

23 Q Okay. Then the next time you said you saw
24 him he was quiet on Tuesday morning?

25 A Right. That is right.

MERIT REPORTING (702) 323-4715

AA02264

386

2JDC03699

SVanIs12JDC03699

1 Q When you saw him on Tuesday morning, you
2 played basketball again?

3 A We were supposed to play basketball, but we
4 didn't have a ball.

5 Q I'm sorry?

6 A We didn't have a ball. We were supposed to
7 play basketball.

8 Q So you just met at church on Tuesday
9 morning?

10 A Yeah.

11 Q You didn't play.

12 Do you know how long you were at church that
13 morning?

14 A Probably half an hour, 45 minutes.

15 Q Did you have any conversations with the
16 defendant--

17 A No, I didn't.

18 Q --on Tuesday morning?

19 A Oh, no.

20 Q All right. Now, on Sunday you say you did
21 not see him with an axe or hatchet?

22 A No, I did not.

23 Q No wig?

24 A No, sir.

25 Q How about Monday morning? Hatchet? Wig?

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AA02265

387

2JDC03700

SVan1s12JDC03700

SVan1s12JDC03701

1 A No, sir.

2 Q Nothing?

3 Tuesday morning did he have a hatchet or a wig?

4 A No, sir.

5 Q What was he wearing on Tuesday when you saw
6 him in the morning?

7 A Same clothes he wore Monday I guess.

8 Q Do you recall what those were?

9 A Jeans, jacket, shirt.

10 Q And can you recall what kind of shirt?
11 Cloth? Leather?

12 A Leather, I think.

13 Q Leather jacket.

14 And did you notice anything unusual about his
15 clothing on Monday morning?

16 A No, sir.

17 Q Anything unusual about his clothing on
18 Tuesday morning?

19 A No, sir.

20 Q Okay. He didn't tell you--

21 Did he talk to you about hurting anybody,
22 killing anybody--

23 A No, he didn't.

24 Q --on any of the occasions?

25 Then again the last time you saw him was on

MERIT REPORTING (702) 323-4715

AA02266

388

2JDC03701

1 Tuesday night, and then that was at the church?

2 A Right.

3 Q Is it fair to say that the sum total of
4 your encounters with Mr. Vanisi are you saw him Sunday
5 morning--

6 A Monday.

7 Q --Monday morning?

8 A Yeah.

9 Q Tuesday morning? Tuesday afternoon?

10 A Correct.

11 Q All of which took place at the church?

12 A Yes, sir.

13 MR. FEY: No further.

14 THE COURT: Mr. Stanton, anything else?

15 MR. STANTON: No.

16 THE COURT: Okay. Thank you. You are excused.

17 Is he free to go?

18 MR. FEY: No objection.

19 MR. SPECCHIO: I just want to ask him one
20 question, if I could--

21 THE COURT: Go ahead.

22 MR. SPECCHIO: --just so I understand.

23 ///

24 ///

25 CROSS-EXAMINATION

MERIT REPORTING (702) 323-4715

AA02267

389

2JDC03702

SVanisi12JDC03702

1 BY MR. SPECCHIO:

2 Q You never heard him make the statement that
3 he wanted to kill a cop or kill anybody?

4 A Not from his mouth personally, no, sir.

5 THE COURT: That is it?

6 MR. SPECCHIO: Thank you, Your Honor.

7 THE COURT: Okay. You are free to go.

8 Did you have another question, Mr. Stanton?

9 MR. STANTON: No, I didn't, Your Honor.

10 THE COURT: Okay. Bring in your next witness.

11 MR. STANTON: The State would call Shamari
12 Roberts. I believe the bailiff is getting him.

13 THE COURT: All right. Mr. Roberts, if you will
14 come up to my left, I will swear you in.

15 Please raise your right hand and be sworn.

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

18 THE COURT: All right. Please be seated right
19 there.

20 THE WITNESS: Okay.

21
22 SHAMARI ROBERTS,
23 produced as a witness herein, having
24 been first duly sworn, was examined
25 and testified as follows:

MERIT REPORTING (702) 323-4715

DIRECT EXAMINATION

BY MR. STANTON:

Q Could you please state your first name and last name and spell your first name.

A Shamari Roberts, S-h-a-m-a-r-i.

Q Mr. Roberts, how old are you, sir?

A Twenty-three.

Q Where do you reside?

A Here in Reno.

Q What is the address?

A 1966 Bishop Street.

Q Okay. How long have you lived here in Reno?

A All my life.

Q Okay. And where are you employed?

A Colorite Plastics.

THE COURT: Would you spell that.

THE WITNESS: Colorite Plastics, C-o-l-o-r-i-t-e P-l-a-s-t-i-c-s.

BY MR. STANTON:

Q Mr. Roberts, did there come a time in January, specifically January 13th, 1998, where you had an interview or gave a statement to Reno Police Officers conducting an investigation of a murder of a police officer?

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AA02269 391

2JDC03704

SVan1s12JDC03704

SVan1s12JDC03705
1 A Yes.

2 Q Okay. Now, based upon that interview and
3 the content of the questions that were asked to you by
4 police officers, do you see that individual sitting in
5 the red jump suit to my left?

6 A Yes.

7 Q Do you know him?

8 A Yes, I do.

9 Q How do you know him?

10 A I met him at my sister's wedding.

11 Q What sister?

12 A Mafi.

13 Q Does she have any nickname?

14 A That is all I know her by is by Mafi.

15 Q Mafi?

16 A I don't know how to spell it.

17 Q Do you know the last name?

18 A No, I don't.

19 Q Okay. And you attended the wedding?

20 A Yes.

21 Q When was that?

22 A The 4th of July weekend of '97.

23 Q All right. And where was that wedding?

24 A In San Mateo, California.

25 Q Okay. And did you have any extended

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AA02270 292

2JDC03705

1 contact with the defendant at that time?

2 A No, just an acquaintance meeting.

3 Q At the wedding?

4 A Yeah.

5 Q Nothing unusual or odd about that meeting?

6 A Unh-unh.

7 Q When was the next time that you saw the
8 defendant after the wedding?

9 A On January 5th-- no, the 6th. Sorry.

10 Q Of what year?

11 A Of this year, 1998.

12 Q And where was that meeting at?

13 A It was at my niece's baby-sitter's house--

14 Q What is her name?

15 A --apartment. Losa Louis.

16 Q Where was that address?

17 A I think it's 1098 East Rock Boulevard,
18 Apartment A.

19 Q Okay. Do you know the apartment number?

20 A Apartment A.

21 Q Now, you said East Rock. Could it be North
22 Rock?

23 A North Rock. I'm sorry.

24 Q And what were you doing at that location?

25 A Picking my niece up for school.

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AA02271 293

2JDC03706

SVan1s12JDC03706

1 Q What is your niece's name?

2 A Brittany Tillman.

3 Q And did you know Losa at that time?

4 A Yes.

5 Q How long had you known Losa?

6 A For about 13 years.

7 Q And how would you describe your
8 relationship with Losa?

9 A We are close, like a sister/brother type
10 thing.

11 Q Okay. So pretty close?

12 A Yeah.

13 Q And at the time that you saw the defendant
14 at Losa's house on that day did he look different then
15 than he does today?

16 A No, not at all.

17 Q Okay. He looks the same today as he did
18 then?

19 A Yeah.

20 Q Did you see him at that time with a wig on?

21 A No, I didn't.

22 Q Did you ever see him with a wig?

23 A No, I didn't.

24 Q Did you see him with a hatchet?

25 A No, I didn't.

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AA02272

394

2JDC03707

SVan1s12JDC03707

1 Q Did you ever see him with a hatchet?

2 A No.

3 Q Did he ever tell you that he wanted to hurt
4 somebody?

5 A No.

6 Q Specifically, did he ever tell you that he
7 wanted to kill a cop?

8 A No.

9 Q Did you hear that from other people?

10 A Yes, I heard it from other people.

11 Q But you never personally heard it?

12 A No.

13 Q Did there come a time, sir, where the
14 defendant asked you to alter his appearance?

15 A Tuesday morning. That morning I went to
16 pick up my niece. He had asked me to shave him.

17 Q Okay. Now, why would somebody ask you to
18 shave them?

19 A Because I cut hair.

20 Q Okay. And Losa and her friends know that?

21 A Yes.

22 Q And you are at the Rock Street address?

23 A Yes.

24 Q And what did you do, and where did that
25 happen, regarding the defendant and him asking you to

MERIT REPORTING (702) 323-4715

AA02273 395

2JDC03708

SVan1s12JDC03708

1 shave him?

2 A I had went and dropped my niece off at
3 school. Then I came back to the apartment, and then I
4 shaved him.

5 Q And what did you do specifically regarding
6 his beard?

7 A Trimmed it-- trimmed it, gave him a couple
8 of sideburns, made it look kind of clean.

9 Q And did he make any statements to you about
10 why he wanted to be shaved?

11 A No.

12 Q He didn't?

13 A No.

14 Q Did he appear or act differently to you
15 during this time period on Tuesday morning?

16 A No.

17 Q Now, you stated that you never saw the
18 defendant with a hatchet?

19 A Yes.

20 Q Okay. How many times did you see the
21 defendant during this time period, this general time
22 period?

23 A I guess I seen him all day. I was-- Off
24 and on all that day.

25 Q What was the time that you arrived at

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AA02274 396

2JDC03709

SVan1s12JDC03709

1 Losa's house on Tuesday morning?

2 A I get off work about eight. I got there
3 about 8:20, and then I got back there maybe 8:40.

4 Q And this is in the a.m.?

5 A Yes.

6 Q And when you arrived there, was the
7 defendant there already?

8 A Yes.

9 Q How was he acting when you arrived Tuesday
10 morning?

11 A Normally I guess.

12 Q Okay. Not any different than you had seen
13 him before?

14 A Yeah, not any different.

15 Q Do you remember seeing the defendant--
16 what shoes he was wearing?

17 A No, I don't.

18 Q Mr. Roberts, State's Exhibit 3-A, I would
19 like to direct your attention in that photograph to
20 the jacket that is draped over that chair. Did you
21 ever see the defendant wear that jacket?

22 A Not that I recall, no.

23 Q Okay. 3-B is a closeup of the jacket. Do
24 you recall him wearing that?

25 A No, I don't remember.

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AA02275 897

2JDC03710

SVan1s12JDC03710

1 Q Okay. In the middle of 3-B there is a set
2 of cream colored leather gloves. Did you ever see the
3 defendant wear those?

4 A No.

5 Q 3-C. I direct your attention in that
6 photograph to the hatchet that is depicted there. Did
7 you ever see that in the possession of the defendant?

8 A Not in the possession of, no.

9 Q Okay. Where was the first time that you
10 saw that?

11 A It was sitting next to the microwave in the
12 apartment.

13 Q Okay. How did it look to you when you saw
14 it on the microwave?

15 A Just like it does in the picture.

16 Q Did you see anything on the hatchet?

17 A No, I didn't.

18 Q Okay. Did you look closely at it?

19 A No, it was just a glance.

20 Q Okay. And where was the microwave in the
21 kitchen?

22 A On the counter.

23 Q Was it in plain view?

24 A It's pretty much in the corner view-- I
25 mean if you were to walk into the apartment, you

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AA02276 398

2JDC03711

SVan1s12JDC03711

1 wouldn't be able to see it unless you are in the
2 kitchen.

3 Q Was anybody else in the kitchen at that
4 time?

5 A No.

6 Q Did you see anybody handle the hatchet?

7 A No, I didn't.

8 Q Did you touch it?

9 A No.

10 Q Do you have any idea how the hatchet got
11 from the location on top of the microwave to where you
12 see it in that photograph?

13 A No, I don't.

14 Q If I were to represent to you--

15 Well, let me ask you: Do you know where in that
16 photograph of that hatchet that is in the apartment at
17 Rock Boulevard?

18 A Absolutely, no. I wasn't paying attention
19 to the surroundings.

20 Q Okay. If I were to represent to you that
21 was inside the front door almost immediately adjacent
22 to the front door, do you have any idea how the
23 hatchet got from on top of the microwave to that
24 location?

25 A No, I don't.

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AA02277 399

2JDC03712

SVan1s12JDC03712

1 Q Did you ever see anybody handle that?

2 A No.

3 Q Did you ask any questions about whose
4 hatchet that was?

5 A No.

6 MR. STANTON: I have no further questions of Mr.
7 Roberts.

8 THE COURT: Mr. Fey.

9 MR. SPECCHIO: I will. Thank you, Your Honor.

10

11 CROSS-EXAMINATION

12 BY MR. SPECCHIO:

13 Q Mr. Roberts, let me see if I understand
14 this correctly. You met the defendant sometime ago in
15 California?

16 A Correct.

17 Q Then you saw him again in January?

18 A Yes.

19 Q Which would have been on a Tuesday?

20 A Yes.

21 Q You didn't see him on Monday?

22 A No.

23 Q Okay. You didn't see him on Wednesday, so
24 all we are talking about is Tuesday?

25 A Just Tuesday, yes.

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AA02278 400

2JDC03713

SVan1s12JDC03713

1 Q Okay. And you would have been with him and
2 other people from about 8:20 until how late?

3 A Maybe 8:30 that evening.

4 Q Okay. So you were with him for about 12
5 hours, give or take? You might have left, or he might
6 have left?

7 A Yeah, correct.

8 Q Did he leave at any time during that time?
9 Was all of your contact with Mr. Vanisi inside the
10 apartment at 1098?

11 A Actually, no, it wasn't.

12 Q Okay. Where did you go from there?

13 A We had been to my home, we had been to the
14 Mormon Church, and then back to the apartment.

15 Q Okay. And you think you left the apartment
16 around 8:30 that night?

17 A No, no, no. I left-- We left the Mormon
18 Church at 8:30-- Well, I did actually.

19 Q And you left the defendant at the Mormon
20 Church?

21 A Yes.

22 Q And that is the last time you saw him?

23 A Yes.

24 Q Now, when you-- About what time of the
25 day-- Let's see. You got there about 8:20 to pick up

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AA02279

401

2JDC03714

SVanisi12JDC03714

1 your niece?

2 A Yes.

3 Q You took your niece to school and then came
4 back?

5 A Yes.

6 Q What time was the shaving and the--

7 A Roughly, let's see, let me give you an
8 estimate, maybe 9:00, 9:15.

9 Q Okay. So it was within the hour after you
10 came back?

11 A Yes.

12 Q Now, the defendant before you--

13 Did you cut his hair? Did you trim his hair?
14 Did you touch his hair at all or the just the face?

15 A No, just the face.

16 Q Did he have a beard that was like down to
17 here?

18 A No.

19 Q How much did you trim off of his beard?

20 A Just touched it up maybe half an inch, I
21 guess. I don't know.

22 Q So altering his appearance wouldn't really
23 be a fair characterization? It would be more that you
24 gave him a trim, isn't that correct?

25 A Yes.

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AA02280 402

2JDC03715

SVan1s12JDC03715

1 Q And the beard was a full beard before you
2 started?

3 A Yes.

4 Q And then you cut the--

5 A Sideburns.

6 Q --long sideburns?

7 A Uh-huh.

8 Q Down to below the ear, Elvis Presley style?

9 A Yes.

10 MR. SPECCHIO: I have no further questions.

11 MR. STANTON: Nothing further.

12 THE COURT: Thank you, Mr. Roberts. You are
13 excused.

14 Is he free to go?

15 MR. STANTON: Yes, Your Honor.

16 MR. SPECCHIO: No objection.

17 MR. FEY: Yes, Your Honor.

18 THE COURT: You may leave, Mr. Roberts.

19 MR. GAMMICK: Carl Smith.

20 THE COURT: Officer, if you will come over to my
21 left, I will swear you in.

22 Please raise your right hand and be sworn.

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

25 THE COURT: Okay. Please be seated.

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AA02281 403

2JDC03716

SVan1s12JDC03716

CARL SMITH,

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

DIRECT EXAMINATION

BY MR. GAMMICK:

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

A Carl H. Smith, S-m-i-t-h.

Q What is your profession or occupation?

A Police Officer, University of Nevada-Reno.

Q How long have you been a police officer?

A Going on 15 years, two years in California,
13 years here.

Q And did you know a person by the name of
Sgt. George Sullivan?

A I did.

Q What was his capacity?

A Patrol Sergeant.

Q For the University of Nevada-Reno?

A Yes, sir.

Q And did you work with Sgt. Sullivan?

A I did.

Q For how long?

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AA02282

404

2JDC03717

SVan1s12JDC03717

1 A He was my T.O. when I first came to work
2 for the police department--

3 Q Your--

4 A --at UNR.

5 Q Your T--

6 A He was my training officer.

7 Q Okay. And were you familiar with the
8 equipment that he would wear when he would go to work?

9 A Yes, sir, I am.

10 Q Let me call your attention specifically to
11 Monday night, January 12th, Tuesday morning, January
12 13th. Did you work that night?

13 A I did.

14 Q What time did you come to work?

15 A 11:00, 23:00, on the 12th.

16 Q And was Sgt. Sullivan there?

17 A He was.

18 Q Did he work the same shift as you?

19 A He did.

20 Q So it was 11:00 when both of you started
21 graveyard shift?

22 A Yes, sir.

23 Q Okay. How was he dressed that night?

24 A Basically the same as I was, in his
25 uniform, his badge, his gun belt, his gun, pepper gas,

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AA02283

4.5

2JDC03718

SVan1s12JDC03718

1 nightstick, flashlight--

2 Q Let me show you--

3 A --and radio.

4 Q --what is Exhibit 4-B, and I ask if you
5 recognize that equipment?

6 A I do. That is his flashlight, his radio--
7 He was also the officer that more or less took care of
8 the radios for the department.

9 This is definitely his radio, because he-- He
10 had a propensity for writing little tags and putting
11 his name on his stuff. He would do that with his--

12 Q Let me show you 4-C, which appears to be
13 the back--

14 First of all, does that appear to be the back of
15 the same radio depicted in 4-B?

16 A It is.

17 Q And there is a name tag on that radio?

18 A Right.

19 Q What does that read?

20 A It should say George Sullivan. (Reading.)
21 Yep.

22 Q Do you need some glasses, or do you have
23 it?

24 A Yeah, I have it. (Reading.) It says
25 "Sullivan" there.

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AA02284 406

2JDC03719

SVan1s12JDC03719

1 Q Do you know what type of weapon Sgt.
2 Sullivan carried?

3 A I sure do.

4 Q Let me show you 6--

5 A A .45 caliber Glock, model 21.

6 Q Look at photograph number 6 there, does
7 that appear to be at least the same type of weapon, if
8 not his weapon?

9 A It does.

10 Q Let me take you to about 00:20, about 20
11 minutes after midnight. Sometime in that time frame,
12 were you and Sgt. Sullivan involved in some type of
13 law enforcement activity?

14 A Yes, sir, it was.

15 Q What was going on?

16 A He had made a traffic stop just before that
17 at the corner of Center and 9th.

18 Q Is that right where the gate to the
19 university is?

20 A Well, it's across the street and down.
21 It's right across from the Center Street parking lot.

22 Q Okay.

23 A It was a Jeep. The Jeep had a blond headed
24 girl in it.

25 Backing up a little bit, I had started to run

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AA02285 407

2JDC03720

SVan1s12JDC03720

SVan1s12JDC03721
1 radar when he had made the traffic stop. I heard he
2 was making a traffic stop.

3 Shortly after that he put out the code. He was
4 Code 4, but we always go down and check on each other
5 anyway, if we know that--

6 Q If I can interrupt just a second, how many
7 of you were on duty on the graveyard shift?

8 A He and I.

9 Q Just the two of you?

10 A Yes, sir.

11 Q So you look out for each other?

12 A Yes, sir.

13 Q So you assisted him on that stop?

14 A Right.

15 Q About how long did that stop take?

16 A About 10-- between 10 and 14 minutes.

17 Q And then where did Sgt. Sullivan go as soon
18 as the stop was over?

19 A Well, as I went up, we made the stop, and
20 we discussed the merits of the stop, the fact that the
21 guy may have been in the area to pick up somebody that
22 he may have dropped off, because we were having
23 problems--

24 Q If I can just jump ahead. When you are
25 done with the stop, where does Sgt. Sullivan go?

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AA02286

408

2JDC03721

SVan1s12JDC03722

1 A I went across into the Center Street
2 parking lot. Sgt. Sullivan turned around in the
3 street, and he immediately drove up to the university.
4 And he disappeared over as he rounded the corner up by
5 the kiosk.

6 Q Okay. The kiosk. Is that up by Morrill
7 Hall?

8 A It is.

9 Q The gate and Morrill Hall?

10 A It's the information booth, yes, sir.

11 Q Is there a place where you or him used to
12 park in order to do various things, like write reports
13 or whatever?

14 A Well, it's well-lighted up there. You can
15 pull up to the site-- With the additions up there
16 it's more lighted, so we frequently go up there to
17 fill out--

18 George would normally take an FI card or he
19 would take his notebook, write the information down in
20 the notebook. Then when he got to where he could and
21 there was liberal time, he would take out one of our
22 regulation FI cards and fill that FI card out,
23 transfer the information off his notebook onto that FI
24 card.

25 Q Field interview cards?

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AA02287 409

2JDC03722

SVan1s12JDC03723

1 A Yes, sir.

2 Q Okay. Now, during the period of time of
3 the stop when you were down in the area of 9th and
4 Center did you see any individuals that appeared
5 suspicious at that time?

6 A Yes, sir, I did.

7 Q And where did you see--
8 First of all, how many people?

9 A Well, as I was driving up, I noticed an
10 individual--

11 Q Just one then?

12 A Yes.

13 Q Where did you see that person?

14 A I saw him between-- Well, there is a
15 series of trees along 9th Street just before you get
16 to Center Street. I saw him just before the second
17 Street.

18 Q What drew your attention to him?

19 A As I went by, he turned and literally
20 glared at me, like I guess you could-- in almost a
21 squared off motion as if in a fight mode and glared at
22 me.

23 And it's a look like you see sometimes from
24 people that may have had an uncomfortable contact with
25 police at one time or another, and it's something that

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AA02288

410

2JDC03723

SVan1s12JDC03724
1 we run into occasionally. And it is something you get
2 sensitive to after awhile.

3 You know, it's not something you get paranoid
4 about, but certainly you become aware of it and
5 sensitive to it, so that in the event you have contact
6 with that individual later that, you know, you are
7 aware of what his thoughts might be.

8 Q Okay. Would you describe that person as he
9 appeared that night, please.

10 A It was a brief, three-second look. The
11 prismatic effect of the lighting, because it's light
12 there but not real well-lighted, and there are some
13 multi-colored lights, he looked dark skinned, not
14 really African/American but an African/American type
15 look.

16 He had dreadlocks and kind of like a scraggly
17 beard. He was wearing a dark jacket that was bulky.
18 It-- The sleeves were open like this at the bottom,
19 and it came down to I would say about right here, and
20 the coat was open.

21 Q Can you describe the build of the person.

22 A He was-- He had a portly build similar to
23 the individual that was in the Jeep that we had
24 stopped or that Sgt. Sullivan had stopped.

25 Q Now, during this three-second time did you

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AA02289

411

2JDC03724

1 get a good look at this person's face?

2 A I did.

3 Q Do you see that person in court today?

4 A I do, but he doesn't have dreadlocks like
5 he had that night, or it appeared to be dreadlocks.

6 Q Okay. Can you identify a person in court
7 today as being the same person you saw in the street
8 that night?

9 A I can.

10 Q Where is that person, and what is he
11 wearing today?

12 A That person is seated to the left of the
13 gentleman with the brown suit on. He's wearing an
14 orange jump suit and handcuffs and bracelets.

15 MR. GAMMICK: May the record reflect
16 identification of the Defendant Vanisi, Your Honor.

17 THE COURT: All right, it will.

18 BY MR. GAMMICK:

19 Q How does he differ today from the way he
20 appeared that night?

21 A He had what appeared to be dreadlocks and
22 presented not really an African/American look--
23 Because of the prismatic effect it can make you look
24 darker at night--more of a Ragu look of-- from an
25 islander, like Kingston, Jamaica.

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AA02290

412

2JDC03725

SVanisi12JDC03725

1 Q When you say-- The type of hairstyle you
2 were talking about, is that what is normally believed
3 to be a Jamaican-type hairstyle?

4 A Right, with that Ragu lifestyle type music.

5 Q Reggae?

6 A Reggae. Did I say Ragu?

7 Q That is spaghetti sauce I believe.

8 A I'm sorry. I apologize.

9 Q Did you-- You say you went down, parked in
10 the parking lot. Then did you leave that area?

11 A No, I did not. I specifically-- When I
12 cleared from the-- we cleared from the traffic stop, I
13 went over-- I was going to go up by the kiosk,
14 because we were going to wait and see if this guy had
15 dropped somebody off and was going to come back and
16 pick that person up.

17 Q Okay.

18 A And that is specifically why Sgt. Sullivan
19 and I were up there. I had gone to the parking lot,
20 but Sgt. Sullivan just turned around and immediately
21 went up there.

22 I saw him going up to where the kiosk was. I
23 said, Well, there is no need for both of us to be up
24 in exactly the same place. I will sit in the parking
25 lot down here so that anybody who comes up and down

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AA02291 413

2JDC03726

SVan1s12JDC03726

1 the street we can-- we will see.

2 Q Did you see Defendant Vanisi anymore that
3 night?

4 A No, I did not.

5 Q About how much longer was it before you
6 received another radio call?

7 A I stayed in the center parking lot. I got
8 out of the car and was by the car-- actually had the
9 car door open out of the car, and I stayed there for
10 maybe 20 minutes after we cleared the stop.

11 Q Okay.

12 A Then I went back up to restart running
13 radar, because initially whenever he first called out
14 the stop that is what I done, I pulled over to run--
15 to set up and run radar.

16 Before that you have to check calibration, make
17 sure, all that kinds of stuff. So I left there, drove
18 down the street, which takes about seven or eight
19 minutes, about a minute and a half.

20 I grabbed the radar gun off the table--I had
21 left it on the briefing room table--grabbed that, went
22 back, got back in the car, drove up behind the old gym
23 and pulled up there.

24 It takes about 12 minutes to do that. I started
25 to check the calibration on the radar. That only

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AA02292 414

2JDC03727

SVanisi12JDC03727

SVan1s12JDC03728
1 takes about two minutes, and then I got dispatched to
2 the information booth at 9th and Center on a Trouble
3 Unknown call.

4 And as I started out, I knew Sgt. Sullivan was
5 up there. I didn't know what was going on. But there
6 had been no traffic over any of the radios or anything
7 either-- over any of the radios whatsoever.

8 As I started down the roadway, I heard a voice
9 come up on the police radio that I knew was not the
10 voice of a police person. And it was-- You couldn't
11 really understand fully what was being said on the
12 radio, and the dispatcher cut him off and told me,
13 Officer down, to respond with 136. So I did that.

14 As I came up onto the scene, there was a young
15 white male that was bent over Sgt. Sullivan, who was
16 laying on his back at the time. He had short dark
17 hair, a freckled face guy, and I recognized him
18 because I had had contact with him two years before on
19 a graveyard shift on a couple of prank calls out of
20 White Pine Hall.

21 So I kind of recognized him once he turned
22 around so that I could see his face.

23 Q Have you seen that gentleman again today
24 here in court?

25 A I have.

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AA02293

4/5
2JDC03728

1 Q Mr. Ciocca?

2 A Well, Drew is all I know him by. I don't
3 know what his last name is. I just knew him by Drew,
4 because I've had-- He usually stops and says, "Hi" to
5 me or something every time he sees me around the
6 university.

7 Q Did you see Sgt. Sullivan at the scene?

8 A Yes, I did.

9 Q Was there anything missing from him?

10 A Yes, there was. Once I got the young guy
11 back-- Because I wasn't sure what was going on at
12 that point. 136 arrived on the scene. He took
13 custody of him, took him to the side.

14 The door was open on Sgt. Sullivan's car. There
15 was no lights, but the car was running. I thought it
16 was real odd, no overhead lights on or anything.
17 Normally if we are going to go out on somebody or
18 something like that, we would at least flip on the
19 overheads or flip something like that. But no lights
20 were on in the car, nothing.

21 So that left me with having to clear the car,
22 bushes and everything else with people still starting
23 to arrive and come onto the scene. So I did that.

24 And the first thing I looked at was to check to
25 see where his weapon was, and I noticed that his gun

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AA02294

416

2JDC03729

SVan1s12JDC03729

SVan1s12JDC03730
1 belt was missing.

2 And I immediately got on the radio and informed
3 the dispatch center to let all officers that were
4 responding to the area know that whomever the suspect
5 was now armed with a Glock .21 semi-- I think the
6 words I used, if I recall correctly, was he was armed
7 with a semi-automatic Glock .45 pistol. And I believe
8 that was what the dispatch record would say.

9 Q When you looked inside of Sgt. Sullivan's
10 car, did you see anything that appeared to have been
11 paperwork he might have been working on?

12 A No.

13 Q Did you see a coffee cup or coffee or
14 anything?

15 A I didn't notice. I wasn't looking for a
16 coffee cup. I was looking for people or person, but I
17 did do this-- Briefly I looked--

18 Because of the condition of Sgt. Sullivan at the
19 time I didn't see any abnormal amount of blood or
20 anything like that in the car, so I-- You know, just
21 deductive reasoning from that would lead me to believe
22 that whatever had happened to him had not happened
23 inside the car.

24 MR. GAMMICK: Thank you, Officer Smith. That is
25 all I have.

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AA02295 4/7

2JDC03730

1 THE COURT: Mr. Fey or Mr. Specchio.

2 MR. SPECCHIO: Thank you, Your Honor.

3
4 CROSS-EXAMINATION

5 BY MR. SPECCHIO:

6 Q Officer Smith, when Officer Sullivan had
7 the vehicle stopped at 9th and Center--

8 A Yes, sir.

9 Q --you stopped? You were at that stop?

10 A I drove up to it after he had made the
11 stop, yes, sir.

12 Q Okay. Did you get out of your vehicle?

13 A I certainly did.

14 Q Okay. And what type of a vehicle was it
15 that was stopped?

16 A It was a Jeep.

17 Q And this is the one that had--

18 A --had Nevada license plates. I recall
19 that.

20 Q --had a blond lady in it?

21 A There was a blond lady sitting in the
22 passenger seat.

23 Q And the guy was driving?

24 A The guy was driving, and the guy was back
25 at the back, up on the sidewalk-- There is actually

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2JDC03731

SVan1s12JDC03731

1 an area kind like a dirt area, and he was just behind
2 the Jeep on that dirt area in front of the church.
3 There is a church there.

4 Q Okay. Were there three of you standing
5 outside, you, Mr. Woods, the owner of the Jeep?

6 A Right.

7 Q And--

8 A Sgt. Sullivan.

9 Q And this was about what time?

10 A About-- I want to say 12:35, something
11 like that.

12 Q This would be Tuesday morning, 12:35?

13 A Right. That would be the 13th, right.

14 Q Okay. Who would be the first one to leave
15 that location, you, the Jeep, or Sgt. Sullivan?

16 A I'm sorry?

17 Q There is three of you there--

18 A Right.

19 Q --outside the car?

20 A Right.

21 Q Okay. With the blond lady inside the Jeep?

22 A Right.

23 Q Somebody leaves first?

24 A Mr. Woods left first.

25 Q The Jeep left first?

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2JDC03732

SVan1s12JDC03732

SVan1s12JDC03733

1 A Right.

2 Q And which direction did he go?

3 A He went straight down the street.

4 Q Beyond 9th Street?

5 A Right.

6 Q 9th Street, west?

7 A That wasn't 9th Street. That was Center

8 Street. He was on Center Street, headed in the

9 eastbound direction, or that runs actually

10 north/south. So he was actually headed in a

11 southbound direction.

12 Q So he went south on Center?

13 A Right.

14 Q And your car was facing which direction?

15 A Same direction. Both our cars were facing

16 in the same direction.

17 Q And Sgt. Sullivan's car as well?

18 A Right.

19 Q So all three cars were facing south on

20 center?

21 A Southbound.

22 Q The Jeep leaves first?

23 A Right.

24 Q I assume he took the blond with him?

25 A Oh, yeah.

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AA02298 42A

2JDC03733

1 Q Okay. So that left you and Sgt. Sullivan?

2 A Right.

3 Q Then you left?

4 A Both of us stood there, talked about it,
5 the totality of the circumstances. The guy had said
6 some things about looking for some addresses. He was
7 looking for an address of a property that had came out
8 for sale and had just been posted. And that was his
9 explanation. And I believe he said he was looking for
10 481 Center Street.

11 Q He was looking for real estate at 12:30 at
12 night?

13 A Right.

14 Q Okay. Now, this guy is a white guy, isn't
15 he?

16 A He certainly is.

17 Q Big guy?

18 A Not real big, but he presented a portly
19 appearance.

20 Q Okay. Similar to the size and shape of the
21 person that you saw lurking in the--

22 A Not as tall.

23 Q Who was taller?

24 A Oh, I would say the guy that I saw walking
25 down the street.

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2JDC03734

SVan1s12JDC03734

1 Q The guy in the bushes is taller than the
2 guy in the--

3 A Bushes? I never saw anybody in the bushes.

4 Q The guy you said you saw that was
5 suspicious when you left, didn't you testify--

6 A I didn't say I saw anybody suspicious
7 looking when I left. I said on arrival at the scene I
8 saw this gentleman here walking down the street turn
9 and glare at me.

10 Q Okay. And you got to look at him for three
11 seconds you said?

12 A Right.

13 Q And in that time you know it was him?

14 A Absolutely. His face I would recognize
15 anyplace, and it wasn't so much that as it was because
16 of the glaring look that he gave me when I drove by.
17 And it was--

18 True, it was three seconds, but I must admit
19 because of the prismatic effect he certainly looked
20 darker complected that night than he does now. He
21 looks lighter.

22 Q Was he under a street light?

23 A Under a street light?

24 Q Yeah.

25 A No, there is no street light specifically

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422

2JDC03735

SVan1s12JDC03735

SVanisi12JDC03736

1 right there, but there is a light-- a restaurant, the
2 Beer Barrel, and there are several lights in the
3 little parking lot directly behind there. There is
4 like a real estate office there, and there is several
5 lights there.

6 So while it's not brilliant light--You would be
7 underneath the street lamp--it is fairly well-lighted
8 there.

9 Q Your description or ability to recognize
10 the defendant as being the person on the street at
11 that time, that is not clouded by the fact that you
12 saw--

13 A Not clouded.

14 THE COURT: Let him finish his question.

15 THE WITNESS: Oh, I'm sorry.

16 BY MR. SPECCHIO:

17 Q It's not clouded by the fact that you saw
18 his picture on television the day after?

19 A I didn't see his picture on television the
20 day after.

21 Q You saw never saw Mr. Vanisi's picture on
22 television?

23 A No, I did not. No, sir. That I can
24 honestly say.

25 Q You haven't watched any news accounts--

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1 A There was--

2 THE COURT: Wait, wait. Let him finish.

3 Go ahead.

4 BY MR. SPECCHIO:

5 Q Have you watched any news accounts at all
6 of the death of your friend and co-worker, Sgt.
7 Sullivan?

8 A No, sir.

9 Q Nothing on television?

10 A Nothing.

11 Q And you gave a statement to the police, did
12 you not?

13 A Right.

14 Q And who did you give the statement to?

15 A Officer Dreher.

16 Q Did you give another statement or just to
17 Officer Dreher?

18 A Just to Officer Dreher.

19 Q Okay. Did he show you photographs at that
20 time?

21 A Absolutely not.

22 Q Did you give a written statement of your
23 account of this situation, what happened that night?

24 A He tape recorded my statement.

25 Q No. Did you give a separate written

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AA02302 424

2JDC03737

SVan1s12JDC03737

1 statement?

2 A No, I did not.

3 Q You never prepared a written report?

4 A No, sir.

5 Q Did you have to prepare a written report in
6 your duties as a UNR police officer?

7 A No, I did not.

8 Q And what was the defendant wearing that
9 night when you saw him for that three seconds?

10 A The trousers were dark. They looked a
11 little baggy. And the coat-- I couldn't tell if it
12 was dark brown or black, but it was certainly a dark
13 color.

14 Q Okay.

15 A And, like I said, the prismatic effect of
16 artificial lighting at night can sometimes make dark
17 brown look black and sometimes black look dark brown,
18 but it was certainly dark in color.

19 And it appeared not only that-- It appeared to
20 me to be probably leather or a leather-appearing type
21 material.

22 Q Okay. Now, you and Mr. Woods and the blond
23 lady and Sgt. Sullivan are on Center Street?

24 A Right.

25 Q You see Mr. Vanisi on which street?

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AA02303

425

2JDC03738

SVan1s12JDC03738

1 A He was on 9th Street as I was approaching
2 Center, driving by.

3 Q And which direction was he going, east or
4 west?

5 A Oh he was headed eastbound.

6 Q He was going east towards--

7 A Towards Center Street.

8 Q Towards Center Street?

9 A Right.

10 Q Okay. How much time were you at that stop
11 with Mr. Woods?

12 A I think I testified already to that.

13 Q Well, try to refresh my recollection.

14 A Somewhere between 12, 14 minutes-- 10 to 14
15 minutes I would say.

16 Q Did you see the defendant again?

17 A No, I did not. I wasn't looking in the
18 direction that I had saw him, no. He didn't walk by,
19 or I didn't notice him walk by.

20 Q But he could have walked by? You were
21 paying attention to the Woods' car, weren't you?

22 A I was paying attention to Mr. Woods,
23 because I did not like the way he was moving around.

24 Q So let me see. Now, you have come in
25 contact with two people in 12 to 15 minutes, one is

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AA02304 476

2JDC03739

SVan1s12JDC03739

1 the defendant, who has got a glare, and Mr. Woods, who
2 you didn't like the way he moved?

3 A Well, there are certain things that people
4 do when you are talking to them.

5 Q Did you run into anybody else in those 12
6 to 15 minutes?

7 A No, other than Sgt. Sullivan--

8 Q Okay.

9 A --who was talking to Mr. Woods at the time.

10 Q Okay. Did you have any conversation with
11 Mr. Woods at all?

12 A Other than to tell him that the address
13 that he was looking for, 481, didn't appear to be
14 really a good address there.

15 Q And that seemed a little funny to you,
16 didn't it?

17 A Well, actually he gave three different
18 addresses. He gave 481, 484, 482. Then he went to
19 his car briefly and got another address and came back,
20 and it happened to be the address of the church. And
21 then he said, Well, this is the address actually I'm
22 looking for. I made a mistake.

23 I said, Good, that is a church there, and, There
24 is no sign For Sale in front of it, but that is not to
25 say it couldn't be for sale. Perhaps you should go

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AA02305 117

2JDC03740

SVan1s12JDC03740

1 around the back and check. Maybe the sign might be
2 back there.

3 Q Let's get back to Mr. Woods. Mr. Woods is
4 you said bigger-- or you said one of these people were
5 bigger, either Mr. Vanisi or Mr. Woods. Who was the
6 larger of the two?

7 A I would say Mr. Vanisi is.

8 Q Mr. Vanisi would be taller or wider?

9 A Taller, not a whole lot wider. Both of
10 them presented somewhat of a portly appearance.

11 Q Well, we like to call ourselves full
12 figured.

13 A Well, full figured. He presented a full
14 figured appearance. If you want to use that instead
15 of portly, that is fine.

16 Q Mr. Woods would be portly or full figured
17 like us as well?

18 A No, not quite as much.

19 Q He's thinner and not as tall?

20 A Right.

21 MR. SPECCHIO: May I have the Court's
22 indulgence?

23 THE COURT: Certainly.

24 MR. SPECCHIO: (Reading.)

25 ///

1 BY MR. SPECCHIO:

2 Q Did you talk to the blond?

3 A Did I talk to the blond?

4 Q Yeah.

5 A No.

6 Q I guess I will put this as--

7 A She was sitting in the passenger seat in
8 the Jeep.

9 Q Do you know if the blond was Mrs. Woods?

10 A I have no idea who she was.

11 Q When you fill out that little-- the FI
12 card--

13 A Yes, sir.

14 Q For instance, that night did you do one and
15 Sullivan do one?

16 A No.

17 Q Whoever makes the stop does the card, is
18 that how it works?

19 A If he obtains the information from the
20 subject, and on the back of it we put down the
21 circumstances.

22 Q But what I'm trying to get at is if you
23 stop me tonight--

24 A Yes, sir.

25 Q --and another officer comes up behind me at

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AA02307 429

2JDC03742

SVan1s12JDC03742

1 1:30, because I look for real estate at that time up
2 there--

3 A Right.

4 Q --are you both going to fill out those
5 cards, or just you, because you stopped me first?

6 A It would be just me filling out the card.
7 There is no need to duplicate the FI card from the
8 files.

9 Q You told me about the trousers. I think I
10 interrupted you after that. This person-- You saw
11 the defendant. He was wearing dark trousers, you
12 didn't know if he they were black or brown because of
13 the prism effect of the glass.

14 What else-- He had something else on other than
15 the trousers?

16 A He had a shirt.

17 Q Did he-- And a coat?

18 A And a coat, right.

19 Q Do you know what color the shirt was?

20 A I'm not real sure.

21 Q Do you know what color the coat was?

22 A Like I said, it was either dark brown and
23 black, but I couldn't be real sure.

24 Q But it was a longer-- It wasn't a waist
25 jacket, it was below the waist?

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AA02308

430

2JDC03743

SVan1s12JDC03743

1 A No, it was below the waist. It came down
2 to right here, as I recall.

3 Q Do you know what kind of material it was
4 made out of?

5 A It appeared to be leather. Three seconds
6 driving by that fast without a closer examination
7 there would be no way I could positively identify a
8 material.

9 Q Okay. After you saw the defendant then you
10 went to the Woods' stop?

11 A Right.

12 Q And you really lost contact with Mr. Vanisi
13 at that time?

14 A Right.

15 Q Do you know if he got in the car and drove
16 away?

17 A I have no idea.

18 MR. SPECCHIO: I have no further questions.

19 THE COURT: Mr. Gammick.

20 MR. GAMMICK: I have no further questions.

21 THE COURT: Thank you, officer. You may be
22 excused.

23 Is he free to go?

24 MR. GAMMICK: Yes, Your Honor.

25 MR. FEY: Yes.

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AA02309 421

2JDC03744

SVanisi12JDC03744

1 THE COURT: You may be excused.

2 All right. Call your next witness.

3 MR. GAMMICK: Your Honor, I have-- Dr. Clark
4 will be in in just a moment.

5 This is a demonstrative look-alike hatchet that
6 was also purchased from Wal-Mart's. This will be
7 marked as 11.

8 THE COURT: I have 1 through 12 as pictures. So
9 would this be 13.

10 MR. GAMMICK: No. That is why I went
11 specifically through the exhibits, so we didn't do
12 that. I can remark it as 13. That would be fine.
13 But there is no photograph 11.

14 THE COURT: I thought Mr. Stanton referred to
15 pictures 1 through 12.

16 MR. GAMMICK: But after that I went through
17 every single exhibit, so that we made sure, because
18 that was not entirely correct. I'm keeping track of
19 the exhibits now.

20 THE COURT: So we have 1 through 10 and then 12?

21 MR. GAMMICK: No. What we have is number 1 is a
22 booking photo of the defendant; 2 is a photo of the
23 defendant, which we haven't used yet; numbers 3-A,
24 3-B, 3-C are the photos of the jacket, the jacket, and
25 gloves and the photo of the hatchet.

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2JDC03745

SVan1s12JDC03745

1 THE COURT: Okay.

2 MR. GAMMICK: 4-A, 4-B, 4-C are photos of a Sam
3 Brown belt or, excuse me, the bag, the Sam Brown belt,
4 then the back of the radio; number 5 is the DNA
5 results, two pages.

6 THE COURT: All right. I have that.

7 MR. GAMMICK: Number 6 is a photo of the
8 victim's gun, Sgt. Sullivan's gun; number 7 is a photo
9 of the Hills' car; number 8 is a photo of the scene;
10 number 9 we did not use.

11 That will be Dr. Clark with whatever photos she
12 has on both 9 and 10. And then number 11 is the
13 hatchet I just presented to you. And number 12 is a
14 photo of the apartment in Salt Lake City with the
15 photographs on the wall.

16 THE COURT: Okay. So I've got it now. Okay.

17 All right. Dr. Clark, if you will please raise
18 your right hand, I will swear you in.

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

21 THE COURT: Please be seated.

22 MR. STANTON: Can I have the Court's indulgence
23 for just one moment.

24 THE COURT: All right.

25 MR. GAMMICK: Your Honor, may I also ask if the

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AA02311 422

2JDC03746

SVan1s12JDC03746

SVan1s12JDC03747
1 Court would be willing to take judicial notice of the
2 education and qualifications of Dr. Clark as a
3 forensic pathologist for purposes of the preliminary
4 hearing?

5 MR. SPECCHIO: Yeah, for this hearing only, Your
6 Honor.

7 THE COURT: All right. Then you will be doing
8 the cross-examination, Mr. Specchio?

9 MR. SPECCHIO: Possibly, Your Honor. We hate to
10 make decisions that far in advance.

11 THE COURT: I understand. It's difficult.

12 Then what we will do is we will go ahead, and I
13 guess we have stipulated then that Dr. Clark is an
14 expert as to what she is about to testify to.

15 MR. SPECCHIO: For the purpose of this hearing
16 only, Your Honor.

17 THE COURT: For the purpose of this hearing.
18 And if I am understanding right, Exhibit 11 is
19 admitted for this hearing only?

20 MR. SPECCHIO: Yeah, as long as we understand it
21 doesn't have any relevance to this case other than the
22 fact it's going to be used by the doctor in her
23 testimony for demonstrative purposes only. That is
24 fine.

25 THE COURT: Okay. Is that it?

1 MR. GAMMICK: It is. And I would just make sure
2 we are clear that it is the same type, the same kind,
3 same make, same size in all ways as the hatchet that
4 is depicted in Exhibit 3-C.

5 THE COURT: Okay.

6 MR. GAMMICK: 3-C is the actual hatchet we have
7 in evidence. This is a look-alike bought from the
8 same store, same brand, everything for purposes of Dr.
9 Clark's testimony.

10 MR. SPECCHIO: It looks like a duck, it walks
11 like a duck, kind of thing.

12 MR. GAMMICK: This one quacks, yes.

13 THE COURT: Admitted as 11.

14 (State's Exhibit 11 was admitted.)

15 MR. GAMMICK: Thank you.

16
17 ELLEN CLARK, M.D.,
18 produced as a witness herein, having
19 been first duly sworn, was examined
20 and testified as follows:

21
22 DIRECT EXAMINATION

23 BY MR. GAMMICK:

24 Q Now, Dr. Clark, do you have some
25 photographs that you brought with you for today's

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1 testimony?

2 A Yes.

3 Q May I see those, please.

4 A (Handing.)

5 MR. GAMMICK: (Handing.)

6 MR. FEY: (Looking.)

7 MR. GAMMICK: If the Court will bear with me for
8 just a moment.

9 THE COURT: All right.

10 MR. GAMMICK: (Writing.)

11 MR. SPECCHIO: Your Honor, again we are prepared
12 to stipulate to those things on two conditions:
13 Number one, we get a copy; and, number 2, they don't
14 demonstrate it for the cameras and audience.

15 THE COURT: All right.

16 MR. GAMMICK: Your Honor, for the purpose of the
17 record I would indicate that we have six photographs
18 that Dr. Clark has brought with her. They have been
19 marked 10-A through 10-F.

20 THE COURT: Okay. Those will be admitted then
21 10-A through 10-F.

22 (State's Exhibit 10-A through

23 10-F were admitted.)

24 BY MR. GAMMICK:

25 Q Dr. Clark, I call your attention to January

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AA02314 436

2JDC03749

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SVan1s12JDC03750
1 13th, 1998. At that time did you perform an autopsy
2 on Sgt. George Sullivan from the University of Nevada-
3 Reno Police Department?

4 A Yes.

5 Q And were you able from that autopsy to
6 determine a cause of death?

7 A Yes.

8 Q And what is that?

9 A Sgt. Sullivan died of multiple cranial
10 cerebral injuries due to blunt force impact trauma.

11 Q And at the time of the autopsy was there
12 some discussion with the investigating officers as to
13 any types of possible weapons that could have caused
14 the injuries that you found?

15 A Yes.

16 Q Subsequent to that autopsy, either the next
17 day or two days later, were you shown that hatchet or
18 a hatchet that looks like that?

19 A Yes.

20 Q Same size, make, everything else?

21 A Yes.

22 Q And were you able to make comparisons
23 between the hatchet you were shown and the injuries to
24 Sgt. Sullivan, either to his person or through the use
25 of photographs that were taken at the autopsy?

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AA02315

437

2JDC03750

SVan1s12JDC03751
1 A Yes.

2 Q And were you able to reach a conclusion as
3 to whether or not that hatchet could have been
4 involved in causing some or all of those injuries?

5 A Yes.

6 Q And would you please state to the Court
7 what your conclusions were and your opinion and how
8 you arrived at them.

9 A It is my opinion that Sgt. Sullivan had
10 numerous pattern injuries, which correspond to the
11 various surfaces of the hatchet, and the majority of
12 which can be matched to surfaces of impact or cutting
13 contained on the axe.

14 Q And would you please demonstrate-- You
15 brought some photographs with you of the autopsy, and
16 you have number 11, which is a look-alike hatchet for
17 the purposes of this hearing.

18 Could you please demonstrate to Judge Dannan at
19 least a couple of the injuries and how you came to the
20 conclusion that they were caused by an implement
21 identical to that one.

22 THE COURT: Are you going to use the photograph?

23 THE WITNESS: Yes.

24 THE COURT: Just put it right there.

25 THE WITNESS: May I take this out?

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AA02316

438

2JDC03751

1 THE COURT: Yes.

2 THE WITNESS: Would you like me to go through
3 the State's exhibits, or how shall I proceed?

4 MR. GAMMICK: However you would like to present
5 it to Judge Dannan. I would ask that if Mr. Fey wants
6 to come up and observe it up here, I would ask to keep
7 it between you, and we can watch what is going on,
8 whatever you are comfortable with.

9 THE WITNESS: State's Exhibit 10-A shows an
10 autopsy photograph of Sgt. Sullivan's upper torso--
11 the upper torso and the face. This photograph shows a
12 minimum of 10 separate impact fissures, injuries to
13 the face.

14 Those are largely aggravated over the forehead
15 and central front of the face but continue well into
16 the mouth and onto the chin.

17 The face was massively fractured. There were
18 capping fractures, which literally lifted the front of
19 the skull from the rest of the facial bones.

20 The nose was crushed. All of the jaw bones were
21 injured. The injuries on the front of the face
22 primarily have a wedge shape, and they have a
23 combination of sharp force margin characteristics as
24 well as blunt trauma characteristics.

25 In particular I would point out that--

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439

2JDC03752

SVan1s12JDC03752

1 May I put this down?

2 THE COURT: Sure.

3 THE WITNESS: --that the injury on the center of
4 the forehead has a specific wedge shape, which
5 corresponds to a combination of cutting with the blade
6 of the axe and/or cutting in combination with the
7 glancing blow, which continues onto the under surface
8 of the wedge shape aspect of the weapon.

9 Injuries which were on the-- that wound and
10 those characteristics are better shown in State's
11 Exhibit 10-B.

12 There is blunt force trauma implicated by the
13 marginal abrasions, but there is also sharp force
14 trauma indicated not only by the surface appearance of
15 the wound but by fractures, which were subjacent to
16 that and penetrated into the skull.

17 State's Exhibit 10-C shows detailed photographs
18 of some relatively patterned injuries on the right
19 facial cheek.

20 And you will notice that there is a straight
21 edge, which begins with a curved edge, and the same
22 pattern is reproduced here. These injuries correlate
23 with the curved portion of the under surface of the
24 axe.

25 And again there are sharp characteristics. The

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440

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1 edge is very sharp along this portion of the weapon,
2 and there are also blunt characteristics with tearing
3 at the edges, which tend to be quite sharp.

4 State's Exhibit 10-D depicts injuries which were
5 located on the left side of Sgt. Sullivan's scalp and
6 head. These injuries are patterned on his scalp
7 surface, also have patterning in the form of depressed
8 and complex fractures on the skull beneath them.

9 These patterns are different than those with the
10 curved margins and the wedge shaped margins in that
11 they have very squared, rectangular corners, quite
12 discrete margins and dimensions. And even though both
13 of them have squared features and straight features
14 some of the squares are relatively narrow, and there
15 is a relatively broad--

16 These injuries correspond in dimension to the
17 flat edge here of the weapon and the curved edge. If
18 the weapon is impacted, for example, in this fashion
19 here, the injury is created. If the weapon is turned
20 somewhat or even impacted with the back, the injury is
21 created.

22 State's Exhibit 10-E shows still another pattern
23 configuration of a laceration on Sgt. Sullivan's
24 scalp, this time toward the top of the scalp in the
25 midline. This, too, was associated with the complex

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441

2JDC03754

1 cranial fractures beneath them.

2 This has patterning, which is somewhat similar
3 to that on the face, although the dimensions of the
4 wound are much smaller. This injury corresponds in
5 size and configuration to impact primarily against the
6 curved edge of where the weapon would begin. Although
7 this is an enlargement I have measured the weapon
8 against the dimensions here.

9 State's Exhibit 10-F shows a less patterned
10 injury. It shows Sgt. Sullivan's left hand in what
11 can be construed as defensive wounds.

12 There was near detachment through a combination
13 blunt sharp force injury of the tip of the left long
14 finger as well as the index finger towards the knuckle
15 or back of the hand. It was very extensive
16 hemorrhage, and there are was crushing injury of many
17 of the bones making up the fingers in that hand.

18 In addition to a minimum-- I'm through with
19 that portion.

20 In addition to a minimum of ten separate impacts
21 to the forehead and/or face there are seven--
22 conservatively seven separate impacts to the scalp or
23 head within the hairline.

24 There are two impact portions on the body on the
25 tops of the shoulders, upper back, and there is a very

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442

2JDC03755

SVan1s12JDC03755

SVan1s12JDC03756

1 extensive injury to the left hand, which
2 conservatively accounts for at least one additional
3 impact for a total of a minimum of 20 separate
4 impacts.

5 BY MR. GAMMICK:

6 Q Now, Dr. Clark, if statements were made
7 that when Sgt. Sullivan or after Sgt. Sullivan lost
8 consciousness there was some stomping of the head or
9 face area, did you find any injuries that were
10 consistent with that?

11 A There are injuries that indicate that the
12 head and face were extensively crushed, primarily in a
13 front-to-back direction, probably more distinctively
14 from the left back of the head toward the right front
15 of the face.

16 There are some relatively broad and non
17 patterned abrasions, in particular on the front of the
18 jaw and the right side of the chin as well as on the
19 top of the back of the scalp.

20 These injuries, although not specific or as
21 patterned as the others I've shown you, are consistent
22 with a crushing impact, stomping maybe as an example
23 of that.

24 MR. GAMMICK: Thank you. That is all the
25 questions I have at this time.

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1 THE COURT: All right. Mr. Fey or Mr. Specchio.

2 MR. FEY: No questions.

3 MR. SPECCHIO: I don't have any either.

4 THE COURT: Thank you, doctor. You are excused.

5 I'm going to take a break for my court reporter.

6 It's to 20 to 3. How about if we reconvene at--

7 Let's make it five til 3.

8 (A break was taken.)

9 THE COURT: Please be seated.

10 All right. We will go back on the record in RJC
11 89,820, State versus Vanisi.

12 Mr. Gammick or Mr. Stanton, call your next
13 witness.

14 MR. GAMMICK: I call Detective Jim Duncan.

15 THE COURT: All right. Detective, if you will
16 come up to my left, I will swear you in.

17 Please raise your right hand to be sworn.

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

20 THE COURT: Please be seated.

21
22 JIM DUNCAN,
23 produced as a witness herein, having
24 been first duly sworn, was examined
25 and testified as follows:

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DIRECT EXAMINATION

BY MR. GAMMICK:

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

A It's Jim Duncan, D-u-n-c-a-n.

Q What is your profession or occupation?

A I'm a police officer for the City of Reno.

Q How long have you been a police officer?

A I'm in my 13th year.

Q And where are you assigned now?

A I'm assigned as a homicide--

Q Where were you assigned yesterday?

A I'm assigned as a homicide detective in a Major Crimes Unit.

Q I understand there has been a reorganization today, so yesterday you were--

A Yes, sir.

Q How long have you worked major crimes or homicide?

A This is my sixth year.

Q The murder of Sgt. George Sullivan from the UNR Police Department, were you assigned as one of the case agents on that case?

A Yes, sir, I was.

Q As part of the investigation did you wind

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1 up going to Salt Lake City, Utah?

2 A Yes, sir, I did.

3 Q That was after Mr. Vanisi had been taken
4 into custody?

5 A Yes, sir.

6 Q And did you-- While you were in Salt Lake
7 City did you make a comparison of a weapon to include
8 a serial number with a Detective Keith Stephens from
9 Salt Lake City?

10 A Yes, I did.

11 Q And the serial number that you gave him,
12 who did that weapon belong to?

13 A Sgt. George Sullivan.

14 Q And that was a match with the weapon that
15 was recovered in Salt Lake City?

16 A Yes, sir, it was.

17 MR. GAMMICK: That is all I have at this time,
18 Your Honor.

19 THE COURT: Okay. Mr. Fey.

20 MR. FEY: Nothing, Your Honor. Thank you.

21 THE COURT: Thank you, detective. You are
22 excused.

23 Call your next witness.

24 And the detective is free to go?

25 MR. FEY: No objection.

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1 MR. GAMMICK: Yes.

2 THE COURT: All right. Officer, if you would
3 come up to my left, I will swear you in.

4 MR. GAMMICK: Your Honor, if I may, my
5 understanding in talking to Mr. Specchio is that he is
6 willing to stipulate that on January 26th, 1998
7 Fernando Moreira, M-o-r-e-i-r-a, of Washoe County
8 Search and Rescue found a black colored wig and a hat
9 in the Orr Ditch after the water had been lowered
10 behind the address of 1215 Beach Street in Reno, which
11 is up close to the university campus.

12 THE COURT: All right. Mr. Specchio.

13 MR. SPECCHIO: Your Honor, for the purpose of
14 this hearing that is correct, Your Honor.

15 THE COURT: All right. Thank you.

16 Officer, please raise your right hand and be
17 sworn.

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

20 THE COURT: Please be seated.

21
22 LOUIS J. LEPERA,
23 produced as a witness herein, having
24 been first duly sworn, was examined
25 and testified as follows:

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DIRECT EXAMINATION

BY MR. GAMMICK:

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

A It's Louis Joseph Lapera, L-e-p-e-r-a.

Q What is your profession or occupation?

A I'm an acting sergeant with the University Police Department.

Q And how long have you been a police officer?

A A total of six and a half years.

Q And has all of that been with the University of Nevada-Reno?

A No, sir.

Q Where else have you been a police officer?

A I was with the Storey County Sheriff's Office for three years.

Q And how long have you been with UNR PD?

A It's been a little over three and a half years now.

Q I call your attention to right around midnight or a little after midnight on what would have been the night of January 12th, January 13th, 1998. Were you in the area of 9th and Center Street?

A Yes, sir.

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1 Q And at that time did you see any other UNR
2 PD Officers?

3 A Yes, I did.

4 Q Who was that?

5 A It was Sgt. George Sullivan and Officer
6 Carl Smith.

7 Q What type of activity did they appear to be
8 involved in at that time?

9 A When I saw Sgt. Sullivan, he was talking to
10 Officer Smith.

11 Q Were you on duty then?

12 A No, sir.

13 Q And you were just in the area?

14 A Yes, I was driving home.

15 Q Okay. Did you see anyone else in that
16 immediate area at that time?

17 A Yes, sir.

18 Q Would you please describe--

19 How many other people did you see?

20 A I remember a gentleman that was standing
21 behind a tree, and then there was another vehicle
22 traveling east.

23 Q Okay. Let's talk about the gentleman who
24 was standing behind the tree. Would you please
25 describe that person.

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1 A He was probably around five-ten, five-
2 eleven, maybe six foot, real stocky build. He had
3 long black hair, but it was really scarly-- scraggly
4 looking. He had a mustache and beard. He was wearing
5 a hat and a very dark, large jacket it looked like.

6 Q And did you get a good look at that person?

7 A Yes.

8 Q And do you see that person in court today?

9 A Yes, I do.

10 Q Would you please indicate where that person
11 is at and what he is wearing today.

12 A He's over at the table right over there,
13 and he's wearing an orange jump suit-- red jump suit.

14 Q When you saw the two officers talking to
15 each other and you saw the individual who is--

16 MR. GAMMICK: May the record reflect
17 identification of the Defendant Vanisi, Your Honor.

18 THE COURT: It will.

19 BY MR. GAMMICK:

20 Q --and you saw Defendant Vanisi there, what
21 did you do?

22 A I honked my horn, because I was saying
23 good-bye to two officers-- saying good night to them.

24 And as I was going through, the gentleman behind
25 the tree looked straight at me, and I looked straight

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1 at him, and then I continued on.

2 Q So you didn't stop or hang around in the
3 area?

4 A No, sir.

5 Q You went on home?

6 A Yes, sir.

7 MR. GAMMICK: That is all the questions I have
8 at this time. Thank you.

9 THE COURT: All right. Mr. Fey.

10
11 CROSS-EXAMINATION

12 BY MR. FEY:

13 Q Officer Lepera, you saw an individual
14 standing behind a tree. And this is the intersection
15 of 9th Street and Center, is that correct?

16 A It would be just-- Where the gentleman
17 behind the tree was would be just west of that
18 intersection.

19 Q Okay. West of that intersection. On the
20 north or south side of 9th Street?

21 A It would be the south side.

22 Q So the south side of 9th Street next to the
23 parked cars behind a tree?

24 A I don't remember if there was any parked
25 cars there, but there was a ledge and some trees, and

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1 there is a house behind it.

2 Q All right. And was it on the sidewalk next
3 to the trees or on the sidewalk?

4 A It would be just off the sidewalk.

5 Q Do you recall previously telling police
6 officers that the individual that you saw was a white
7 male in his mid 30's?

8 A Yes.

9 Q And what color pants was this man wearing?

10 A I believe for some reason--I can't
11 remember--it was white pants.

12 Q All right. And he was wearing a ski parka,
13 down parka?

14 A A large jacket that looked like a ski
15 jacket.

16 MR. FEY: All right. No further questions.

17 MR. GAMMICK: I have no further questions.

18 THE COURT: Thank you, sergeant. You are
19 excused.

20 The sergeant is free to go?

21 MR. GAMMICK: Yes, Your Honor.

22 MR. FEY: No objection.

23 THE COURT: All right. Next witness.

24 MR. GAMMICK: Call Andrew Ciocca.

25 THE COURT: Sir, if you will come up to my left,

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1 I will swear you in.

2 Please raise your right hand and be sworn.

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

5 THE COURT: All right. Please be seated.

7 ANDREW G. CIOCCA,

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

12 DIRECT EXAMINATION

13 BY MR. GAMMICK:

14 Q Would you please state your name and spell
15 your last name, sir.

16 A Andrew Guy Ciocca. The Last name is
17 spelled C-i-o-c-c-a.

18 Q And do you have a nickname you go by?

19 A Drew.

20 Q And, Mr. Cioccaa, what do you do for a
21 living?

22 A At this point I am a student, sir.

23 Q And where?

24 A At the University, Reno.

25 Q I would like to call your attention to the

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