A Yeah.

Q What do you call it?

A We prefer to call it a DNA typing result.

Q That typing result would end up with a numerical value, would it not?

A Once that DNA profile is compared to the population data.

Q No, not that number. You would have like a 1.1 or a comma 2?

A In one of the systems, yes, we would have a numerical number, right.

Q And that numerical number should be the same whether the DNA process utilized is RFLP or PCR?

A They're both numerical numbers that are used in both -- RFLP uses numerical numbers. The PCR system uses numerical numbers, but they mean different things.

Q Okay. But they would both end up, you would both end up with not a statistical number but a designation number; is that right?

A A result.

Q In either form, right, RFLP or PCR, you'd still end up with a number down at the bottom of your evaluation?

A Sure.

Q Then what you do is you take, to make a

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determination for statistic purposes, you go to a chart, you go to a white chart, a Caucasian chart, a black chart or an Hispanic chart?

A That's correct, get the DNA profile and then compare that profile to the population data base, which is the chart you're referring to.

Q And that number is just meant to be an estimate?

A That's correct.

Q I mean, it could be way off, couldn't it?

A There's been studies to show that the numbers are fairly accurate.

Q Well, studies can end up saying whatever you want them to say. The fact is, you're going to present to a jury a number, one in 177,000, for instance -- let's just pick that number out of the air -- and you get that number off of a chart, right?

A In simple terms, yes.

Q We're going to have to make it real simple, otherwise I'm not going to understand it.

What chart do you go to for a Tongan? Do you go to a white chart, the black chart or the Hispanic chart?

A The way the reports, the way we issue the reports are we report out on three of the prevalent data

bases that are available.

Q Let everybody make their choice from there, right?

A That's correct.

Q So what you say is this number fits into the white guys to this point, the black guys to this point and the Hispanic to this number; and since you're dealing with the Tongan, you put it any place you want? I mean, you don't have a Tongan number, do you?

A No, we don't. There's no Tonga data base.

Q You also don't know really how accurate -- you can't tell me, for instance, if the Caucasian number of one in 177,000 would be correct?

A The number is an approximate number.

Q Approximate.

A The National Research Council has looked into how accurate that number is. And they have interpreted that.

Q And that's really where the forensic geneticist comes in, right?

A In what aspect?

Q For instance, in order to be accurate with the one in 177,000, you would have to know, when you write that down, how many people there are in this country. Wouldn't you have to know -- to be accurate, not

approximate, but to be accurate -- science is not an accurate science, I guess; but to be accurate, don't you have to know -- I mean, mathematics is accurate, unless you're talking about an approximation. But if you're telling me one in 177,000, and you swear that that number is accurate, don't you have to know how many whites there are at the time that you wrote that down?

A We have to know how many whites there are in the population data base that we're using.

Q Okay. So if you're going to testify to one in 177,000, then you're prepared to testify that's based on what we used in this computer, the data base we got from this computer?

A The frequencies would be based on the population data base frequencies that were obtained.

Q You'll at least give me that since we've been talking a number of white people in this country have been born and a number have died, so whatever number we might have given when we started this conversation could change substantially by -- but the data base would still be the same, it would still say 177, right?

A That's correct.

MR. SPECCHIO: I have nothing further.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. STANTON:

Q Let me ask you a couple questions to follow up on Mr. Specchio's. The National Research Council, the scientists involved in State's Exhibit 3, the yellow book, did that include population geneticists or, as Mr. Specchio states, forensic geneticists?

A Yes. The council or the committee that set the guidelines had population geneticists on there, mathematicians, and various other individuals.

Q Now, we argue at least by some sort of analogy, Mr. Specchio said that people die and live even as this hearing was being conducted. That doesn't affect the scientific credibility of the results you have, correct?

A It has no effect on that at all.

Q The fact that you test in this case PCR and come up with certain markers, and what are they called in PCR testing and what are they called in RFLP?

A I'm not sure what you're referring to.

Q In RFP you have something called an autowrap?

A That's correct.

Q And that has genetic markers that are presented to you in what looks like an x-ray photograph?

A That's correct. We call them bands.

Q What are they called in PCR testing?

A There's two types of PCR systems that are used. One is analogous to the RFLP; we look at bands. The other are what we call reverse dot blots, or we look at dots on strips.

Q What was done in this case?

A Both. Both PCR tests, not RFLP.

Q And so you had both types of results that occurred?

A That's correct.

Q Now, relative to your understanding of the scientific community regarding the blending of the science of DNA with the statistics of DNA, Mr. Specchio asked you, well, you don't have a Tongan data base. I'm assuming you don't have an American Indian date base, a Samoan date base, any of the ethnic, the hundreds of ethnic subgroups that exist in the world, correct?

A There's been some studies that have gotten other data bases, but I do not have -- we do not have a Tongan data base.

Q That's what I'm going to ask you is what you have. You don't have all the ethnic data bases, and you'd agree with me that there's probably hundreds of ethnic data bases throughout the world?

A Correct.

Q According to your knowledge of the science of the statistics of DNA, do you need one of those to compare the genetic testing in this case?

A In this particular case there was -- the evidence that was seen, some compared to Officer Sullivan, some compared to Mr. Vanisi. The population data bases are relevant to those individuals.

Q And relative to the scientists in the National Research Council, as you know their work and within the scientific community that you practice, is there anything that says that ethnic subgroupings render the statistics invalid?

A No, not at all.

Q In fact, the yellow book addressed, among other things, precisely the argument that was raised in the red book, and that is, the statistical numbers were invalid because it did not take into consideration ethnic subgroups?

A That's correct.

Q So the current status, what is reflected today both in the yellow book and since the yellow book's publication, is that ethnic subgrouping has no scientific impact on the statistics of DNA?

A In the statistical formulas that are used, that is taken into account for that, right.

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Q And what is taken into account in the formulas resulting in an aspect of statistics, either taken to subgrouping or if just counted, whatever extent subgrouping has in statistics?

A That's correct.

Q So Tongan, American Indian, whatever it is, the testing that you performed in this case -- according to the scientists the best in the field, they have determined that that is accurate, regardless of what the ethnic subgroup is?

A That's correct.

MR. STANTON: No further questions.

THE COURT: Mr. Specchio?

MR. SPECCHIO: No, I don't have anything further, Your Honor.

THE COURT: Has the population data base changed over time or is it only changing between the yellow book and the red book?

THE WITNESS: You mean the actual numbers of the population data base, or the people that are in the data base?

THE COURT: The people in the data base.

THE WITNESS: It does change over time. The statistical numbers that were determined in this case, that date base is at 200 and that's left there. So we

don't --

THE COURT: You mean the population data base that you utilized, you don't rerun it on a different population data base, is that what you're saying?

THE WITNESS: Let me see if I understood your question right. You asked if the population data base changes in size, right?

THE COURT: Right. Over time. We're talking about generally in terms of the science of DNA testing, not with regard to this particular test that you ran.

THE WITNESS: Right. The data bases -- it depends on how you obtain the data base. In this particular case or in our particular laboratory we use a data base of 200 individuals. There are some other people that might use data bases of, say, 100 individuals. It just depends on what data base they are using and are available.

THE COURT: The data base you're utilizing was provided to you by a manufacturer; is that what you said?

THE WITNESS: Right. And presently right now there's something taking place where they're compiling all the data bases from all around, say all the Caucasian data base, Caucasian samples, and they're going to put it all together, then there would be a much larger population

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data base that will be available to the forensic community.

THE COURT: And this issue with the ethnic subgroupings, in your original direct examination you said that ethnic subgrouping was not an issue in this case.

THE WITNESS: In the statistical calculations that are used, ethnic subgrouping is formulated in that calculation. So if ethnic subgrouping did come into play, it would be taken into consideration through the statistical formulas that are used.

THE COURT: You base that on the statistical formula that was utilized by the manufacturer in establishing the data base that you used?

THE WITNESS: No, the statistical formula is based from the National Research Council report. So the National Research Council report said you should use these formulas over here when you are calculating frequencies. Over here we have a population data base from a manufacturer that we obtain the frequencies from. So we take these frequency numbers, plug them into the National Research Council formula that they suggested using, and then we obtain the frequency of that profile.

THE COURT: Is there any certification of the population data base other than it's just provided by the manufacturer?

THE WITNESS: Quote certification, I'll have to say no. But for a population data base to be used in the forensic community, it has to meet criterias such as various population statistical evaluations. They consist of this Hardy Weinberg Equilibrium Calculation and things like that.

THE COURT: The data base profile that you utilized coming from the manufacturer has gone through that process?

THE WITNESS: Exactly, correct.

THE COURT: Do you do that yourself or does some other institute?

THE WITNESS: The manufacturer has done that. Some independent groups have done that. Independent statisticians have done that outside of, say, the manufacturer.

THE COURT: Then you've reviewed that literature to determine that that is a viable population data base to be utilizing?

THE WITNESS: That's correct.

THE COURT: Do I understand it correctly that the whole issue between the original red book and now the statistical analysis that you employ utilizing the yellow book has taken into consideration ethnic subgroups in the population groups?

Mr. Stanton.

MR. SPECCHIO: Your Honor, I don't think I have tried a death penalty case before this Court before. So I'm not sure whether or not -- some of the judges follow the old Rule 250 and conduct in camera hearings or meetings with the defendant. I don't know if you do that.

THE COURT: I hadn't planned on doing that.

MR. SPECCHIO: If you want to do that, I would indicate we would have no objection. It sometimes proves beneficial record wise.

THE COURT: I hadn't really planned on that, but I'll look around and see about an in camera.

MR. SPECCHIO: Some of the judges hold them before trial, some during trial. I'll leave it to the Court's discretion.

THE COURT: We'll let you know. I think in the November hearings, when we set the procedure for selecting the jury, we can go over any other issues that you might believe are important to go over prior to the jury trial beginning, any logistics or any issues that any of you have we can talk about that in November. Anything further?

MR. GAMMICK: No, Your Honor.

THE COURT: Okay. 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 8th day of August, 1998.

ERIC V. NELSON, CCR No. 57

Exhibit 79

Exhibit 79

Siaosi2JDC03953

Case No. CR98-0516

Dept. No. 4

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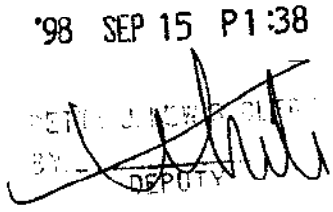

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA, Plaintiff, vs. SIAOSI VANISI, Defendant.	STATUS HEARING SEPTEMBER 4, 1998 Reno, Nevada

APPEARANCES:

For the Plaintiff: RICHARD ALLEN GAMMICK, ESQ.
District Attorney
75 Court Street
Reno, Nevada 89520

For the Defendant: MICHAEL R. SPECCHIO, ESQ.
Washoe County Public Defender
One S. Sierra Street
Reno, Nevada

The Defendant: SIAOSI VANISI

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

ORIGINAL

Vanisi2JDC03954

RENO, NEVADA, FRIDAY, SEPTEMBER 4, 1998, 9:00 A.M.

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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

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things were to be tested and results furnished, and I think we have pretty well clarified all of that except the records of Sergeant Sullivan from UNRPD. I believe we're still at odds on that. But I think everything else is working its way out.

THE COURT: The question I think I have is do you want -- do you accept everything that Mr. Specchio put in his memo to you on August 14th that he gave to the Court? Do you want me to make that part of the record in terms of the record of the discovery as to what your agreements are back and forth?

MR. GAMMICK: As to his latest memo concerning all of the different evidentiary items, the ones he no longer wishes tested because explanations were given for those and the ones that we have agreed to test, we're in total agreement with that. As I say, the only thing we're still at odds at are the records of Sergeant Sullivan from UNRPD. That's the only issue we're aware of.

THE COURT: We'll make the August 14th, 1998 memo, letter from Mr. Specchio where he cc'd the Court, and the letter was addressed to Mr. Gammick and Mr. Stanton, we'll make that part of the record with regard to the discovery issues.

Now, also in that, as I understand it, the issue with regard to Sergeant Sullivan's personnel file, it

still must be presented to the Court. Is November -- is the November time line all right for presentation of that issue?

MR. SPECCHIO: I would think so, Your Honor. We'll just -- we just want to look at it or have the Court look at it to determine whether or not there is anything that we should pursue in that file.

THE COURT: We can resolve that then at the November hearing schedule that we already have. And if we receive any submits, as we discussed before, we'll just rule on those as they come in.

MR. SPECCHIO: We'll probably do that, Your Honor, within the next three weeks, probably submit as many of the motions as we possibly can.

THE COURT: That's fine. Now the jury questionnaire issue, I think I'd like to hear argument. I will tell you that I'm probably not disposed to give the questionnaire that the defense is requesting. It is awfully long. But I want to hear argument because I want to hear the necessity for more than what's been argued thus far.

But I think November is plenty of time to make that determination. The Jury Commissioner wouldn't pull a panel this early anyway. So we can talk about that, and certainly logistic issues that Mr. Gammick raised in his return letter to me on August 26th were issues that would have to be resolved. They are not insurmountable but they

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are issues that have to be resolved.

Anything further?

MR. SPECCHIO: Custody of Mr. Vanisi, Your Honor.

THE COURT: As I understand it, the -- Captain Means, is it?

THE DEPUTY: Yes, ma'am.

THE COURT: Please don't repeat to him that I couldn't remember what his title was.

-- has assured me that Mr. Vanisi will remain in the Washoe County Jail for the remainder of the time period, as long as there's no problems, no significant issues that arise or personality problems with this. But for the time, as far as I understand it, he believes that they can adequately protect Mr. Vanisi and handle him here in the Washoe County Jail. Anything else?

MR. GAMMICK: May I have just a moment, Your Honor?

THE COURT: Yes.

MR. SPECCHIO: Your Honor, was the Court inclined to order any psychiatric evaluations in this case?

THE COURT: Do you want to explore that issue or do you want to wait a little while while he is back here? I could set a review in two or three weeks while you have an opportunity to visit with Mr. Vanisi. You did raise the

issue at the last hearing.

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

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

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

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

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

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since July 21st. Today is September 4th.

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

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

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

MR. SPECCHIO: What day is that?

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

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

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

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

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

THE COURT: Yes.

MR. SPECCHIO: I think that's fine.

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

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

THE COURT: Yes. Anything else, counsel?

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

MR. GAMMICK: Thank you, Your Honor.

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 80

Exhibit 80

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FILED

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BETTY J. LEWIS, CLERK

BY _____ DEPUTY

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-	:	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
STEPHEN GREGORY
Deputy Public Defender
One South Sierra Street
Reno, Nevada

THE DEFENDANT: SIAOSI VANISI

Reported by: Lesley A. Clarkson, CCR #182

ORIGINAL

State v. Vanisi 2JDC03937

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

-oOo-

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

MR. SPECCHIO: Okay.

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

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

THE COURT: How does that look for counsel?

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

THE COURT: Certainly.

MR. SPECCHIO: That's fine. That's Friday? That's fine. Thanks, Judge.

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

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

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

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

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

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

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

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

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

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

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

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to order that the reports be presented to this Court?

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

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

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

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

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tests.

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

MR. STANTON: Thank you, Your Honor.

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

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

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

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

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

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

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of anyone --

MR. STANTON: No, Your Honor.

THE COURT: -- that should not be appointed?

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

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

THE COURT: Anything further?

MR. STANTON: Not from the State.

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

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

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

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

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

THE COURT: The 6th.

MR. SPECCHIO: What did I say?

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-

Vanisi 2JDC03944

STATE OF NEVADA)
) ss
COUNTY OF WASHOE.)

I, LESLEY A. CLARKSON, Official 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 on Monday, the 28th day of September, 1998, and took stenotype notes of the proceedings had upon the Status Hearing in the matter of THE STATE OF NEVADA, Plaintiff, vs. SIAOSI VANISI, Defendant, No. CR98-0516, and thereafter transcribed them into typewriting as herein appears;

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

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

Lesley A. Clarkson

Lesley A. Clarkson, CCR #182

Exhibit 81

Exhibit 81

2JDC03904

Case No. CR98-0516

Dept. No. 4

FILED

'98 DEC -1 P2:04

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.

_____/

REPORT ON PSYCH EVAL

November 6, 1998

Reno, Nevada

APPEARANCES:

For the Plaintiff: RICHARD GAMMICK
District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant: MICHAEL SPECCHIO
Public Defender
One South Sierra Street
Reno, Nevada

The Defendant: SIAOSI VANISI

Reported by: Cindy Lee Brown, CCR #486

ORIGINAL

SIERRA NEVADA REPORTERS - (702) 329-6560

LASER BOND FORM A PENGAD 1-800-631-6989

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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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future purposes.

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

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

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

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

THE COURT: Then that will be the order.

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

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

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

THE COURT: Okay. Mr. Specchio?

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

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

THE COURT: Mr. Vanisi, stand up.

You understand that I have appointed counsel to represent you?

THE DEFENDANT: You have appointed counsel.

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

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

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

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

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

THE COURT: I have not seen the letter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE DEFENDANT: Let me just --

THE COURT: Set this over for a hearing.

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

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

THE COURT: Uh-huh.

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

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

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

THE COURT: Yes.

THE DEFENDANT: Nothing can change it.

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

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

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

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

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

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

THE CLERK: November 9th at 11:00.

THE COURT: Can counsel make that?

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

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

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I've got a department head meeting.

THE COURT: You have a county commission issue?

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

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

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

THE COURT: Right, Wednesday's the holiday.

Can you make Tuesday at 11:00?

MR. GAMMICK: Yes, Your Honor.

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

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

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

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

THE COURT: Correct.

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

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

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

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THE COURT: Okay.

MR. SPECCHIO: I'll be here.

THE COURT: Thank you.

Court's in recess.

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

-oOo-

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

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

That I was present in the above-entitled court on November 6, 1998, and took verbatim stenotype notes of the proceedings entitled THE STATE OF NEVADA, Plaintiff, versus, SIAOSI VANISI, Defendant, Case No. CR98-0516, 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 hearing.

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

CINDY LEE BROWN, CCR #486

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State v Siaosi Vanisi 2JDC03916

LASER BOOK FORM V PRINTED ON RECYCLED PAPER 1-800-631-6989

Exhibit 82

Exhibit 82

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Case No. CR98-0516

Dept. No. 4

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BETTY L[illegible] CLERK

BY [illegible] 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, vs. SIAOSI VANISI, Defendant.	HEARING REGARDING COUNSEL November 10, 1998 Reno, Nevada

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

Vanisi2JDC03928

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,

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

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

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

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

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

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

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

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

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

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

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

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

Do you understand that?

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

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

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

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

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

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

Counsel have anything further? Anything further?

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

MR. SPECCHIO: Nothing further.

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

(Recess adjourned at 11:05 a.m.)

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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 11th day of June, 1998.

ERIC V. NELSON, CCR No. 57

Exhibit 83

Exhibit 83

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Case No. CR98-0516

Dept. No. 4

FILED

'98 DEC -4 P1:24

BETTY LEWIS CLERK

DEPUTY

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT COURT JUDGE

-oOo-

STATE OF NEVADA,

Plaintiff,

-vs-

SIAOSI VANISI,

Defendant.

PRE-TRIAL MOTIONS

November 24, 1998

Reno, Nevada

APPEARANCES:

For the Plaintiff: RICHARD A. GAMMICK
District Attorney
-and-
DAVID L. STANTON
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant: MICHAEL R. SPECCHIO
Public Defender
-and-
STEVE GREGORY
Deputy Public Defender
1 South Sierra Street
Reno, Nevada

The Defendant: SIAOSI VANISI

Reported by: DENISE PHIPPS, CCR #234, RDR, CRR

SUanisi 2JDC00002

I N D E X

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SUanisi 2JDC00003

RENO, NEVADA, TUESDAY, NOVEMBER 24, 1998, 10:00 A.M.

-oOo-

THE COURT: Good morning. This is the time set for hearings in Case No. CR98-0516. Let the record reflect the defendant is present with counsel, Mr. Specchio. And the State is present.

Shall we proceed with the arguments on the motions that you've not submitted?

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

THE COURT: If you want to argue any of the motions that were submitted, you certainly may do so, but I anticipated that you would not be arguing those motions.

MR. SPECCHIO: I don't think it's necessary, Your Honor.

THE COURT: So we have the State -- actually, they're all defense motions; although I think the State is ready to proceed on many of the issues. So do you want to go in any particular order?

MR. STANTON: Yes, Your Honor, if that's okay. We have a preference to some extent regarding the order. My records reflect that we have set for today and tomorrow a total of seven motions that are set for either evidentiary or oral presentation to the Court.

THE COURT: That's my record also.

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MR. STANTON: There are two requests relative to the order of them. The State would request today to begin with the motion entitled Motion in Limine Re: State's DNA Expert as the first motion this morning as there is a witness present in court to testify to that. And between 10:30 and 11:00 Dr. Ellen Clark will be here as the State's second and sole remaining witness to testify, and that would be the Motion in Limine Regarding Gruesome Photographs.

Other than that, the State has no other evidentiary matters to present as far as live testimony. So that's the only preference as to the order from the State's perspective.

THE COURT: Any problem with that, Mr. Specchio?

MR. SPECCHIO: Judge, I don't care what order we go in, but what I would kind of like to do is go over all of these and make sure we're all on the right track. I don't have seven -- what did you say, eight?

THE COURT: He said seven.

MR. SPECCHIO: I have eight.

THE COURT: He talked about one that wasn't scheduled, but I knew we were going to have to hear it. You're right, let's go over what I have.

I have a Motion in Limine Regarding Reference

SUanisi 2JDC00005

to Gang Affiliation; a Motion in Limine Regarding the Arrest of the Defendant in Salt Lake City. Those were originally scheduled for 10:00 this morning. I have Motion to Avoid Death Prone Jury; Motion to Preclude Photographs and Television in the Courtroom; Motion for Individual Voir Dire of Prospective Jurors that were originally scheduled for 1:30. Although, the Motion to Avoid Death Prone Jury was submitted without oral argument.

Then we had set at 3:30 the Motion in Limine Regarding the State's DNA Expert. We had set for tomorrow at 10:00 the Motion in Limine Regarding Prior Bad Acts, which was the motion regarding the criminal history of the defendant. Then also, which has not been submitted or scheduled, was the Motion in Limine Regarding Gruesome Photographs, and the Motion for Reasonable Time Between Guilt and Penalty Phase of Trial. Those were not submitted to the Court yet.

We have the issue of the jury questionnaire that we should talk about, and that's all I have on my schedule that was not submitted or that was submitted that had previously been set for oral hearing.

Do you have any other motions that you think --

MR. SPECCHIO: Judge, I think the gruesome

photographs or the motion regarding the gruesome photographs, you indicated that you wouldn't rule until you saw the photographs that they intend to introduce.

THE COURT: Right.

MR. SPECCHIO: That's why we didn't submit that.

THE COURT: I guess we're ready now. We have Ms. Clark coming.

MR. SPECCHIO: Yeah, he wants Dr. Clark here before he does that. So I don't have any problem with that.

THE COURT: We can do that when she gets here at 10:30 or so.

Are you ready to go forward on the DNA expert this morning as he's requesting instead of at 3:30 this afternoon?

MR. SPECCHIO: Sure. That's fine as well. I'm just going to request that when we get done with these that we go through the entire list to make sure that I'm on board as to the ones that you denied, the ones you've granted, the ones that are still submitted.

THE COURT: Okay. We can do that at the end of the day if that works out for you.

MR. SPECCHIO: I think that's a good idea, Judge. That's fine.

THE COURT: Now, if Mrs. Clark is going to be here at 10:30, I think with Mr. Vanisi not getting here quite at 10:00, we really only have 15 minutes or so before she comes, so I think some housekeeping things I can go over with you would be more appropriate, then we'll hear Mrs. Clark. Then when she's through, the DNA expert can begin his testimony, rather than starting him and putting him on and off the stand.

We have the issue with regard to the jury questionnaire and the request for individual voir dire. Do either of you want to argue those points?

Mr. Gammick?

MR. GAMMICK: I believe we have a couple of other points to make as far as the jury questionnaire is concerned, Your Honor. One of the main things I think that gives me concern with that is that the jury is not sworn before they complete that questionnaire. We also have the problem, even though the Court -- and I've seen instructions where it tells jurors not to consult with other people or not to work with other people while they complete that -- we have absolutely no control over that. We have absolutely no control of them going to other sources, to other people, to anywhere within their expanse to set that up.

I also seriously question, now that we've had

a chance to look at these expanded jury questionnaires, some 29 pages worth of material, the time that it takes to put those together, the time it takes to distribute those, the time it takes that we're taking away from the jurors. We inconvenience jurors tremendously by bringing them in here, making them sit through a trial. In this case we may be a couple of weeks that we're going to take out of their lives, then we send them a 30-page or 29-page or 28-page, whichever version it happens to be, questionnaire, for them to sit down and take however many hours it takes to fill that out. I really question the value of the time that's not only put in by the prospective jurors, but by our office and the PD's Office and the Court and everybody else in going through this much material to try to phantom out what magazines they read, a lot of other information in there that may be nice-to-know information sometime down the road but doesn't really get to the issues that we're here for what the United States Supreme Court has said and what the Nevada Supreme Court has said are the issues in picking a jury. They're very collateral to that. They scatter around the neighborhood, but they don't ever get right to those points. A tremendous amount of time effort and energy is put into those to complete them, to analyze them, to go through them.

I also have a concern, the third time I read this particular questionnaire and sat back and looked at it, if you look at it from a light on -- I have a concern that we're doing some type of psychological analysis of these people without their even knowing that that's going on. Because when you sit back and look at this questionnaire and see it, you start seeing that kind of a pattern coming out of the questionnaire, that it is a psychological evaluation of people to see how they react to certain questions.

There are also questions in that questionnaire that I have never been allowed to ask in any court here in voir dire, this Court included, or any other department. So I think we have questions there that are going to cause problems on down the road if the Court elects to use that as far as any appellate issues.

What verdict did you come -- one jumps to my mind right now, "What verdict did you come to when you sat in prior cases?" Almost asking how they deliberated before and those kinds of things that I know aren't allowed. But there are some of those kinds of questions in this questionnaire.

The system we have now -- no system is perfect. The system we have now we've been using for a long period of time. It works. It's withstood appellate

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challenges in literally hundreds of cases.

I would suggest to the Court we do not use this questionnaire, just because of all the reasons I've laid out. And then when we talk about individual voir dire, we've also had a system that has pretty well evolved where we do the panel voir dire. If we run into people with specific problems or they're embarrassed or something that shouldn't be brought out to the entire panel, the courts have been very good about stopping voir dire, doing that person individually on that particular question, and handling it that way.

I would hate to see this jurisdiction get into a program where we do individual voir dire as a matter of course in these kinds of cases and wind up like California with three-month jury selections or even longer.

So I think the system we have now, again, that system has withstood all of the challenges that have come down through the appellate courts. It's a system that works. It's flexible, so it does give the Court and the parties the opportunity to talk to prospective jurors if there is a particular issue that needs to be discussed, and yet it also looks at the efficiencies of time and being able to move the case forward.

Does the Court have any questions on anything

I've had to say?

THE COURT: No.

Mr. Specchio.

MR. SPECCHIO: Judge, when we submitted that questionnaire, we just included every possible question in the world. It was not designed that we would ask the Court to submit that questionnaire, but one that the District Attorney would have a chance to redact any questions they definitely didn't want in, as well as the Court.

I was looking at a questionnaire of maybe three or four pages is really what we finally wanted to boil it down to. But I thought I have to include every possible question that I've seen in all the other jury questionnaires and then boil it down to whatever would be acceptable to the Court. So I have no intention, nor am I asking the Court, for a 29-page questionnaire. And that was the whole purpose.

I thought the Court suggested that I prepare a questionnaire with every conceivable question and then the District Attorney would be able to discuss any particular questions they didn't want. I don't want to send a 29-page questionnaire out either. I think 10 or 20 questions, 30 questions at the outside, is all we have to do. That's two or three pages.

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So it's not my intention to ask the Court for a 29-page questionnaire. I just thought I would submit that, they would X out the ones they didn't like, and submit it to the Court and we'd go from there. But I guess we're not following that procedure. But I'm not asking for 29 pages, I'm asking for about 10 percent of that. I just think it will eventually speed up the jury selection process.

THE COURT: Okay. I've utilized questionnaires in the past particularly in areas of pretrial publicity. I think it's a valuable tool and it does save us from contaminating the entire jury panel. I wouldn't consider a questionnaire certainly as long as was provided, and clearly the defense has indicated that wasn't their intention; however, I want to let you know, we have a jury consultant in this district who is reporting to the district judges on December 1st with a recommendation of how we will modify our jury selection process and our utilization of jury venire. So what I'd like to do with regard to the issue of the questionnaire -- and what you haven't touched upon is the issue of the confidentiality of the jury which we've been debating in this district for the last three or four months on how to keep jurors, certain information about jurors confidential, certain information provided only to

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counsel, certain information provided to counsel and their offices but destroyed later. We've been working on many different forms throughout the district on how to protect our jurors and protect the rights of the parties to secure relevant information.

All of this will be discussed at the judges administrative meeting on December 1st. Before I rule on the confidentiality of the jury or the utilization of a questionnaire, I want to hear from a jury consultant on his recommendations of what we should institute. It's not to say that anything will be acted upon by the district judges at that meeting, but it will give me a better indication of the recommendations of this consultant who is a nationally known consultant.

I am inclined to allow for a modified questionnaire. I am inclined to allow for some confidentiality with regard to the jurors. And I am inclined to not allow any individual voir dire except as Mr. Gammick has talked about in those circumstances which we currently utilize where the answer would be embarrassing or we have to develop information more extensive than can be done in front of the entire panel without contaminating the rest of the members of the panel. So that's my inclination of how I would operate. But I do want to have a recommendation.

So the clerk and I have come up with a tentative date to deal only with the issue of the jury and the questionnaire. And she can give us that date now.

THE CLERK: December 10th at ten a.m.

THE COURT: Does that look all right for you, counsel? We'll only decide -- it's a Thursday. Thursday morning at ten a.m. That way we can hear what the consultant has to say. I have about a week after that to talk with the chief judge and kind of mull through the rccommendations and then I'll come up with my idea of what I want to do. And I'll give you an opportunity to be heard at that hearing about the proposal so that you'll have an opportunity to discuss it.

MR. GREGORY: Can we have the Court's indulgence?

THE COURT: You may.

MR. SPECCHIO: Could I ask you what date you would anticipate making a ruling, because we're going to be --

THE COURT: Right after that. I hoped that based on my -- on December 10th what I tell you and I hear your comments, I'm going to rule.

MR. SPECCHIO: Okay. Because we're going to be facing a time situation here.

THE COURT: If you think we have to do it in

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closer proximity to that judges' meeting of December 1st, we could probably do it the week before. But it's not going to be a very long questionnaire. So I don't think that will take a lot of time. I will consider Mr. Gammick's thoughts with regard to how and where they answer the questionnaire. So I'm going to have to think about that, too.

MR. SPECCHIO: I guess it will be all right. We'd be able to send it out within a week of the 10th.

THE COURT: We could do it the week before, if you want to.

MR. GAMMICK: I was just going to mention to the Court, with what we're running into unique to this case is if we get this started in that particular time in December, there's no telling how many prospective jurors are going to be on vacation or leave town or anything else because we're running right straight into Christmas and New Year's right before we get into the trial. I don't believe we've discussed it yet as to how large of a panel the Court intends to call on this case either. And that, I think, would definitely have a weight on it, too, as to how many people we have to deal with.

THE COURT: I told the jury commissioner several months ago I wanted 100 people initially pulled. We're having about a 20 percent no show or can't make

it/last minute problems with our jury panels. So that would leave us about 80 that actually get here ready to go. And that is as small as I think we can do in this case. And I anticipate that we'll have, through the recommendations of the jury consultant, I anticipate we'll have a backup panel for you so that there will be some ability if we have a real problem with the publicity issues. We want to get a panel in this district if at all possible. So we have to deal with the pretrial publicity issues with our panel.

We'll move that up. Your comments are well thought out. This questionnaire really should go out before the school holiday, which is December 18th, because many of the members of our panel will be scheduling vacations around that school and the holidays. So we'll go ahead and have a hearing the week before.

THE CLERK: December 3rd at 10:30.

MR. SPECCHIO: I've gotta teach at the judicial college that Wednesday.

THE COURT: That's the death penalty seminar. We're not going to have it because I'm going to be there. We will have to do it back where we have it, but we'll move it quickly. I knew there was a reason we were trying to hold those dates.

While we're waiting on Dr. Clark, the Motion

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to Avoid Death Prone Jury was submitted to the Court. I don't really feel like I need any further argument on that, but it's up to counsel if you want to argue that today.

MR. SPECCHIO: No, Your Honor. We'll submit it.

MR. STANTON: I think the State's comfortable with its papers, too, on that issue.

THE COURT: We still don't have Dr. Clark?

Let's talk about the Motion to Preclude Photographs and Television in the Courtroom. The State has no position on this, as I understand it.

Mr. Specchio, the procedure -- and I know you're familiar with this, but I want to make sure the record is clear -- the procedure that the Second Judicial District Court has, the protocol, is that there can be one pool camera in the courtroom both for still photographs and for video.

The video camera must be set up prior to court beginning, cannot be broken down or stopped during the course of the hearing. They can only move the camera in and out when court is not in session and the jury is not present. No photographs may be taken of the jury during the course of the trial. That's the procedure that seems to work. It doesn't seem to be particularly

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invasive to the counsel, the parties; the witnesses don't notice it. We're very fortunate, in this department we have a little corner that the jury can't even see the camera, really, and the witnesses don't see it, particularly, there either. So it works pretty well. I do not allow any still photographs by anyone moving or any flash photography of any kind.

Now, I am inclined to perhaps do something with regard to the hallways. In prior cases like this we have had a problem with the jury, witnesses, counsel, having to run a gauntlet to get from the courtroom to the elevator. I'm kind of inclined to say that if there's a pool camera in the courtroom, that's one thing, but that on this floor we don't need any cameras.

Does anyone have any position on that?

MR. SPECCHIO: That's fine, Your Honor. I don't particularly want cameras anywhere near the building, but that's probably not going to fly. I really don't want them in the courtroom. And, minimally, I don't want them outside the courtroom. It is kind of -- it does create a problem when you're leaving the courtroom after a hectic day and have to face those people. It's sometimes difficult.

I understand the Court's procedure, and I'm just opposed for whatever reason, maybe it's inherent, but

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I just don't like cameras in the courtroom. But we'll abide by the Court's order. I just can't stipulate to it or agree to it, because I don't like having them here. I don't photograph that well, primarily.

THE COURT: If that were the criteria, I guarantee you there would be no cameras in the courtroom for the Court either.

But this is an issue that I want to be sure that counsel feels comfortable for either side raising. If you see any violation of the court protocol with the use of the cameras or the press, something that is interfering with your presentation of the case or with your witnesses, please be sure to bring that to my attention. Just because I'm ruling that they can be here doesn't mean I won't revisit it if there's a basis. But there is a long precedent to allow them in the courtroom in this district. As long as they abide by the rules and are not intrusive, I will allow them. I'll move them out of here the minute they violate the rules, and I've done it in other cases and I'll continue to do it.

Because of the close proximity of this courtroom to the elevator and the small space between here and the elevator, the inability of the jurors to be moved from the jury room to the elevator or the stairwell without running into problems of being photographed by

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photographers that I can't control because they're not in my courtroom, I am going to ban photographers from the floor. They can be anywhere else in the courthouse. It's a public courthouse and they can be, they may well be on the first floor, but we'll be able to move the jurors in and out without having to run the gauntlet if they're not here on this floor. That will be part of the protocol that we adopt in this case.

MR. GAMMICK: Your Honor, so it's clear where we're at: We don't feel we really have standing to interpose in this. When this motion was first filed, we did contact the media, advised them that the motion had been filed. Now that the Court's entered the order, I don't know if they're going to be wanting to come in or anything else and we'll just advise them what the order is, but we'll leave that in their laps to do whatever they think is appropriate.

THE COURT: That's part of why we set it for oral hearing in case anybody wanted to move to intervene or make a position known, any of the media. It's been set for several months, this oral hearing. I haven't heard of any consideration by the media or any request. So they haven't made it; they're not here; they don't want to intervene, we'll rule this way.

MR. STANTON: I think one of the things that

your order addressed was an incident that occurred I guess this past week. And that reporter was a still photographer from the Sparks Tribune. And I understand not only what occurred inside of the courtroom in front of Your Honor's presence but also what I had heard from courthouse bailiffs, the performance of that photographer on the courthouse steps and the additional altercation that occurred out there because of the conduct, I would thoroughly agree that that order is appropriate.

I know Marilyn Newton, who is typically the pool still photographer for the Gazette-Journal, has never, in my opinion, nor have I ever heard of her conducting herself in the same fashion or similar fashion as that photographer did. And most of the pool photographers for the television stations, I think, are undoubtedly aware of what is appropriate and not appropriate. Although I'm not sure if they're really cognizant of photographing in the hallways. I know Judge Breen was the only one that had previously entered orders that said that was prohibited.

So at some juncture if they're advised of it, I think it's an excellent idea and I think it's an excellent idea, especially in response to that still photographer from the Sparks Tribune, his performance last week.

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THE COURT: I didn't know about what happened outside the courtroom. Maybe later someone can inform me. It doesn't have anything to do with this case, but the Court likes to be informed about what's happening with this outside the courthouse also.

Mr. Specchio, what happened is I was taking a verdict in another case for a different judge and the still photographer interfered with the reading of the verdict by standing, moving around the courtroom and was ejected from the courtroom by me. So just to let you know, I do take control and we don't let it go on.

Okay. Do we have Dr. Clark?

MR. STANTON: I don't believe she's here, but I'm prepared to go forward with my witness, Your Honor.

THE COURT: I don't think we have any other housekeeping motions to hear. We'll go ahead and hear your witness.

MR. STANTON: Your Honor, at this time the State would call Jeffrey Riolo to the stand. This is for the purposes of presenting evidence for the defendant's motion in limine regarding the DNA witness.

THE COURT: Please face the court clerk.

(Witness sworn.)

MR. STANTON: I'll have three items marked State's sequentially in order.

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THE COURT: Do you anticipate using these during the trial?

MR. STANTON: Pardon me?

THE COURT: Do you anticipate using the exhibits during the trial?

MR. STANTON: No.

THE COURT: Okay.

MR. STANTON: Certainly not in my direct examination. If there's some cross-examination regarding the witness' qualifications or the science, then yes. But this is more foundation for just this hearing.

THE COURT: If there's a potential, the clerk will mark them in our numerical system that will remain throughout these hearings and trial.

JEFFREY RIOLO

called as a witness on behalf of the State herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STANTON:

Q Could you please state your name and spell your last name for the court reporter.

A Jeffrey Riolo, R-i-o-l-o.

Q How are you currently employed?

A I'm currently employed at the Washoe County Sheriff's Office as a DNA analyst in the forensic division.

Q And have you been involved in testing in this case, State versus Vanisi, forensic material?

A Yes, I have.

THE CLERK: Exhibits 1, 2 and 3 marked.

(Exhibits 1, 2 and 3 marked.)

MR. SPECCHIO: No objection.

BY MR. STANTON:

Q Showing you what's been marked and admitted as three exhibits --

THE COURT: Well, I'll admit them.

MR. SPECCHIO: I had no objection.

THE COURT: They're admitted for purposes of this hearing only.

(Exhibits 1, 2 and 3 were admitted.)

BY MR. STANTON:

Q Is Exhibit 1 your CV?

A Correct.

Q And Exhibit 2, Standards for Forensic DNA Laboratory Personnel?

A Correct.

Q And State's Exhibit 3, which is the National

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Research Council's publication regarding scientific testing?

A Yes, the cover sheets.

Q The cover, not the actual document?

A Yes.

Q Now, Mr. Riolo, directing your attention to State's Exhibit 2, there is apparently something entitled "1994 DNA Identification Act" that is supposed to be a series of guidelines that have been set up for people who are involved in the scientific testing of DNA, correct?

A Correct.

Q And is that the guidelines there, Exhibit 2?

A Yes, the quality assurance standards for forensic DNA testing laboratories.

Q If you could, sir, turn to page 8 of State's Exhibit 2, under section 5.3.

A Yes.

Q Says "Examiner/Analyst"?

A Yes.

Q Is that indeed your function regarding DNA at the Washoe County crime lab?

A That's correct.

Q Relative to the criteria that this federal statute has enunciated, do you qualify pursuant to the standards set forth under 5.3?

A Yes, I do.

Q Now, Mr. Riolo, Exhibit 3 before you, do you recognize the pages or the excerpts from that document?

A Yes, I do.

Q And could you describe what within the scientific community of DNA testing that book is designed to articulate?

A The book that's being referred to is called the "Evaluation of Forensic DNA Evidence." What this book is designed to do for the forensic community is set guidelines or standards for DNA analysis. Part of that is the actual statistical calculations that are used in the reports, along with some other recommendations.

Q Relative, Mr. Riolo, to that book, is that considered the bible, if you will, the current version of the status of the science regarding DNA testing, both in the science and in the statistics frame?

A The book is regarded in the forensic community as very -- I guess the bible would be the correct term. It's used for the standards of DNA testing.

Q And the people who authored that book is a consortium of various different people within both the scientific community, the forensic community, as well as the statistical community, correct?

A That's correct. The individuals that

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authored the book are members of various scientific places from geneticists to population statistics, to mathematicians. These individuals are in high regard in the scientific community, members of the National Academy of Science, some of them are.

Q And are the conclusions or the guidelines and the protocols established in that book generally accepted within the scientific community regarding DNA testing?

A That's correct.

Q Now, Mr. Riolo, you're familiar with the contents of that book?

A Yes, I am familiar with it.

Q Now, relative to your testing in this particular case, I want to shift gears a little bit and talk about the forensic DNA testing that you performed in the State versus Vanisi case. It involves testing of genetic materials from several different items, correct?

A Correct.

Q The somewhat unique situation in this case is that it's not the genetic markers of the suspect, or the defendant, but indeed the victim in this case?

A Yes, profiles were determined for both.

Q And then compared to eliminate or to find out what are the tests for positive or a match as best you can regarding the test that you used, correct?

A Correct.

Q And all the tests that were results of genetic material you have concluded came from Sergeant Sullivan?

A Some items came from Sergeant Sullivan.

Q The ones that I guess are relevant for the proceedings that you and I have discussed, the operative items being Sergeant Sullivan's gun belt, some clothing that Mr. Vanisi was wearing, all, as you've been advised, come back as what appears to be genetic material and blood from Sergeant Sullivan?

A Yes, consistent with.

Q What is the precise genetic test that you performed to get the results in this case?

A The DNA test that was used in this case is a test called PCR, which stands for preliminary chain reaction. What that is, is basically we take a small amount of DNA and we can make copies of it, kind of like a Xerox machine. So we can look at certain areas of the DNA and make multiple copies so we can analyze it.

Q And that is compared to the other primary known DNA testing which is called RFLP?

A Correct.

Q Now, relative to the testing of PCR in this case, you have come up with results regarding that testing

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in that you have converted those results or have stated those results not only in a scientific form but also in a statistical form, correct?

A That's correct.

Q Now, where is that statistical formula derived from by you in this case?

A The statistical formulas that were used in this case or used in the forensic community are tools that we use when we determine a DNA profile. These formulas were obtained from the National Research Council report, the "Evaluation of Forensic DNA Evidence" book that they had published and researched.

Q So the statistics that you use are also part of the science of DNA according to what NRC says and as part of the kit used to do the testing; is that a fair summarization?

A Yes, they're a tool that are used.

Q Now what kind of statistical numbers are we talking about in this case?

A I'd have to refer to the report.

Q If you would.

THE COURT: Are you through using, with the witness, using Exhibits 1, 2 and 3?

MR. STANTON: Yes, Your Honor.

THE COURT: Could you get them for the Court,

please.

Mr. Specchio, you have copies of Exhibits 1, 2 and 3?

MR. SPECCHIO: Yes. I don't have them here, but I've been provided with them.

THE COURT: That's fine.

BY MR. STANTON:

Q If you're ready, Mr. Riolo, having reviewed your documents, what kind of statistical numbers are we dealing with in this case?

A If we just look at the profiles that were obtained from George Sullivan, the frequency that we're looking at in the Caucasian population -- now there's three different population numbers. In the Caucasian population, there would be approximately one in 177,000. In the black population, it would be one in 4,180,000. And in the Hispanic population, it would be one in 344,000.

In the DNA profile from Siaosi Vanisi, in the Caucasian population, the approximate frequency is one in 2,450,000. In the black population, one in 3,410,000. In the Hispanic population, one in 885,000.

Q And the statistics that you derive those numbers from are obtained from where? How do you physically come up with those statistics when you do your

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testing?

A What happens is once a DNA profile has been established, we'll take that DNA profile and compare it to a population data base. What a population data base is, is a data base of people that -- these are just random people that have been selected out of the population -- their DNA profile has been established and a DNA pattern has been obtained from that. From that information we can determine how frequent a DNA pattern is in the population.

So what happens is, when I determine a DNA profile in, say, a reference sample or an evidence sample, I'll take that DNA profile and compare it to this data base. And from that data base I can obtain how often I will see that in the population, or expect to see it.

Q Where do you get those figures from?

A In this particular case the numbers that were used in these calculations were obtained from the manufacturer that provides us with the PCR or the DNA typing material.

Q I'd like to shift gears slightly and focus on two separate and distinct concepts, at least for the purposes of this hearing. One is the science of DNA and the other is the statistics of DNA. Are you comfortable with disassociating those two concepts as I've phrased them?

A Yes, I am.

Q There's a book commonly referred to as the "red book," which was a precursor to State's Exhibit 3, which is yellow in color, the current version being yellow. The red book was the previous publication from the same scientific community or at least the same titled community, the National Research Council. At some time after the publication of what is commonly referred to in your business as the red book, there was a dispute within the scientific community about ethnic subgrouping. Am I correct?

A Yes.

Q And in a general fashion, that subgrouping was that in certain small ethnic groups they may have socialized and bred within that social group such that the DNA statistical analysis may not be accurate for certain ethnic subgroups. Is that, once again, a generalization of an argument that was posed against the statistics?

A Yes.

Q After that argument was raised, certain techniques were interjected in the interim to take care of that anomaly, and then ultimately the scientific community was addressing whether or not ethnic subgrouping was indeed a statistical problem regarding DNA testing. Is that a correct statement as well?

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A Correct.

Q Can you tell us what happened relative within the scientific community, what is the results in the yellow book and the status of the science today regarding both the science of DNA and the statistics of DNA regarding ethnic subgrouping?

A The current evaluation from the National Research Council, which is the yellow book, the evaluation of the technology itself in the report addresses that it's a sound technology.

And addressing the statistical aspect of things, they address the inbreeding question that arose in the first report. Basically inbreeding would lead to a non-random distribution of the alleles, or loci, in a population. What they did was they addressed that and they gave basically a statistical formula that would be used to compensate or take into account if inbreeding were to take place in a population.

Q Now, in the case regarding Sergeant Sullivan as being the focus of the testing, understanding that Mr. Vanisi is a controlled sample that also exists to exclude, your results in this case are that the genetic material pulled off the operative clothing matches or is consistent with Sergeant Sullivan being a Caucasian male; subgrouping, at least as an ethnic basis, is not at issue

in either the science or the statistics of DNA in this case under those parameters, correct?

A That's correct.

Q Now, Mr. Riolo, one final question for you, would it be a fair statement to say that the current status within the scientific community that is exhibited within the yellow book, State's Exhibit 3, is that both the science of DNA and the statistics of DNA are indeed one in the same, as far as its acceptance within the scientific community?

A That's correct.

MR. STANTON: No further questions of this witness.

CROSS-EXAMINATION

BY MR. SPECCHIO:

Q Mr. Riolo, are you a mathematician or a scientist?

A I'm a scientist, molecular biologist.

Q You're not a forensic geneticist, are you?

A No, I'm not.

Q If I understand it correctly, you go through the process in the lab and you come out with a DNA result, the fingerprint, for lack of a term, fingerprint; is that right?

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at him, and then I continued on.

Q So you didn't stop or hang around in the area?

A No, sir.

Q You went on home?

A Yes, sir.

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

THE COURT: All right. Mr. Fey.

CROSS-EXAMINATION

BY MR. FEY:

Q Officer Lepera, you saw an individual standing behind a tree. And this is the intersection of 9th Street and Center, is that correct?

A It would be just-- Where the gentleman behind the tree was would be just west of that intersection.

Q Okay. West of that intersection. On the north or south side of 9th Street?

A It would be the south side.

Q So the south side of 9th Street next to the parked cars behind a tree?

A I don't remember if there was any parked cars there, but there was a ledge and some trees, and

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there is a house behind it.

Q All right. And was it on the sidewalk next to the trees or on the sidewalk?

A It would be just off the sidewalk.

Q Do you recall previously telling police officers that the individual that you saw was a white male in his mid 30's?

A Yes.

Q And what color pants was this man wearing?

A I believe for some reason--I can't remember--it was white pants.

Q All right. And he was wearing a ski parka, down parka?

A A large jacket that looked like a ski jacket.

MR. FEY: All right. No further questions.

MR. GAMMICK: I have no further questions.

THE COURT: Thank you, sergeant. You are excused.

The sergeant is free to go?

MR. GAMMICK: Yes, Your Honor.

MR. FEY: No objection.

THE COURT: All right. Next witness.

MR. GAMMICK: Call Andrew Ciocca.

THE COURT: Sir, if you will come up to my left,

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I will swear you in.

Please raise your right hand and be sworn.

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

THE COURT: All right. Please be seated.

ANDREW G. CIOCCA,

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, sir.

A Andrew Guy Ciocca. The Last name is spelled C-i-o-c-c-a.

Q And do you have a nickname you go by?

A Drew.

Q And, Mr. Cioccaa, what do you do for a living?

A At this point I am a student, sir.

Q And where?

A At the University, Reno.

Q I would like to call your attention to the

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

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

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

Q And do you know where the kiosk is located?

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

Q Yes.

A Yes.

Q Did you go through that area?

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

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

A Yes, I did, sir.

Q And would you--

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

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

Svanis12JDC03768

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

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

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

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

A The car door was open.

Q What did you do immediately?

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

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

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

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

Q You made the telephone call first, then

SVanisi2JDC03769

went back?

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

Q Was the officer awake at that time or conscious?

A No, the officer was not.

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

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

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

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

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

Svanis12JDC03770

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

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

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

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

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

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

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

The paramedics worked on him?

SVanisi2JDC03771

A Yes. He was in uniform at the time.

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

THE COURT: Mr. Fey.

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

THE COURT: Thank you. You are excused.

THE WITNESS: Thank you.

THE COURT: Okay. Call your next witness.

MR. GAMMICK: Call Patricia Misito, please.

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

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

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

THE COURT: All right. Please be seated.

PATRICIA MISITO,

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

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SVanisi2JDC03772

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

SVanis12JDC03773

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

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

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

A Yes, I do.

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

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

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

THE COURT: All right, it will.

BY MR. GAMMICK:

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

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

Q Okay. How about the shape and everything,

Svanis i2JDC03774

is that the same type of gun?

A It was squared.

Q And let me show you what--

Does the store have a camera surveillance system in it?

A Yes, it does.

Q And does it take photographs?

A It takes video.

Q A video snapshot-type affair?

A Well, it takes like VCR, video.

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

A Yes, there was.

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

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

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

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

Q Okay. That is why we have these rehearsals.

SVanis12JDC03775

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

A Yes, it is him.

MR. SPECCHIO: Which one of us?

THE WITNESS: The man with the red shirt on.

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

THE COURT: Okay. The DA will verify that.

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

THE COURT: Is that it then?

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

THE COURT: Mr. Fey.

MR. FEY: Just briefly.

CROSS-EXAMINATION

BY MR. FEY:

Q Did he pull the gun out of his pants?

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

Q The gun was not pointed at you?

A No. He did not point it at me.

Svanis i2JDC03776

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

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

Q That particular picture you have seen on television?

A Yes.

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

A He's the person I saw.

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

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

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

A Right.

Q Did that ever come down?

A No. He had it right to here.

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

A No, but I recognize his eyes and cheekbones.

SVanisi2JDC03777

Q Was he wearing a heat?

A No.

Q Was he wearing a wig?

A No.

Q Okay.

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

Q Essentially from the eyes north is what you saw?

A Uh-huh.

Q Correct?

A Yes.

MR. FEY: Thank you. No further.

THE COURT: Mr. Gammick, anything else?

MR. SPECCHIO: I have one question.

CROSS-EXAMINATION

BY MR. SPECCHIO:

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

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

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

Vanisi2JDC03778

A Right.

MR. SPECCHIO: I have no further questions.

THE COURT: Anything else, Mr. Gammick?

REDIRECT EXAMINATION

BY MR. GAMMICK:

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

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

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

THE COURT: Mr. Specchio.

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

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

(The defendant stood.)

BY MR. GAMMICK:

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

A He's him.

MR. GAMMICK: That is all I have.

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

SVanis12JDC03779

MR. FEY: Nothing further.

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

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

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

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

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

THE COURT: Thank you, Ms. Misito.

Is she free to go?

MR. SPECCHIO: Sure.

MR. GAMMICK: Yes.

THE COURT: Next witness, Mr. Gammick.

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

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

Please raise your right hand and be sworn.

SVanisi2JDC03780

(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?

SVanisi2JDC03781

A It's right there on the border line.
Q Is there a Texaco station--
A Uh-huh.
Q --at that intersection?
I would like to call your attention to about 10:35 that night, January 13th. Did something unusual happen?
A I was robbed.
Q Okay. Explain what happened.
A A guy came in, just laid a gun on the counter in the palm of his hand, told me to empty the register, stay calm, because I was flipping.
Q And then what?
A I opened the register, put it all in a paper bag, opened the other one, the other register, for him, showed him that one was empty, and he left.
Q Okay. You say you were flipping. What does that mean?
A I was shot before, and when I seen the gun, I just backed up and went--
Q Were you scared?
A Yeah, big time.
Q Okay. And that is why you gave him the money?
A Oh, yeah. He could have had anything in

SVanisi2JDC03782

that store he wanted.

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

A Yes, I do, sitting right there.

Q Would you please--

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

THE COURT: What is he wearing?

THE WITNESS: He's wearing the red shirt.

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

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

MR. SPECCHIO: Whew.

BY MR. GAMMICK:

Q Does your store have a camera surveillance system?

A Yes, it does.

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

A Yes.

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

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

Q Okay. That was taken that night?

A Yeah.

SVanis12JDC03783

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

A Uh-huh.

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

A Because of Daylight Savings Time.

Q Okay. The camera wasn't changed?

A Right.

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

A Absolutely positive.

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

THE COURT: Mr. Fey or Mr. Specchio.

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

THE COURT: Yes.

MR. SPECCHIO: (Looking.)

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

THE COURT: Uh-huh. (Handing.)

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

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

Vanisi2JDC03784

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

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

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

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

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

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

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

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

SVanisi2JDC03785

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

The status continues as no bail.

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

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

MR. GAMMICK: Thank you, Your Honor.

(The proceedings were concluded.)

--o0o--

SVanisi2JDC03786

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

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

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

Edward Dannan

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

SVanis12JDC03787

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

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

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

Lynda Clark

LYNDA CLARK, CSR #73

Exhibit 76

Exhibit 76

SVanisi2JDC03446

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

ORIGINAL

Reported by: KRISTINE A. BOKELMANN, CCR #165

Svanisi2JDC03447

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

-oOo-

THE COURT: First matter, Siaosi Vanisi.

MR. SPECCHIO: Ready, your Honor.

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

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

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

MR. SPECCHIO: It is, your Honor.

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

MR. SPECCHIO: We are.

THE COURT: How are you going to plead?

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

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

THE DEFENDANT: Yes, I understand.

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

Svanis i2JDC03448

Office. You understand that?

THE DEFENDANT: Yeah, that's correct.

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

THE DEFENDANT: Thus far, yes.

THE COURT: How do you plead to the charge?

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

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

MR. SPECCHIO: We have, your Honor.

THE COURT: You understand the contents?

MR. SPECCHIO: Yes, ma'am.

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

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

THE COURT: Yes.

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

Svanis i2JDC03449

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

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

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

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

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

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

Svanis i2JDC03450

in this case. Thank you.

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

THE CLERK: September 8th or November 2nd.

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

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

THE COURT: Any objection from the State?

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

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

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

I believe the defense needs some latitude for

Svanis i2JDC03451

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

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

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

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

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

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

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

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

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

MR. SPECCHIO: I understand that.

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

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

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

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

THE DEFENDANT: Yes, I do.

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

Svanis i2JDC03453

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

THE DEFENDANT: Yes, I do.

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

THE DEFENDANT: Yes, I do.

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

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

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

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

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

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

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

Vanisi2JDC03454

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

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

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

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

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

MR. SPECCHIO: Friday would be all right.

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

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

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

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

MR. SPECCHIO: Thank you, your Honor.

(Proceedings concluded.)

Svanis i2JDC03455

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

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

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

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

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

Kristine A. Bokelmann
KRISTINE A. BOKELMANN, CCR #165

Exhibit 77

Exhibit 77

Svanisi2JDC03440

FILED

Case No. CR98-0516

'98 APR 28 P12:38

Dept. No. 4

JUDI BAILEY, CLERK

BY

DEPUTY

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT COURT JUDGE

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STATE OF NEVADA,

Plaintiff,

-vs-

SIAOSI VANISI,

Defendant.

MOTION TO SET TRIAL

March 19, 1998

Reno, Nevada

APPEARANCES:

For the Plaintiff: RICHARD GAMMICK
District Attorney
DAVID STANTON
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant: MICHAEL SPECCHIO
Public Defender
WALTER B. FEY
Deputy Public Defender
1 South Sierra Street
Reno, Nevada

For the Division of Parole and Probation: ROBERT TUCKER

The Defendant: SIAOSI VANISI

Reported by: DENISE PHIPPS, CCR #234, RDR, CRR

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RENO, NEVADA, THURSDAY, MARCH 19, 1998, 9:00 A.M.

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THE COURT: Siaosi Vanisi.

This is the time set for setting of trial. The clerk has come up with a proposed trial date. I think you've been notified of the proposed trial date; is that correct?

MR. SPECCHIO: No, your Honor.

THE COURT: Well, she'll tell you now and we'll see if you like it.

THE CLERK: January 11th, 1999, at 10:00.

MR. GAMMICK: That's fine with the State.

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

THE CLERK: Also we'll have a pretrial motion hearing January 7th, 1999, 1:30 p.m., a pretrial motion hearing on November 23rd, 1998, 10:00 a.m.

MR. STANTON: What time?

THE CLERK: 10:00. And a status conference July 30th, 1998, 4:00 p.m.

THE COURT: And I want the record to also reflect that pursuant to Rule 250, the Court has reviewed the qualifications of both counsel for the prosecution and counsel for the defendant and find that those qualifications are met and counsel may proceed.

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MR. GAMMICK: Excuse me, your Honor. I'll be out of town on July 30th. I'll be out of town that whole week at a conference.

THE CLERK: July 23rd at 4:00 p.m.

MR. SPECCHIO: Your Honor, could I make sure I have those down right? Trial is January 11th, 1999. Pretrial motion January 7th, 1999, 9:30?

THE CLERK: 1:30.

THE COURT: That's your hearing that must be held shortly before the trial. And then you have a pretrial hearing motion date that's for more extensive --

MR. SPECCHIO: That's November 23rd at 10:00 a.m.

THE CLERK: Correct.

MR. SPECCHIO: Status conference 7-23-98 at 4:00.

THE COURT: Yes. You indicated you anticipated having a significant number of motions. We'd like to resolve most of those at the November hearing. The hearing that's set for January 7th is for last minute concerns.

MR. SPECCHIO: We'll have everything filed, your Honor, by June 1, I'm sure. We anticipate about -- there's 65 motions. We're going to meet this morning and deal with that. I estimate about 50 will be filed. We should have them.

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THE COURT: We may be able to get a ruling on most of them that don't require special hearings in the July date. If we have to have evidentiary hearings that we need witnesses, we may have to postpone that until November. But if any of the motions deal with jury questionnaires or special questions for the jury panel, those must be submitted in November. They cannot be handled at the later date.

MR. SPECCHIO: That's why we will have everything filed by June and then you can --

MR. GAMMICK: Based upon the nature of the case and the number of motions, the State would request of the Court the opportunity to respond to those motions within 30 days as opposed to the statutory 10 days.

MR. SPECCHIO: No objection, your Honor.

THE COURT: We want to make it very clear. Everyone must come prepared at the November date. That's, I think, right before Thanksgiving. You have that -- it's a Monday. You'll have a Tuesday and a Wednesday also. So be prepared. All those motions will be submitted to the Court before that date and be decided that Thanksgiving week. So I have blocked out as much as three days for your benefit. So just be sure that you're able to argue them at that time.

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

THE COURT: Anything further?

MR. GAMMICK: Not from the State, your Honor.

MR. SPECCHIO: Nothing, your Honor.

THE COURT: Thank you. We'll see you back at your next hearing.

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

I, DENISE PHIPPS, Official 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 on March 19, 1998 and took verbatim stenotype notes of the proceedings had in the matter entitled herein;

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

DATED: At Reno, Nevada, this 24th day of April, 1998.

Denise Phipps

DENISE PHIPPS, CCR #234, RDR, CRR

Exhibit 78

Exhibit 78

Vanisi 2JDC04065

Case No. CR98-0516

Dept. No. 4

'98 AUG 10 P12:38

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, 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

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

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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.

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MR. SPECCHIO: That is fine, Your Honor.

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

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

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

MR. STANTON: Yes, Your Honor.

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

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

Motion in limine regarding the arrest of the

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

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

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

THE COURT: Correct.

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

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

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

THE COURT: If it turns out you need to do

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

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

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

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

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

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

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

Motion to avoid death prone jury, I have set a

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

Rule of exclusion is handled in the written order.

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

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

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

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

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make a decision.

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

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

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

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

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

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

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

Motion to disqualify certain potential jurors

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

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

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

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

THE COURT: But you are not agreeing that that

is 48.045 evidence?

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

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

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

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

THE COURT: The same cousin.

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

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

THE COURT: Mr. Specchio.

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

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

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

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

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be a factual scenario that's changing between now and trial. I mean, basically what we have we have already presented, and we can't contemplate under any circumstances that the nature, the quality and the form of the evidence is going to change. It is what it is. We have presented it, and it's really not our intent to massage it, manipulate it or present it in some other fashion. We're presenting it straight forward the way it was presented at prelim.

So since it's not going to change, I think it probably would be appropriate maybe in the November date, give Mr. Specchio further time to review what was presented in the police reports on it to understand the nature and the context of it, and as the Court indicated, if there is any further questions by the Court or by Mr. Specchio, hopefully somewhere around that time period Mr. Kini Kini will be available.

There are actually two witnesses from Salt Lake City. They are both from that same family. Vianga is a truck driver, and he apparently has moved back to Texas. So with some consideration or latitude or flexibility from the Court, I'm sure we can accommodate pretrial testimony in a hearing fashion to determine any additional questions that anyone might have of him.

THE COURT: Okay. I think we have to have a hearing and I have to have the witness testify. I want to

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hear the evidence and Mr. Specchio to hear the evidence in front of the Court before I rule on it. I don't see any reason why we can't do it in November also. So I'm going to go ahead and set that for the November date.

MR. SPECCHIO: That is fine. Unless they don't want to bring him in November. We know he is going to be here for trial.

THE COURT: Right.

MR. SPECCHIO: If they want to bring him, whatever.

THE COURT: We can get it done then.

MR. SPECCHIO: It doesn't make any difference.

THE COURT: Why don't we tentatively set that for November 25th then at 10:00 a.m. That is the next day. If you need some -- if you have certain witnesses on some of these motions that I have set at certain times that you'd like to have some accommodation, Mr. Stanton, please get together with Mr. Specchio and come on up and we'll do whatever we can. I just lumped things that I thought would be the same witnesses or similar witnesses at the time frames and what I guesstimate would be the lengths of time for the arguments in coming up with these dates and times.

So if it needs to happen on the 25th, that's fine. You are currently set for the 23rd, 24th and 25th. Based on what's been served so far, I don't think we're

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going to need that Monday. I'm basically taking you off of needing to be here on Monday, and we're holding Tuesday and Wednesday before Thanksgiving solely for you.

MR. SPECCHIO: Your Honor, in that regard, I have spoken with Mr. Stanton. They still have some more responses to file. After I get those, I may be prepared to submit some additional procedural type motions.

THE COURT: That is fine.

MR. SPECCHIO: We'll probably just deal with these meaty ones on the 24th and 25th, I would think.

THE COURT: I hope so. Everything that I can handle without oral motion, you will get a written order on before the date of the November 24th and 25th hearings.

MR. SPECCHIO: I should alert the Court, Your Honor, there is about between 8 and 14 additional motions that we're looking at. We're trying to -- they are not going to be filed unless we believe they really have to be filed. But that would be the outside parameters of how many motions will be filed. Somewhere between -- we're going to try not to file any more, but we don't want to short change Mr. Vanisi.

So we're examining between 8 and 14 as tentative motions to be filed. If they are going to be filed, they will be filed within the next 10 or 15 days. Other than that, we're going to stand pat on the motions

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that have been filed. Then when we get their responses, we will see how many we can submit to the Court.

THE COURT: Just make sure any motions you have with regard to the jury selection, I want to resolve all those issues in November.

MR. SPECCHIO: There won't be any more issues regarding the jury.

THE COURT: Mr. Stanton, I don't know if you have any motions so far.

MR. STANTON: At this juncture, we can't contemplate any to be raised at this juncture. I do note there are 13 motions left to be answered by the State. The responsive dates, basically our due dates are between the 14th and 16th of August.

Save and except for the change of venue, I think most of them are relatively straight forward. The change of venue I think is an issue that is resolved when we actually have the jury in front of us.

So I can't contemplate much or any motions at this juncture from the State's perspective. I would indicate to the Court there are a couple matters outside of pleading form that are occurring in the background that should be brought to your attention.

Mr. Specchio has, and I have been advised along with Mr. Specchio about the custody status of Mr. Vanisi.

He was requested pursuant to a couple conversations I had with Captain Don Means, who is the head of the jail, or at least the division - Sheriff Kirkland is actually the head of the jail - but he had apparently talked to me and Mr. Specchio about transferring the defendant to the Nevada State Prison during the interim of this case for security reasons and the difficulty that it was presenting housing him at the county jail.

Apparently that was accomplished and the current status of affairs as we sit here today. Mr. Specchio has informed me he is going to be requesting the Court to change that status and to have him brought back down here.

It's the State's perspective as it relates to any defendant, that the custodial status of a defendant awaiting trial, sentencing, whatever, is the sole purview of the executive branch of the Sheriffs's Office and that absent some specific authority to, and an opportunity at least I think for the legal counsel for the Sheriff's division, the civil division of the District Attorney's Office, to at least have an opportunity to review that and express something to the Court if indeed the Court were to entertain an order as to whether or not they have any legal remedies or rights in that regard.

THE COURT: Well, I think there is some

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authority that says that the Sheriff has a great deal of latitude. However, the Sheriff also has to make the defendant available for his counsel. So I think that's a balancing test that is utilized.

I think it comes up mostly in federal court where you can be held in a facility across the country awaiting trial. That is where the case law that I'm familiar with. I'm not sure much happens here. I can't think of a Nevada case on point.

MR. STANTON: No, I can't in the past 10, 15 years, recall either seeing a decision that had been published or running across one that occurred before my tenure in the D.A.'s office about that issue. I know that it has occurred in the federal system. I see those in the advance sheets.

I just, before the Court rules on it, I would just ask as a courtesy to counsel for the Sheriff's office to have an opportunity to explore that and to address it to the Court, their rights.

THE COURT: What I think I would prefer to have happen is have a meeting with the Sheriff with Mr. Specchio. Maybe there is some accommodation. I don't know what the issue is for Mr. Specchio.

MR. STANTON: I think it is access.

THE COURT: It is access?

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MR. SPECCHIO: Judge, I have seen Mr. Vanisi 25 times since February in the Washoe County Jail. I can tell you, I'm not going to see him 25 times between now and January if I have to go to Carson City. I just don't have the luxury of every time I need to see him or my investigator needs to see him, that we have to drive to Carson City.

Judge, I don't want to have to ask for a continuance in this case, but if I'm going to have to see him 30 miles away, there is no way we're going to be able to do what we're going to have to do in this case.

I'm going to ask that he be transferred back. I advised Captain Means that I would do so. I mean, he is in the shoe. He is locked up 23 hours a day. He can't be that much trouble for them.

My position is I'm going to ask that he be ordered back here. I'm going to ask that you order the prison to provide both Mr. Stanton and myself copies of the evaluation that they have done on Mr. Vanisi, if in fact one was done. We believe there was one. And if the State wants to argue about or have their counsel present authority or otherwise to the Court, let them do it while he's here, not while -- he's been down there for a little over two weeks, I think, and I haven't had access to him for two weeks.

The closer we get to trial, the more access I'm

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going to have to have with him. I think I have seen him at least 25 times, and I'm almost sure that my investigators have seen him that many times. I just can't go to Carson City. I wish I could every time. That's at least once a week. I just don't have that luxury of that time.

And one thing I don't want to do is come in here in November or December and say, Judge, I'm going to have to continue this trial because I haven't had access to him. I don't want to do that.

THE COURT: Okay. What is this evaluation? Are you familiar with that, Mr. Stanton? Do you know that was done?

MR. STANTON: No, I don't know for certain what's done. But I know that as a matter of protocol, when a defendant is committed or placed for housing in the Nevada State Prison, that they do as a matter of course an intake evaluation. That part of that evaluation includes physical examination as well as mental examination. Whether it was done in this case, I don't know. I'm assuming it was done.

THE COURT: He wasn't actually placed in the Warden's -- they are just housing him just like they used to house the federal prisoners.

MR. STANTON: Correct.

THE COURT: They never did them on federal prisoners.

MR. STANTON: I believe they do that on everybody that they are housing.

MR. SPECCHIO: I think that is correct, Your Honor.

MR. STANTON: For a liability perspective as to where to house them and what precautions, if anything. For example, if a federal prisoner is suicidal and they don't know it or don't take reasonable efforts to determine that the person is, they obviously might be concerned about liability if someone were to do something or for that matter do an intake evaluation relative to any security concerns with other inmates they have that they wouldn't otherwise know about, I think it is done as a matter of protocol.

THE COURT: Any objection to getting that?

MR. STANTON: No, I have no legal basis that I know of, Your Honor.

THE COURT: I order the Department of Prisons provide copies of the evaluation to counsel for the State and the defense. I'm going to order that copies of those evaluations be ongoing so that if there is an update after the entry of the order, counsel will be notified, and I'm going to expand that beyond the evaluations to any disciplinary action or notes that are taken by the prison officials with regard to his custodial status will be provided to counsel.

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MR. SPECCHIO: Your Honor, in addition to that, one of the reasons that I'm asking for this copy of the evaluation to me, we, the State and myself have received various reports regarding some bizarre behavior on behalf of Mr. Vanisi. From talking gibberish to washing himself in his own urine to dancing naked. I mean, stuff that I do on Saturday night but stuff that's not of the norm.

And for that reason, I stress to the Court that I think maybe you want to bring him back down here and maybe the Court might want to deliver an evaluation, since we have enough time between now and the trial date to determine --

THE COURT: Competency? Are you concerned about that?

MR. SPECCHIO: Well, I don't know. I guess a guy can dance naked and wash himself in his own urine and be competent as anybody else. I don't know. I don't know how valid these statements are.

THE COURT: Are you hearing these from the Sheriff's office or from the prison?

MR. SPECCHIO: I have heard them from inmates, and I don't want to put anybody on the spot, guards at the prison. Now how valid that is, I couldn't -- I don't necessarily believe the guards or the inmates, nor do I disbelieve them. But it came from two different sources, which tells me -- and I think Mr. Stanton as well has heard

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some statements regarding bizarre behavior. Coming from those two different sources tells me maybe there is a seed of truth and maybe we better be looking into this.

THE COURT: Well, I don't know about competency. I don't know if it really affects his competency, but I think you should look into it, but it may affect your penalty phase if you get to a penalty phase. So you need to investigate that.

MR. SPECCHIO: That is another reason I have to have him here, Judge, as opposed to Carson City.

THE COURT: You couldn't look at him and have someone investigate this in Carson City?

MR. SPECCHIO: Judge, the more -- the farther away he is, the more expensive it is for me, and the less access I have to him.

THE COURT: I see.

MR. SPECCHIO: In light of the seriousness of these -- I mean, he's been here for six months in this jail. All of a sudden they had to transfer him.

As far as I know, there's been one cell extrication problem that wasn't entirely his fault. Other than that, I know of no problem other than the fact that they don't like him because he is an alleged cop killer. And I don't think that is enough reason to -- I have to have him here.

Sooner or later, you are going to get him here for me. Whether we do it now or later and if it is too far later, I just have too many other duties other than this particular case to have to set aside every Friday to go see Mr. Vanisi in prison. That's the problem that I have.

THE COURT: I want to hear from the Sheriff. I want to know what the actual problems are and how serious the situation is and have counsel have an opportunity to hear those problems. I also must say, I agree with Mr. Specchio, Mr. Vanisi is going to be back here at some point, and it's just an issue of how long he's going to be housed in Washoe County. We don't want a continuance of this trial.

MR. STANTON: No, Your Honor, if I could address a couple things. Number one is the order that the Court entered relative to the production of the documents from the prison, can the State have an opportunity -- the one thing that you mentioned was notes. That is a concern of the State's as far as the notes that exist in the file.

THE COURT: If it's something that would be work product, I don't know if there would be. See, my concern is that while he is housed down there there may be -- I know that the prison regularly enters notes in their jackets. Those notes of statements or things they observed could ultimately be utilized by the State, and I want to be

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sure the defense has it in a timely fashion so they know what is there.

MR. STANTON: You are not talking about notes the officers may personally possess but notations to his jacket file.

THE COURT: Anything discoverable by the State for utilization, especially to get to a penalty phase. I think there are comments frequently or notations that become relevant at the sentencing phase. I want to be sure the defense has that, at the same time that the State has it.

MR. STANTON: Okay. In addition, Your Honor, relative to the competency issue that has been brought up now and part of the record, it would be extremely critical for the State that any issues of competency, whether they exist, they don't exist, the nature or the quality of the evidence be placed on the record. Therefore, if there is an investigation, if there is any facts one way or the other, I think it is incumbent upon all the parties to fully develop that for this record.

And we would request that if competency is an issue with Mr. Specchio in this case based upon his investigation, that the formal written motion that triggers that process take place, and in the alternative, if the investigation determined that it not, that some record be made whether it be in camera under seal with Mr. Specchio

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and Your Honor, that would be sufficient for the State. But I don't think we can bring it up in the context of this hearing and then down the road not answer the question that has been raised one way or the other.

THE COURT: Okay. What I'm anticipating doing is setting a date in September wherein, early September - I'm not talking about late September - wherein we can address the issues with regard to his custodial status in the Nevada State Prison or here.

MR. SPECCHIO: You are going to leave him there that long, Judge?

THE COURT: Well, I'm kind of out of time, Mr. Specchio. I don't know.

MR. SPECCHIO: Why don't you order him back here, and then let's have the hearing while he's here rather than -- so I can at least have access to him?

THE COURT: I want to hear from Captain Means why he got moved.

MR. SPECCHIO: We're voicing our objection, Your Honor, because I'm not going to go to the prison to see him until this hearing. Because I don't have time to do that.

MR. GAMMICK: Your Honor, if I may just for the record here. We're not interfering with accessibility to the defendant. We don't care where the defendant is housed.

The Sheriff has a serious concern, and I appreciate the Court wanting to hear from the Sheriff's Department as to what their concerns are.

But I want to make sure the record accurately reflects that the defendant is not across country or in another nation. He's 30 miles away in Carson City, and it was my understanding at every hearing we have been at there's been another attorney. Wally Fey from the Public Defender's Office was even allowed at his being the lead attorney in this case. He is not here this morning, but there are two attorneys on this case, plus investigators from the defense side.

So I don't want to leave this record saying that he is totally inaccessible and we're hiding him some way when that is not the case in fact. And I think the Sheriff needs to get something in on this as to what their concerns are and why they had to move him. We do know about the one incident which we have furnished to defense. I don't know if there were other problems or what the concerns are.

MR. SPECCHIO: There are no other lawyers in my office on this case, Your Honor. I am sole counsel for Mr. Vanisi.

MR. GAMMICK: Well, we have never been served with that, Mr. Fey was off this case, because at preliminary

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hearing, Mr. Specchio made the statement Mr. Fey was the lead counsel.

MR. SPECCHIO: And the preliminary hearing I think was in February, and he's been off the case since March.

THE COURT: Okay. Well, you are the attorney.

MR. SPECCHIO: Yes.

THE COURT: Certainly we have already gone through the death qualified requirements. So we're under control in that regard.

This is what I'm going to do. Today I'm going to contact Captain Means and find out if an accommodation can be made without an order. If that can't happen, then we will have to have a hearing, and I'll weigh the competing interests here.

And the Sheriff needs to be represented, and that's just the reality here. Before I enter an order compelling the Sheriff to house any defendant in any particular way or manner, I want to hear from the Sheriff to make sure I'm weighing the proper elements.

I don't know when I can set that hearing. I was thinking the beginning of September. I understand your concern, Mr. Specchio. You will just get called about when the hearing is set.

I do have the next two weeks off, starting on

Wednesday, and we have some time. So I have to look at the calendar and see when we can have that hearing, if we need it. Perhaps through informal discussions with Captain Means we can resolve this.

But counsel have any objection to the Court contacting Captain Means personally?

MR. SPECCHIO: Not at all, Your Honor.

MR. STANTON: Not at all, Your Honor.

THE COURT: I'll go ahead and do that. The record will also reflect the State is not presenting any position with regard to the housing of the defendant. As I understand. You are merely putting me on notice that you do not represent the Sheriff on this issue; is that correct?

MR. STANTON: That is correct, and I think they are a real party in interest to this issue.

THE COURT: But you are not taking a position.

MR. STANTON: I think Mr. Gammick correctly stated our position, we could care less where Mr. Vanisi is housed.

THE COURT: Anything else coming up that I need to be told about?

MR. SPECCHIO: Yes, Your Honor. I haven't read the Court's order, but there's an issue regarding discovery that we're going to have to deal with as well. If you want to do it.

THE COURT: We can do it now. The written order indicates that you both abide by the reciprocal discovery rules and that I noticed that this is an open file case. I don't know what you are missing and what the discovery problems are.

MR. SPECCHIO: What I would like to do, Your Honor, if this is acceptable to the Court, is I would like to send a letter to the State asking for certain specific items of discovery. One of which I have already been advised I can't have, and that's the personnel file of Sergeant Sullivan, the decedent. I want to have access to that to look at. I don't want copies of it. I just want to look at it and possibly copies of it. But at this point I want to review it.

There is also a list of -- a number of items that I would like to look at. Some of it, some of which has already been provided. As a matter of fact, I might have sent them a letter already. I don't think we would expand on that.

And I would like them to respond to that, and whatever items they say no to, I think we should have a hearing on it. So I would suggest we proceed. The rest of the stuff they provided for me. And that's really the only discovery issue.

THE COURT: So you sent a letter specifically

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requesting items that you think they have in their possession?

MR. SPECCHIO: Yes, Your Honor.

THE COURT: And now has the State responded to that letter?

MR. GAMMICK: No, Your Honor, we have a letter that was dated July 20th, 1998, from Mr. Specchio. At first opportunity we intend to arrange a meeting with Mr. Specchio, sit down and go through these item by item. Anything we reach agreement on, of course, will be resolved. Things that we don't -- because in this letter there is also testing requested that we have no intent of doing at this time. So we need to sit down with Mr. Specchio and just figure out exactly what is expected on each item.

For any items we come to impasse, then after we have the meeting, then we will reduce it to writing. But I have always found that face-to-face is better to get issues resolved, and then we will reduce it to writing any issues that we cannot come to agreement on, such as Sergeant Sullivan's personnel file, we can come back into court and discuss those items at that time.

But I think those are going to be -- I mean, that is the only item I'm aware of right now where we're at an impasse. So I don't expect a full blown, long, drawn out hearing on this matter, because I think there will be very

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very few items. Only one at this time. And I think we can get most of the rest of this resolved.

THE COURT: The written order indicates that anything that could be evidence of exculpatory nature, submit to the Court in camera. If you get to the issue where it's exculpatory, you can submit that order to me in camera and I'll make a determination. I won't release it without a hearing and letting you know. I don't know if that is the nature of this personnel file. I'm not sure exactly what.

MR. SPECCHIO: Your Honor, I have no problem of your reviewing the personnel file and --

THE COURT: I don't know what would be -- because I'm not as familiar with either theory of the case, I don't know exactly what would be exculpatory just off the top of my head in Sergeant Sullivan's personnel file.

MR. SPECCHIO: I think you would know.

THE COURT: You mean it would just jump out at me?

MR. SPECCHIO: I think it would probably jump out at you. If you want to do it that way, that is fine. If you say there is nothing exculpatory in there or nothing that I can have, that will be the end of the hunt. But I think I better do it.

THE COURT: Okay.

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MR. SPECCHIO: Otherwise somebody two years from now is going to tell me I should have.

THE COURT: That is what the written order says. If the State doesn't think there is anything that fulfills the requirements as in the written order, then you can set it for hearing. Or Mr. Specchio will ask it be heard because he will tell me no, this is in camera stuff, you should be looking at it, Judge, and you on the part of the State would be saying, no, it isn't, we're not going to give it to you, Judge, and then you can decide.

But if you are comfortable with the written order those things you come to an impasse on, and you want to submit it to me in camera, then you won't have to have another hearing. You will be able to do it pursuant to the written order that you have received.

MR. GAMMICK: I think the first issue we're going to wind up addressing on this is we do not have Sergeant Sullivan's personnel file. I'm not sure UNR is going to be willing to give that personnel file up.

We're not even at square one yet. We have not reviewed the personnel file. We're not aware of any exculpatory information being in that file.

I can state that right now that we're not aware of any information in there that would be exculpatory to the defendant. We haven't seen it. We haven't asked the State

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for it. Like I said, I'm not even sure they are going to be willing to give it up. We may be back here for a full blown hearing with the State interests here, the State of Nevada, not necessarily our prosecution.

THE COURT: Right. If you don't have it and you can't get it, if you make an effort and you aren't -- it is not afforded to you and you document that, then you notify Mr. Specchio of that, and his next move is to subpoena, and there will be a motion to quash the subpoena, and we'll all be in here on that.

MR. GAMMICK: We'll go through that routine, Your Honor.

THE COURT: Note it and Mr. Specchio wants to keep going with it if he can.

MR. STANTON: There are two cases that the Nevada Supreme Court has addressed access by defense counsel at pretrial to a police officer's personnel file. Obviously, the factual -- maybe not obviously, but the factual situations are somewhat different in those cases. Stinnett, S-t-i-n-n-e-t-t, there is a Stinnett one and a Stinnett two. I don't know the citation off the top of my head. But in that case, it was a police officer in a narcotics case that had arrested the defendant, and apparently there had been a preexisting relationship between the police officer and the defendant from a police

officer-arrestee perspective. They address in there some I think pretty straight forward guidelines about when defense counsel gets access to a police officer's personnel file.

In this case, under the facts of this circumstances, I don't know if the defense could ever make a threshold inquiry to be able to get access to it. I can tell the Court, as Mr. Gammick says, we have not looked at the file, we don't plan to make any request to investigate the file or to review it, because as far as the State's perspective, there was no nexus between Sergeant Sullivan and the defendant whatsoever prior to his murder.

And absent that, I think it boils down to a fishing expedition, which I respectfully submit that the Stinnett case conclusively answers as to whether or not they get it and whether the State has the burden of even inquiring of the State of Nevada, specifically the University of Nevada, Reno, to disclose and produce that document.

THE COURT: Did Stinnett go to the United States Supreme Court?

MR. STANTON: I don't believe so, Your Honor. But my knowledge of the case, basically Stinnett one and Stinnett two was that Nevada, Carson City, was where it stopped and ended.

THE COURT: It is always nice if the United

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States Supreme Court affirms our state court. That is always nice.

MR. STANTON: I don't know whether cert was applied for in either one of those cases.

THE COURT: Thank you.

MR. SPECCHIO: I'm not so sure Stinnett applies, Your Honor. That dealt with the arresting officer as opposed to a victim.

THE COURT: I understand the distinction. Thank you, Mr. Specchio.

Do you understand the procedure we'll do here? If Mr. Gammick and you will meet.

MR. SPECCHIO: I think that is fine.

THE COURT: So you will have to trigger this, Mr. Specchio.

MR. SPECCHIO: I'll call him tomorrow morning.

THE COURT: Anything else?

MR. GAMMICK: Your Honor, if I could just, to make sure that we're all playing on the same sheet of music. Today we have received 40 defense motions, and the Court has ruled on the ones you have already laid on the record. I didn't want to go through that again.

I just want to make sure or at least get it on the record we've received 40 motions. We have responded to the ones Mr. Stanton applied to, and the next ones are due

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August 14th, ten days from now.

THE COURT: Right. I don't know how many they filed, but I know that we ruled on 28, either issued an order or set a hearing on 28. So that makes sense based on what Mr. Specchio said.

MR. STANTON: I have 13 outstanding motions to date, and I'm sure we will get a motion with regard to Sergeant Sullivan's personnel file.

THE COURT: Actually I think we're moving well ahead of anticipation. I'm really pleased about the number that were submitted before today's hearing. I'm real pleased with the progress we're making.

MR. SPECCHIO: That is all well and good, except I don't agree with anybody's numbers. I have got 42 filed.

THE COURT: I don't know how many total. I just know I ruled or set hearings.

MR. SPECCHIO: I have 42 that I filed. I received 24 responses.

MR. GAMMICK: So that is something for us to talk about and see where we're missing here.

MR. SPECCHIO: We'll have a meeting and go over a couple of things.

THE COURT: Okay. We know that we have handled 28 of them here. But we don't look at them until you submit

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them usually, unless it happens to pop out of the file while we're looking at the others. We really aren't looking for ones that haven't been submitted yet.

MR. GAMMICK: The only other thing I would request, Your Honor, is not a rush thing within the next few hours, but if we could get a transcript of today's proceedings within the next couple of days so we can make sure we get all the dates and times of the various hearings.

THE COURT: Okay. Appreciate it. Actually, now this is a 250 case, and so the court reporter is on notice with regard to the requirements. But I'll be glad to give you from the Clerk, we'll give you a copy of the court minutes that lay out exactly which hearings will be held, if that's of help to you.

MR. GAMMICK: Thank you, Your Honor.

THE COURT: I don't know if the court reporter can get it to you outside the statutory requirements or not.

MR. STANTON: That's fine. The Court minute order will suffice.

THE COURT: We'll make sure we'll work on that, and we'll have that to you before tomorrow.

Anything further?

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

MR. SPECCHIO: I have one more, Judge.

THE COURT: Mr. Specchio has one more,

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 12 of 26

Electronically Filed
Jan 14 2015 12:21 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX

Appeal from Order Denying Petition
for Writ of Habeas Corpus (Post-Conviction)

Second Judicial District Court, Washoe County

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 7th day of January, 2015. Electronic Service of the foregoing Appellant's Appendix shall be made in accordance with the Master Service List as follows:

Terrence P. McCarthy
Washoe County District Attorney
tmccarth@da.washoecounty.us

Felicia Darensbourg
An employee of the Federal Public Defender's Office

SVanisi2JDC03683

A No.

Q Were you there when it happened?

A No.

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

A Yes.

Q Where were you going and who was with you?

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

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

A The Mormon Church?

Q Yes.

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

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

A Yes.

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

A No.

Q Okay. If I were to represent to you the

SVanis12JDC03684

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

A Yes.

Q And where were you driving from, what address?

A Losa's house.

Q And that is on what street?

A Rock.

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

A Yes.

Q What happened when you were approaching the university campus?

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

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

A He looked paranoid.

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

A Little before seven.

Q Seven p.m.?

A Yes.

Svanisi2JDC03685

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

A No.

Q Did he have the hatchet with him?

A No.

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

A No.

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

A Days after.

Q Okay. And where did you see that?

A In Losa's apartment.

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

A In the cupboard underneath the sink.

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

A Yes.

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

A No.

Q You never saw that?

A No.

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

Svanisi2JDC03686

house touch the hatchet?

A The boys, her brothers.

Q Which ones did you see touch the hatchet?

A First Masi and then Bill.

Q And how old is Masi, and how old is Bill?

A I don't know their age.

Q Approximate.

A Masi is 12. Bill is probably 15 or 16.

Q Okay. When you were driving over to the Mormon Church, what did the defendant do when you got to the church?

A We all got out of the car.

Q Okay. And how long did you stay at the church?

A For about three, five minutes.

Q Okay. When you left, who went with you?

A It was just me and Laki.

Q So the defendant stayed there?

A Yes.

Q And when was the last time you saw the defendant after dropping him off at the church?

A That was the last time.

Q Okay. Did he ever tell you that he killed the police officer at the university?

A No.

SVanisi2JDC03687

Q Did he ever tell you his feelings about white people?

A No.

Q Did he ever tell you any more detail about why he wanted to kill a police officer?

A No.

Q And there has been testimony of a white bag, plastic bag. Did you ever see the defendant with that?

A No.

Q Do you know what was in that bag?

A The belt.

Q Okay. The police officer's belt?

A Yes.

Q Do you know who had that bag?

A No.

Q Do you know how it got to the North Rock address of Losa's?

A No.

MR. STANTON: I have no further questions of this witness at this time.

THE COURT: Mr. Fey, any questions for Ms. Endemann?

MR. FEY: Just briefly. I might want to get a time breakdown.

SVanis12JDC03688

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.

SVanisi2JDC03689

THE COURT: Thank you, Ms. Endemann. You are excused.

Is she free to go?

MR. STANTON: Yes.

MR. FEY: No objection.

THE COURT: Next witness.

MR. STANTON: The State would call Namoa Tupou.

THE COURT: Okay. Sir, if you will come up to my left, I will swear you in up here.

Please raise your right hand and be sworn.

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

THE COURT: Please be seated.

NAMOA TUPOU,

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

DIRECT EXAMINATION

BY MR. STANTON:

Q Sir, could you please state your complete name and spell your first and last name for the court reporter.

A Stephanois, S-t-e-p-h-a-n-o-i-s, Namoa

SVanisi2JDC03690

Tupou, T-u-p-o-u.

Q And your middle name, could you spell that.

A N-a-m-o-a.

Q And your last name again?

A T-u-p-o-u.

THE COURT: T-u what?

THE WITNESS: --p-o-u.

BY MR. STANTON:

Q Do have you a nickname?

A Namoa, N-a-m-o-a.

Q And is that the proper way to address you here today?

A Sure.

Q Namoa, I would like to direct your attention to the table to my left, the individual sitting in the middle of the table with the red pant suit on, do you recognize that person?

A Oh, yeah.

Q How do you know that person?

A I met him in church--

Q Okay.

A --Sunday. We played basketball.

Q Okay. By what name do you know him by?

A Pe.

Q Do you know any other names?

A Nope.
Q Ever heard the name George?
A No.
Q How about Siaosi Vanisi?
A Yeah.
Q When was the first time you met him?
A Sunday.
Q Do you remember what day that was?
A No, I don't.
Q Did you talk to the police about this case?
A Yes, I did, two detectives.
Q From that date, as the framework, how many days prior to that was the first time you met the defendant?
A Three.
Q And it was at church?
A Yeah.
Q What is the church that you met him at?
A The Church of Jesus Christ Latter Day Saints.
Q Do you know the address?
A On Buena Vista.
Q Where is that in relation to the University of Nevada?
A It's very close.

Svanis12JDC03692

Q What side of the campus is it on, do you know?

A It's toward the McQueen-- It's toward the post office.

Q So would it be fair to say that is the west side?

A Yeah, the west side.

Q And do you remember what time of day it was when you first met the defendant?

A It was in the morning session of church.

Q Playing basketball?

A No, I met him the first day at church.

Q Okay. And how did he first appear to you? How was he dressed, and how did he look?

A He looked good. He sounded good. He sounded very--

Q Does he look-- Did he look then like he looks today in court?

A No.

Q Describe how he looked when you first saw him.

A He was normal, I guess.

Q Okay. How was his hair? Was his hair any different when you saw him?

A It was combed, yeah.

Svanis12JDC03693

Q Did he have a wig on?
A No, he didn't.
Q Did you ultimately see him wear a wig?
A No, I didn't.
Q Okay. Did you see him with a hatchet?
A No, I didn't.
Q At no time?
A Nope.
Q Do you remember talking to the police about him-- seeing him with a hatchet?
A Yes, I do.
Q Okay. When did you--
Were you truthful with the police?
A Yes.
Q Okay. But the first time you saw him at the church he didn't have the hatchet with him?
A No.
Q And didn't have a wig?
A No, he didn't.
Q You were in a church setting?
A Yes, sir.
Q Anything unusual about when you first encountered him at church?
A No, sir.
Q When was the next time you saw the

Svanis12JDC03694

defendant?

A Monday morning when we played basketball.

Q Okay. And the same church as where you played basketball at?

A Yes, sir, in the gym.

Q How was he dressed at that time?

A Normal, I guess. He had a jacket on and some jeans.

Q Did he have the wig on?

A No, sir.

Q Okay. And did you see him with a hatchet?

A No, I didn't.

Q Was there anything unusual that happened when you played basketball with him that day?

A We just played basketball.

Q Did he talk to you about doing anything unusual or hurting anybody?

A No, sir.

Q Did there come a time where you were told by the defendant that he wanted to kill a police officer?

A No, sir.

Q Do you remember telling the police that?

A No, sir.

Q You never told the police that?

SVanisi2JDC03695

A I can't remember.
Q Pardon me?
A I can't remember.
Q Okay. Why don't you take a moment to think about it.
A I don't think I did.
Q Okay. Are you certain?
A Yeah.
Q Okay. Did you ever tell the police that you saw him with a hatchet?
A Can you repeat that again?
Q Did you ever tell the police that you saw the defendant with a hatchet?
A No, I didn't.
Q You never told the police that?
A No, sir.
Q You are certain?
A Yes.
Q Sir, did you ever see the defendant with a wig on?
A No, sir.
Q Did you ever tell the police you saw the defendant with a wig?
A Nope.
Q If you told the police that you saw the

SVanisi2JDC03696

defendant with a hatchet, that he told you that he wanted to kill a cop, and you saw him with a wig on, were you truthful to the police?

A I didn't tell the police that. I didn't say anything.

Q Okay. Do you remember the detectives' names that interviewed you?

A No, sir.

Q Detectives Dreher and Depczynski, does that ring a bell?

A Yeah, kind of.

Q Were you truthful to the police?

A Yes, I was.

Q So you never saw him with a hatchet, and he never told you that he wanted to kill a police officer?

A That is correct.

Q Did you see the defendant after or Tuesday?

A Yes, I did.

Q And did he look different on Tuesday than you had seen him before?

A He was very quiet. He didn't speak much. We were supposed to play basketball that morning at church.

Q Okay. And is that where you saw him?

Svanis i2JDC03697

A Yeah.

Q And had he changed his appearance from when you had seen him earlier?

A Not that I noticed-- Not at first. I didn't notice at first, but then he-- Yeah, he did.

Q How was it that he changed his appearance?

A He had a-- He cut his sideburns.

Q Okay. And anything else?

A That was all I noticed.

Q When was the last time you saw him?

A That Tuesday night.

Q Okay. And where was that at?

A At church.

Q And what was the reason that you were at church?

A Oh, I had gone there late. We were supposed to have practice for a luau, and I had gotten there late. And that was the last time-- I got there late. Everyone was about to leave, and that is when I saw him.

Q Okay. Did you talk to him?

A Yeah, I did.

Q Okay. What was the gist of your conversation with him at that time?

A Talked with him about sports.

SVanisi2JDC03698

Q That is it?

A That was about it.

Q How was he acting or behaving?

A Normal. It seemed normal to me.

Q How would you describe your relationship with the defendant?

A I don't know him that well.

Q Okay. And prior to that week or the three or four days before you had never seen him before?

A No, I didn't.

Q Have you ever seen him after Tuesday?

A No, sir.

MR. STANTON: No further questions.

THE COURT: Mr. Fey.

MR. FEY: Court's indulgence.

(Defense counsel conferred briefly.)

CROSS-EXAMINATION

BY MR. FEY:

Q You met the defendant on Sunday morning, is that correct, sir?

A Yes, sir.

Q And that was at church in the Mormon Church?

A Yes, sir.

Svanis i2JDC03699

Q Where is that located? Is that at the university?

A Yes.

Q The one just west of the university?

A Right.

Q On that occasion I think you indicated that is the first time you had met him?

A Yes, sir.

Q All right. You saw him again on--

A Monday morning.

Q --Monday morning when you and he decided to play basketball. And how long did that encounter last?

A I can't recall.

Q Okay. An hour? Less an hour?

A Probably an hour and a half, I guess.

Q And then he went away, and you went away as far as--

A Yes.

Q Then did you see him again late in the afternoon on Monday or the evening?

A No.

Q Okay. Then the next time you said you saw him he was quiet on Tuesday morning?

A Right. That is right.

Svanis12JDC03700

Q When you saw him on Tuesday morning, you played basketball again?

A We were supposed to play basketball, but we didn't have a ball.

Q I'm sorry?

A We didn't have a ball. We were supposed to play basketball.

Q So you just met at church on Tuesday morning?

A Yeah.

Q You didn't play.

Do you know how long you were at church that morning?

A Probably half an hour, 45 minutes.

Q Did you have any conversations with the defendant--

A No, I didn't.

Q --on Tuesday morning?

A Oh, no.

Q All right. Now, on Sunday you say you did not see him with an axe or hatchet?

A No, I did not.

Q No wig?

A No, sir.

Q How about Monday morning? Hatchet? Wig?

Svanis i2JDC03701

A No, sir.

Q Nothing?

Tuesday morning did he have a hatchet or a wig?

A No, sir.

Q What was he wearing on Tuesday when you saw him in the morning?

A Same clothes he wore Monday I guess.

Q Do you recall what those were?

A Jeans, jacket, shirt.

Q And can you recall what kind of shirt? Cloth? Leather?

A Leather, I think.

Q Leather jacket.

And did you notice anything unusual about his clothing on Monday morning?

A No, sir.

Q Anything unusual about his clothing on Tuesday morning?

A No, sir.

Q Okay. He didn't tell you--

Did he talk to you about hurting anybody, killing anybody--

A No, he didn't.

Q --on any of the occasions?

Then again the last time you saw him was on

Tuesday night, and then that was at the church?

A Right.

Q Is it fair to say that the sum total of your encounters with Mr. Vanisi are you saw him Sunday morning--

A Monday.

Q --Monday morning?

A Yeah.

Q Tuesday morning? Tuesday afternoon?

A Correct.

Q All of which took place at the church?

A Yes, sir.

MR. FEY: No further.

THE COURT: Mr. Stanton, anything else?

MR. STANTON: No.

THE COURT: Okay. Thank you. You are excused. Is he free to go?

MR. FEY: No objection.

MR. SPECCHIO: I just want to ask him one question, if I could--

THE COURT: Go ahead.

MR. SPECCHIO: --just so I understand.

///

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CROSS-EXAMINATION

Svanis i2JDC03703

BY MR. SPECCHIO:

Q You never heard him make the statement that he wanted to kill a cop or kill anybody?

A Not from his mouth personally, no, sir.

THE COURT: That is it?

MR. SPECCHIO: Thank you, Your Honor.

THE COURT: Okay. You are free to go.

Did you have another question, Mr. Stanton?

MR. STANTON: No, I didn't, Your Honor.

THE COURT: Okay. Bring in your next witness.

MR. STANTON: The State would call Shamari Roberts. I believe the bailiff is getting him.

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

Please raise your right hand and be sworn.

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

THE COURT: All right. Please be seated right there.

THE WITNESS: Okay.

SHAMARI ROBERTS,

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

Svanis i2JDC03704

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?

Svanis12JDC03705

A Yes.

Q Okay. Now, based upon that interview and the content of the questions that were asked to you by police officers, do you see that individual sitting in the red jump suit to my left?

A Yes.

Q Do you know him?

A Yes, I do.

Q How do you know him?

A I met him at my sister's wedding.

Q What sister?

A Mafi.

Q Does she have any nickname?

A That is all I know her by is by Mafi.

Q Mafi?

A I don't know how to spell it.

Q Do you know the last name?

A No, I don't.

Q Okay. And you attended the wedding?

A Yes.

Q When was that?

A The 4th of July weekend of '97.

Q All right. And where was that wedding?

A In San Mateo, California.

Q Okay. And did you have any extended

Svanis12JDC03706

contact with the defendant at that time?

A No, just an acquaintance meeting.

Q At the wedding?

A Yeah.

Q Nothing unusual or odd about that meeting?

A Unh-unh.

Q When was the next time that you saw the defendant after the wedding?

A On January 5th-- no, the 6th. Sorry.

Q Of what year?

A Of this year, 1998.

Q And where was that meeting at?

A It was at my niece's baby-sitter's house--

Q What is her name?

A --apartment. Losa Louis.

Q Where was that address?

A I think it's 1098 East Rock Boulevard, Apartment A.

Q Okay. Do you know the apartment number?

A Apartment A.

Q Now, you said East Rock. Could it be North Rock?

A North Rock. I'm sorry.

Q And what were you doing at that location?

A Picking my niece up for school.

Svanisi2JDC03707

Q What is your niece's name?
A Brittany Tillman.
Q And did you know Losa at that time?
A Yes.
Q How long had you known Losa?
A For about 13 years.
Q And how would you describe your relationship with Losa?
A We are close, like a sister/brother type thing.
Q Okay. So pretty close?
A Yeah.
Q And at the time that you saw the defendant at Losa's house on that day did he look different then than he does today?
A No, not at all.
Q Okay. He looks the same today as he did then?
A Yeah.
Q Did you see him at that time with a wig on?
A No, I didn't.
Q Did you ever see him with a wig?
A No, I didn't.
Q Did you see him with a hatchet?
A No, I didn't.

SVanisi2JDC03708

Q Did you ever see him with a hatchet?
A No.
Q Did he ever tell you that he wanted to hurt somebody?
A No.
Q Specifically, did he ever tell you that he wanted to kill a cop?
A No.
Q Did you hear that from other people?
A Yes, I heard it from other people.
Q But you never personally heard it?
A No.
Q Did there come a time, sir, where the defendant asked you to alter his appearance?
A Tuesday morning. That morning I went to pick up my niece. He had asked me to shave him.
Q Okay. Now, why would somebody ask you to shave them?
A Because I cut hair.
Q Okay. And Losa and her friends know that?
A Yes.
Q And you are at the Rock Street address?
A Yes.
Q And what did you do, and where did that happen, regarding the defendant and him asking you to

Svanis12JDC03709

shave him?

A I had went and dropped my niece off at school. Then I came back to the apartment, and then I shaved him.

Q And what did you do specifically regarding his beard?

A Trimmed it-- trimmed it, gave him a couple of sideburns, made it look kind of clean.

Q And did he make any statements to you about why he wanted to be shaved?

A No.

Q He didn't?

A No.

Q Did he appear or act differently to you during this time period on Tuesday morning?

A No.

Q Now, you stated that you never saw the defendant with a hatchet?

A Yes.

Q Okay. How many times did you see the defendant during this time period, this general time period?

A I guess I seen him all day. I was-- Off and on all that day.

Q What was the time that you arrived at

SVanis12JDC03710

Losa's house on Tuesday morning?

A I get off work about eight. I got there about 8:20, and then I got back there maybe 8:40.

Q And this is in the a.m.?

A Yes.

Q And when you arrived there, was the defendant there already?

A Yes.

Q How was he acting when you arrived Tuesday morning?

A Normally I guess.

Q Okay. Not any different than you had seen him before?

A Yeah, not any different.

Q Do you remember seeing the defendant-- what shoes he was wearing?

A No, I don't.

Q Mr. Roberts, State's Exhibit 3-A, I would like to direct your attention in that photograph to the jacket that is draped over that chair. Did you ever see the defendant wear that jacket?

A Not that I recall, no.

Q Okay. 3-B is a closeup of the jacket. Do you recall him wearing that?

A No, I don't remember.

Q Okay. In the middle of 3-B there is a set of cream colored leather gloves. Did you ever see the defendant wear those?

A No.

Q 3-C. I direct your attention in that photograph to the hatchet that is depicted there. Did you ever see that in the possession of the defendant?

A Not in the possession of, no.

Q Okay. Where was the first time that you saw that?

A It was sitting next to the microwave in the apartment.

Q Okay. How did it look to you when you saw it on the microwave?

A Just like it does in the picture.

Q Did you see anything on the hatchet?

A No, I didn't.

Q Okay. Did you look closely at it?

A No, it was just a glance.

Q Okay. And where was the microwave in the kitchen?

A On the counter.

Q Was it in plain view?

A It's pretty much in the corner view-- I mean if you were to walk into the apartment, you

SVanis12JDC03712

wouldn't be able to see it unless you are in the kitchen.

Q Was anybody else in the kitchen at that time?

A No.

Q Did you see anybody handle the hatchet?

A No, I didn't.

Q Did you touch it?

A No.

Q Do you have any idea how the hatchet got from the location on top of the microwave to where you see it in that photograph?

A No, I don't.

Q If I were to represent to you--

Well, let me ask you: Do you know where in that photograph of that hatchet that is in the apartment at Rock Boulevard?

A Absolutely, no. I wasn't paying attention to the surroundings.

Q Okay. If I were to represent to you that was inside the front door almost immediately adjacent to the front door, do you have any idea how the hatchet got from on top of the microwave to that location?

A No, I don't.

SVanis12JDC03713

Q Did you ever see anybody handle that?

A No.

Q Did you ask any questions about whose hatchet that was?

A No.

MR. STANTON: I have no further questions of Mr. Roberts.

THE COURT: Mr. Fey.

MR. SPECCHIO: I will. Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SPECCHIO:

Q Mr. Roberts, let me see if I understand this correctly. You met the defendant sometime ago in California?

A Correct.

Q Then you saw him again in January?

A Yes.

Q Which would have been on a Tuesday?

A Yes.

Q You didn't see him on Monday?

A No.

Q Okay. You didn't see him on Wednesday, so all we are talking about is Tuesday?

A Just Tuesday, yes.

Q Okay. And you would have been with him and other people from about 8:20 until how late?

A Maybe 8:30 that evening.

Q Okay. So you were with him for about 12 hours, give or take? You might have left, or he might have left?

A Yeah, correct.

Q Did he leave at any time during that time? Was all of your contact with Mr. Vanisi inside the apartment at 1098?

A Actually, no, it wasn't.

Q Okay. Where did you go from there?

A We had been to my home, we had been to the Mormon Church, and then back to the apartment.

Q Okay. And you think you left the apartment around 8:30 that night?

A No, no, no. I left-- We left the Mormon Church at 8:30-- Well, I did actually.

Q And you left the defendant at the Mormon Church?

A Yes.

Q And that is the last time you saw him?

A Yes.

Q Now, when you-- About what time of the day-- Let's see. You got there about 8:20 to pick up

Svanis i2JDC03715

your niece?

A Yes.

Q You took your niece to school and then came back?

A Yes.

Q What time was the shaving and the--

A Roughly, let's see, let me give you an estimate, maybe 9:00, 9:15.

Q Okay. So it was within the hour after you came back?

A Yes.

Q Now, the defendant before you--

Did you cut his hair? Did you trim his hair? Did you touch his hair at all or the just the face?

A No, just the face.

Q Did he have a beard that was like down to here?

A No.

Q How much did you trim off of his beard?

A Just touched it up maybe half an inch, I guess. I don't know.

Q So altering his appearance wouldn't really be a fair characterization? It would be more that you gave him a trim, isn't that correct?

A Yes.

SVanis12JDC03716

Q And the beard was a full beard before you started?

A Yes.

Q And then you cut the--

A Sideburns.

Q --long sideburns?

A Uh-huh.

Q Down to below the ear, Elvis Presley style?

A Yes.

MR. SPECCHIO: I have no further questions.

MR. STANTON: Nothing further.

THE COURT: Thank you, Mr. Roberts. You are excused.

Is he free to go?

MR. STANTON: Yes, Your Honor.

MR. SPECCHIO: No objection.

MR. FEY: Yes, Your Honor.

THE COURT: You may leave, Mr. Roberts.

MR. GAMMICK: Carl Smith.

THE COURT: Officer, if you will come over to my left, I will swear you in.

Please raise your right hand and be sworn.

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

THE COURT: Okay. Please be seated.

Svanis i2JDC03717

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?

Svanis12JDC03718

A He was my T.O. when I first came to work for the police department--

Q Your--

A --at UNR.

Q Your T--

A He was my training officer.

Q Okay. And were you familiar with the equipment that he would wear when he would go to work?

A Yes, sir, I am.

Q Let me call your attention specifically to Monday night, January 12th, Tuesday morning, January 13th. Did you work that night?

A I did.

Q What time did you come to work?

A 11:00, 23:00, on the 12th.

Q And was Sgt. Sullivan there?

A He was.

Q Did he work the same shift as you?

A He did.

Q So it was 11:00 when both of you started graveyard shift?

A Yes, sir.

Q Okay. How was he dressed that night?

A Basically the same as I was, in his uniform, his badge, his gun belt, his gun, pepper gas,

Svanis12JDC03719

nightstick, flashlight--

Q Let me show you--

A --and radio.

Q --what is Exhibit 4-B, and I ask if you recognize that equipment?

A I do. That is his flashlight, his radio-- He was also the officer that more or less took care of the radios for the department.

This is definitely his radio, because he-- He had a propensity for writing little tags and putting his name on his stuff. He would do that with his--

Q Let me show you 4-C, which appears to be the back--

First of all, does that appear to be the back of the same radio depicted in 4-B?

A It is.

Q And there is a name tag on that radio?

A Right.

Q What does that read?

A It should say George Sullivan. (Reading.) Yep.

Q Do you need some glasses, or do you have it?

A Yeah, I have it. (Reading.) It says "Sullivan" there.

Svanis12JDC03720

Q Do you know what type of weapon Sgt. Sullivan carried?

A I sure do.

Q Let me show you 6--

A A .45 caliber Glock, model 21.

Q Look at photograph number 6 there, does that appear to be at least the same type of weapon, if not his weapon?

A It does.

Q Let me take you to about 00:20, about 20 minutes after midnight. Sometime in that time frame, were you and Sgt. Sullivan involved in some type of law enforcement activity?

A Yes, sir, it was.

Q What was going on?

A He had made a traffic stop just before that at the corner of Center and 9th.

Q Is that right where the gate to the university is?

A Well, it's across the street and down. It's right across from the Center Street parking lot.

Q Okay.

A It was a Jeep. The Jeep had a blond headed girl in it.

Backing up a little bit, I had started to run

Svanis12JDC03721

radar when he had made the traffic stop. I heard he was making a traffic stop.

Shortly after that he put out the code. He was Code 4, but we always go down and check on each other anyway, if we know that--

Q If I can interrupt just a second, how many of you were on duty on the graveyard shit?

A He and I.

Q Just the two of you?

A Yes, sir.

Q So you look out for each other?

A Yes, sir.

Q So you assisted him on that stop?

A Right.

Q About how long did that stop take?

A About 10-- between 10 and 14 minutes.

Q And then where did Sgt. Sullivan go as soon as the stop was over?

A Well, as I went up, we made the stop, and we discussed the merits of the stop, the fact that the guy may have been in the area to pick up somebody that he may have dropped off, because we were having problems--

Q If I can just jump ahead. When you are done with the stop, where does Sgt. Sullivan go?

Svanis12JDC03722

A I went across into the Center Street parking lot. Sgt. Sullivan turned around in the street, and he immediately drove up to the university. And he disappeared over as he rounded the corner up by the kiosk.

Q Okay. The kiosk. Is that up by Morrill Hall?

A It is.

Q The gate and Morrill Hall?

A It's the information booth, yes, sir.

Q Is there a place where you or him used to park in order to do various things, like write reports or whatever?

A Well, it's well-lighted up there. You can pull up to the site-- With the additions up there it's more lighted, so we frequently go up there to fill out--

George would normally take an FI card or he would take his notebook, write the information down in the notebook. Then when he got to where he could and there was liberal time, he would take out one of our regulation FI cards and fill that FI card out, transfer the information off his notebook onto that FI card.

Q Field interview cards?

SVanisi2JDC03723

A Yes, sir.

Q Okay. Now, during the period of time of the stop when you were down in the area of 9th and Center did you see any individuals that appeared suspicious at that time?

A Yes, sir, I did.

Q And where did you see--

First of all, how many people?

A Well, as I was driving up, I noticed an individual--

Q Just one then?

A Yes.

Q Where did you see that person?

A I saw him between-- Well, there is a series of trees along 9th Street just before you get to Center Street. I saw him just before the second Street.

Q What drew your attention to him?

A As I went by, he turned and literally glared at me, like I guess you could-- in almost a squared off motion as if in a fight mode and glared at me.

And it's a look like you see sometimes from people that may have had an uncomfortable contact with police at one time or another, and it's something that

Svanis12JDC03724

we run into occasionally. And it is something you get sensitive to after awhile.

You know, it's not something you get paranoid about, but certainly you become aware of it and sensitive to it, so that in the event you have contact with that individual later that, you know, you are aware of what his thoughts might be.

Q Okay. Would you describe that person as he appeared that night, please.

A It was a brief, three-second look. The prismatic effect of the lighting, because it's light there but not real well-lighted, and there are some multi-colored lights, he looked dark skinned, not really African/American but an African/American type look.

He had dreadlocks and kind of like a scraggly beard. He was wearing a dark jacket that was bulky. It-- The sleeves were open like this at the bottom, and it came down to I would say about right here, and the coat was open.

Q Can you describe the build of the person.

A He was-- He had a portly build similar to the individual that was in the Jeep that we had stopped or that Sgt. Sullivan had stopped.

Q Now, during this three-second time did you

SVanisi2JDC03725

get a good look at this person's face?

A I did.

Q Do you see that person in court today?

A I do, but he doesn't have dreadlocks like he had that night, or it appeared to be dreadlocks.

Q Okay. Can you identify a person in court today as being the same person you saw in the street that night?

A I can.

Q Where is that person, and what is he wearing today?

A That person is seated to the left of the gentleman with the brown suit on. He's wearing an orange jump suit and handcuffs and bracelets.

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

THE COURT: All right, it will.

BY MR. GAMMICK:

Q How does he differ today from the way he appeared that night?

A He had what appeared to be dreadlocks and presented not really an African/American look-- Because of the prismatic effect it can make you look darker at night--more of a Ragu look of-- from an islander, like Kingston, Jamaica.

Svanis12JDC03726

Q When you say-- The type of hairstyle you were talking about, is that what is normally believed to be a Jamaican-type hairstyle?

A Right, with that Ragu lifestyle type music.

Q Reggae?

A Reggae. Did I say Ragu?

Q That is spaghetti sauce I believe.

A I'm sorry. I apologize.

Q Did you-- You say you went down, parked in the parking lot. Then did you leave that area?

A No, I did not. I specifically-- When I cleared from the-- we cleared from the traffic stop, I went over-- I was going to go up by the kiosk, because we were going to wait and see if this guy had dropped somebody off and was going to come back and pick that person up.

Q Okay.

A And that is specifically why Sgt. Sullivan and I were up there. I had gone to the parking lot, but Sgt. Sullivan just turned around and immediately went up there.

I saw him going up to where the kiosk was. I said, Well, there is no need for both of us to be up in exactly the same place. I will sit in the parking lot down here so that anybody who comes up and down

the street we can-- we will see.

Q Did you see Defendant Vanisi anymore that night?

A No, I did not.

Q About how much longer was it before you received another radio call?

A I stayed in the center parking lot. I got out of the car and was by the car-- actually had the car door open out of the car, and I stayed there for maybe 20 minutes after we cleared the stop.

Q Okay.

A Then I went back up to restart running radar, because initially whenever he first called out the stop that is what I done, I pulled over to run-- to set up and run radar.

Before that you have to check calibration, make sure, all that kinds of stuff. So I left there, drove down the street, which takes about seven or eight minutes, about a minute and a half.

I grabbed the radar gun off the table--I had left it on the briefing room table--grabbed that, went back, got back in the car, drove up behind the old gym and pulled up there.

It takes about 12 minutes to do that. I started to check the calibration on the radar. That only

Svanis i2JDC03728

takes about two minutes, and then I got dispatched to the information booth at 9th and Center on a Trouble Unknown call.

And as I started out, I knew Sgt. Sullivan was up there. I didn't know what was going on. But there had been no traffic over any of the radios or anything either-- over any of the radios whatsoever.

As I started down the roadway, I heard a voice come up on the police radio that I knew was not the voice of a police person. And it was-- You couldn't really understand fully what was being said on the radio, and the dispatcher cut him off and told me, Officer down, to respond with 136. So I did that.

As I came up onto the scene, there was a young white male that was bent over Sgt. Sullivan, who was laying on his back at the time. He had short dark hair, a freckled face guy, and I recognized him because I had had contact with him two years before on a graveyard shift on a couple of prank calls out of White Pine Hall.

So I kind of recognized him once he turned around so that I could see his face.

Q Have you seen that gentleman again today here in court?

A I have.

Svanis12JDC03729

Q Mr. Ciocca?

A Well, Drew is all I know him by. I don't know what his last name is. I just knew him by Drew, because I've had-- He usually stops and says, "Hi" to me or something every time he sees me around the university.

Q Did you see Sgt. Sullivan at the scene?

A Yes, I did.

Q Was there anything missing from him?

A Yes, there was. Once I got the young guy back-- Because I wasn't sure what was going on at that point. 136 arrived on the scene. He took custody of him, took him to the side.

The door was open on Sgt. Sullivan's car. There was no lights, but the car was running. I thought it was real odd, no overhead lights on or anything. Normally if we are going to go out on somebody or something like that, we would at least flip on the overheads or flip something like that. But no lights were on in the car, nothing.

So that left me with having to clear the car, bushes and everything else with people still starting to arrive and come onto the scene. So I did that.

And the first thing I looked at was to check to see where his weapon was, and I noticed that his gun

Svanis12JDC03730

belt was missing.

And I immediately got on the radio and informed the dispatch center to let all officers that were responding to the area know that whomever the suspect was now armed with a Glock .21 semi-- I think the words I used, if I recall correctly, was he was armed with a semi-automatic Glock .45 pistol. And I believe that was what the dispatch record would say.

Q When you looked inside of Sgt. Sullivan's car, did you see anything that appeared to have been paperwork he might have been working on?

A No.

Q Did you see a coffee cup or coffee or anything?

A I didn't notice. I wasn't looking for a coffee cup. I was looking for people or person, but I did do this-- Briefly I looked--

Because of the condition of Sgt. Sullivan at the time I didn't see any abnormal amount of blood or anything like that in the car, so I-- You know, just deductive reasoning from that would lead me to believe that whatever had happened to him had not happened inside the car.

MR. GAMMICK: Thank you, Officer Smith. That is all I have.

SVanisi2JDC03731

THE COURT: Mr. Fey or Mr. Specchio.

MR. SPECCHIO: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SPECCHIO:

Q Officer Smith, when Officer Sullivan had the vehicle stopped at 9th and Center--

A Yes, sir.

Q --you stopped? You were at that stop?

A I drove up to it after he had made the stop, yes, sir.

Q Okay. Did you get out of your vehicle?

A I certainly did.

Q Okay. And what type of a vehicle was it that was stopped?

A It was a Jeep.

Q And this is the one that had--

A --had Nevada license plates. I recall that.

Q --had a blond lady in it?

A There was a blond lady sitting in the passenger seat.

Q And the guy was driving?

A The guy was driving, and the guy was back at the back, up on the sidewalk-- There is actually

Svanis12JDC03732

an area kind like a dirt area, and he was just behind the Jeep on that dirt area in front of the church. There is a church there.

Q Okay. Were there three of you standing outside, you, Mr. Woods, the owner of the Jeep?

A Right.

Q And--

A Sgt. Sullivan.

Q And this was about what time?

A About-- I want to say 12:35, something like that.

Q This would be Tuesday morning, 12:35?

A Right. That would be the 13th, right.

Q Okay. Who would be the first one to leave that location, you, the Jeep, or Sgt. Sullivan?

A I'm sorry?

Q There is three of you there--

A Right.

Q --outside the car?

A Right.

Q Okay. With the blond lady inside the Jeep?

A Right.

Q Somebody leaves first?

A Mr. Woods left first.

Q The Jeep left first?

Svanis12JDC03733

A Right.
Q And which direction did he go?
A He went straight down the street.
Q Beyond 9th Street?
A Right.
Q 9th Street, west?
A That wasn't 9th Street. That was Center Street. He was on Center Street, headed in the eastbound direction, or that runs actually north/south. So he was actually headed in a southbound direction.
Q So he went south on Center?
A Right.
Q And your car was facing which direction?
A Same direction. Both our cars were facing in the same direction.
Q And Sgt. Sullivan's car as well?
A Right.
Q So all three cars were facing south on center?
A Southbound.
Q The Jeep leaves first?
A Right.
Q I assume he took the blond with him?
A Oh, yeah.

Svanis12JDC03734

Q Okay. So that left you and Sgt. Sullivan?

A Right.

Q Then you left?

A Both of us stood there, talked about it, the totality of the circumstances. The guy had said some things about looking for some addresses. He was looking for an address of a property that had came out for sale and had just been posted. And that was his explanation. And I believe he said he was looking for 481 Center Street.

Q He was looking for real estate at 12:30 at night?

A Right.

Q Okay. Now, this guy is a white guy, isn't he?

A He certainly is.

Q Big guy?

A Not real big, but he presented a portly appearance.

Q Okay. Similar to the size and shape of the person that you saw lurking in the--

A Not as tall.

Q Who was taller?

A Oh, I would say the guy that I saw walking down the street.

SVanis12JDC03735

Q The guy in the bushes is taller than the guy in the--

A Bushes? I never saw anybody in the bushes.

Q The guy you said you saw that was suspicious when you left, didn't you testify--

A I didn't say I saw anybody suspicious looking when I left. I said on arrival at the scene I saw this gentleman here walking down the street turn and glare at me.

Q Okay. And you got to look at him for three seconds you said?

A Right.

Q And in that time you know it was him?

A Absolutely. His face I would recognize anyplace, and it wasn't so much that as it was because of the glaring look that he gave me when I drove by. And it was--

True, it was three seconds, but I must admit because of the prismatic effect he certainly looked darker complected that night than he does now. He looks lighter.

Q Was he under a street light?

A Under a street light?

Q Yeah.

A No, there is no street light specifically

SVanisi2JDC03736

right there, but there is a light-- a restaurant, the Beer Barrel, and there are several lights in the little parking lot directly behind there. There is like a real estate office there, and there is several lights there.

So while it's not brilliant light--You would be underneath the street lamp--it is fairly well-lighted there.

Q Your description or ability to recognize the defendant as being the person on the street at that time, that is not clouded by the fact that you saw--

A Not clouded.

THE COURT: Let him finish his question.

THE WITNESS: Oh, I'm sorry.

BY MR. SPECCHIO:

Q It's not clouded by the fact that you saw his picture on television the day after?

A I didn't see his picture on television the day after.

Q You saw never saw Mr. Vanisi's picture on television?

A No, I did not. No, sir. That I can honestly say.

Q You haven't watched any news accounts--

Svanis12JDC03737

A There was--

THE COURT: Wait, wait. Let him finish.

Go ahead.

BY MR. SPECCHIO:

Q Have you watched any news accounts at all of the death of your friend and co-worker, Sgt. Sullivan?

A No, sir.

Q Nothing on television?

A Nothing.

Q And you gave a statement to the police, did you not?

A Right.

Q And who did you give the statement to?

A Officer Dreher.

Q Did you give another statement or just to Officer Dreher?

A Just to Officer Dreher.

Q Okay. Did he show you photographs at that time?

A Absolutely not.

Q Did you give a written statement of your account of this situation, what happened that night?

A He tape recorded my statement.

Q No. Did you give a separate written

SVanisi2JDC03738

statement?

A No, I did not.

Q You never prepared a written report?

A No, sir.

Q Did you have to prepare a written report in your duties as a UNR police officer?

A No, I did not.

Q And what was the defendant wearing that night when you saw him for that three seconds?

A The trousers were dark. They looked a little baggy. And the coat-- I couldn't tell if it was dark brown or black, but it was certainly a dark color.

Q Okay.

A And, like I said, the prismatic effect of artificial lighting at night can sometimes make dark brown look black and sometimes black look dark brown, but it was certainly dark in color.

And it appeared not only that-- It appeared to me to be probably leather or a leather-appearing type material.

Q Okay. Now, you and Mr. Woods and the blond lady and Sgt. Sullivan are on Center Street?

A Right.

Q You see Mr. Vanisi on which street?

SVanis12JDC03739

A He was on 9th Street as I was approaching Center, driving by.

Q And which direction was he going, east or west?

A Oh he was headed eastbound.

Q He was going east towards--

A Towards Center Street.

Q Towards Center Street?

A Right.

Q Okay. How much time were you at that stop with Mr. Woods?

A I think I testified already to that.

Q Well, try to refresh my recollection.

A Somewhere between 12, 14 minutes-- 10 to 14 minutes I would say.

Q Did you see the defendant again?

A No, I did not. I wasn't looking in the direction that I had saw him, no. He didn't walk by, or I didn't notice him walk by.

Q But he could have walked by? You were paying attention to the Woods' car, weren't you?

A I was paying attention to Mr. Woods, because I did not like the way he was moving around.

Q So let me see. Now, you have come in contact with two people in 12 to 15 minutes, one is

Svanis12JDC03740

the defendant, who has got a glare, and Mr. Woods, who you didn't like the way he moved?

A Well, there are certain things that people do when you are talking to them.

Q Did you run into anybody else in those 12 to 15 minutes?

A No, other than Sgt. Sullivan--

Q Okay.

A --who was talking to Mr. Woods at the time.

Q Okay. Did you have any conversation with Mr. Woods at all?

A Other than to tell him that the address that he was looking for, 481, didn't appear to be really a good address there.

Q And that seemed a little funny to you, didn't it?

A Well, actually he gave three different addresses. He gave 481, 484, 482. Then he went to his car briefly and got another address and came back, and it happened to be the address of the church. And then he said, Well, this is the address actually I'm looking for. I made a mistake.

I said, Good, that is a church there, and, There is no sign For Sale in front of it, but that is not to say it couldn't be for sale. Perhaps you should go

around the back and check. Maybe the sign might be back there.

Q Let's get back to Mr. Woods. Mr. Woods is you said bigger-- or you said one of these people were bigger, either Mr. Vanisi or Mr. Woods. Who was the larger of the two?

A I would say Mr. Vanisi is.

Q Mr. Vanisi would be taller or wider?

A Taller, not a whole lot wider. Both of them presented somewhat of a portly appearance.

Q Well, we like to call ourselves full figured.

A Well, full figured. He presented a full figured appearance. If you want to use that instead of portly, that is fine.

Q Mr. Woods would be portly or full figured like us as well?

A No, not quite as much.

Q He's thinner and not as tall?

A Right.

MR. SPECCHIO: May I have the Court's indulgence?

THE COURT: Certainly.

MR. SPECCHIO: (Reading.)

///

SVanisi2JDC03742

BY MR. SPECCHIO:

Q Did you talk to the blond?

A Did I talk to the blond?

Q Yeah.

A No.

Q I guess I will put this as--

A She was sitting in the passenger seat in the Jeep.

Q Do you know if the blond was Mrs. Woods?

A I have no idea who she was.

Q When you fill out that little-- the FI card--

A Yes, sir.

Q For instance, that night did you do one and Sullivan do one?

A No.

Q Whoever makes the stop does the card, is that how it works?

A If he obtains the information from the subject, and on the back of it we put down the circumstances.

Q But what I'm trying to get at is if you stop me tonight--

A Yes, sir.

Q --and another officer comes up behind me at

SVanisi2JDC03743

1:30, because I look for real estate at that time up there--

A Right.

Q --are you both going to fill out those cards, or just you, because you stopped me first?

A It would be just me filling out the card. There is no need to duplicate the FI card from the files.

Q You told me about the trousers. I think I interrupted you after that. This person-- You saw the defendant. He was wearing dark trousers, you didn't know if he they were black or brown because of the prism effect of the glass.

What else-- He had something else on other than the trousers?

A He had a shirt.

Q Did he-- And a coat?

A And a coat, right.

Q Do you know what color the shirt was?

A I'm not real sure.

Q Do you know what color the coat was?

A Like I said, it was either dark brown and black, but I couldn't be real sure.

Q But it was a longer-- It wasn't a waist jacket, it was below the waist?

Vanisi2JDC03744

A No, it was below the waist. It came down to right here, as I recall.

Q Do you know what kind of material it was made out of?

A It appeared to be leather. Three seconds driving by that fast without a closer examination there would be no way I could positively identify a material.

Q Okay. After you saw the defendant then you went to the Woods' stop?

A Right.

Q And you really lost contact with Mr. Vanisi at that time?

A Right.

Q Do you know if he got in the car and drove away?

A I have no idea.

MR. SPECCHIO: I have no further questions.

THE COURT: Mr. Gammick.

MR. GAMMICK: I have no further questions.

THE COURT: Thank you, officer. You may be excused.

Is he free to go?

MR. GAMMICK: Yes, Your Honor.

MR. FEY: Yes.

Svanis i2JDC03745

THE COURT: You may be excused.

All right. Call your next witness.

MR. GAMMICK: Your Honor, I have-- Dr. Clark will be in in just a moment.

This is a demonstrative look-alike hatchet that was also purchased from Wal-Mart's. This will be marked as 11.

THE COURT: I have 1 through 12 as pictures. So would this be 13.

MR. GAMMICK: No. That is why I went specifically through the exhibits, so we didn't do that. I can remark it as 13. That would be fine. But there is no photograph 11.

THE COURT: I thought Mr. Stanton referred to pictures 1 through 12.

MR. GAMMICK: But after that I went through every single exhibit, so that we made sure, because that was not entirely correct. I'm keeping track of the exhibits now.

THE COURT: So we have 1 through 10 and then 12?

MR. GAMMICK: No. What we have is number 1 is a booking photo of the defendant; 2 is a photo of the defendant, which we haven't used yet; numbers 3-A, 3-B, 3-C are the photos of the jacket, the jacket, and gloves and the photo of the hatchet.

Svanis12JDC03746

THE COURT: Okay.

MR. GAMMICK: 4-A, 4-B, 4-C are photos of a Sam Brown belt or, excuse me, the bag, the Sam Brown belt, then the back of the radio; number 5 is the DNA results, two pages.

THE COURT: All right. I have that.

MR. GAMMICK: Number 6 is a photo of the victim's gun, Sgt. Sullivan's gun; number 7 is a photo of the Hills' car; number 8 is a photo of the scene; number 9 we did not use.

That will be Dr. Clark with whatever photos she has on both 9 and 10. And then number 11 is the hatchet I just presented to you. And number 12 is a photo of the apartment in Salt Lake City with the photographs on the wall.

THE COURT: Okay. So I've got it now. Okay.

All right. Dr. Clark, if you will please raise your right hand, I will swear you in.

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

THE COURT: Please be seated.

MR. STANTON: Can I have the Court's indulgence for just one moment.

THE COURT: All right.

MR. GAMMICK: Your Honor, may I also ask if the

SVanisi2JDC03747

Court would be willing to take judicial notice of the education and qualifications of Dr. Clark as a forensic pathologist for purposes of the preliminary hearing?

MR. SPECCHIO: Yeah, for this hearing only, Your Honor.

THE COURT: All right. Then you will be doing the cross-examination, Mr. Specchio?

MR. SPECCHIO: Possibly, Your Honor. We hate to make decisions that far in advance.

THE COURT: I understand. It's difficult.

Then what we will do is we will go ahead, and I guess we have stipulated then that Dr. Clark is an expert as to what she is about to testify to.

MR. SPECCHIO: For the purpose of this hearing only, Your Honor.

THE COURT: For the purpose of this hearing. And if I am understanding right, Exhibit 11 is admitted for this hearing only?

MR. SPECCHIO: Yeah, as long as we understand it doesn't have any relevance to this case other than the fact it's going to be used by the doctor in her testimony for demonstrative purposes only. That is fine.

THE COURT: Okay. Is that it?

SVanisi2JDC03748

MR. GAMMICK: It is. And I would just make sure we are clear that it is the same type, the same kind, same make, same size in all ways as the hatchet that is depicted in Exhibit 3-C.

THE COURT: Okay.

MR. GAMMICK: 3-C is the actual hatchet we have in evidence. This is a look-alike bought from the same store, same brand, everything for purposes of Dr. Clark's testimony.

MR. SPECCHIO: It looks like a duck, it walks like a duck, kind of thing.

MR. GAMMICK: This one quacks, yes.

THE COURT: Admitted as 11.

(State's Exhibit 11 was admitted.)

MR. GAMMICK: Thank you.

ELLEN CLARK, M.D.,

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

DIRECT EXAMINATION

BY MR. GAMMICK:

Q Now, Dr. Clark, do you have some photographs that you brought with you for today's

Svanis i2JDC03749

testimony?

A Yes.

Q May I see those, please.

A (Handing.)

MR. GAMMICK: (Handing.)

MR. FEY: (Looking.)

MR. GAMMICK: If the Court will bear with me for just a moment.

THE COURT: All right.

MR. GAMMICK: (Writing.)

MR. SPECCHIO: Your Honor, again we are prepared to stipulate to those things on two conditions: Number one, we get a copy; and, number 2, they don't demonstrate it for the cameras and audience.

THE COURT: All right.

MR. GAMMICK: Your Honor, for the purpose of the record I would indicate that we have six photographs that Dr. Clark has brought with her. They have been marked 10-A through 10-F.

THE COURT: Okay. Those will be admitted then 10-A through 10-F.

(State's Exhibit 10-A through 10-F were admitted.)

BY MR. GAMMICK:

Q Dr. Clark, I call your attention to January

SVanisi2JDC03750

13th, 1998. At that time did you perform an autopsy on Sgt. George Sullivan from the University of Nevada-Reno Police Department?

A Yes.

Q And were you able from that autopsy to determine a cause of death?

A Yes.

Q And what is that?

A Sgt. Sullivan died of multiple cranial cerebral injuries due to blunt force impact trauma.

Q And at the time of the autopsy was there some discussion with the investigating officers as to any types of possible weapons that could have caused the injuries that you found?

A Yes.

Q Subsequent to that autopsy, either the next day or two days later, were you shown that hatchet or a hatchet that looks like that?

A Yes.

Q Same size, make, everything else?

A Yes.

Q And were you able to make comparisons between the hatchet you were shown and the injuries to Sgt. Sullivan, either to his person or through the use of photographs that were taken at the autopsy?

SVanisi2JDC03751

A Yes.

Q And were you able to reach a conclusion as to whether or not that hatchet could have been involved in causing some or all of those injuries?

A Yes.

Q And would you please state to the Court what your conclusions were and your opinion and how you arrived at them.

A It is my opinion that Sgt. Sullivan had numerous pattern injuries, which correspond to the various surfaces of the hatchet, and the majority of which can be matched to surfaces of impact or cutting contained on the axe.

Q And would you please demonstrate-- You brought some photographs with you of the autopsy, and you have number 11, which is a look-alike hatchet for the purposes of this hearing.

Could you please demonstrate to Judge Dannan at least a couple of the injuries and how you came to the conclusion that they were caused by an implement identical to that one.

THE COURT: Are you going to use the photograph?

THE WITNESS: Yes.

THE COURT: Just put it right there.

THE WITNESS: May I take this out?

SVanisi2JDC03752

THE COURT: Yes.

THE WITNESS: Would you like me to go through the State's exhibits, or how shall I proceed?

MR. GAMMICK: However you would like to present it to Judge Dannan. I would ask that if Mr. Fey wants to come up and observe it up here, I would ask to keep it between you, and we can watch what is going on, whatever you are comfortable with.

THE WITNESS: State's Exhibit 10-A shows an autopsy photograph of Sgt. Sullivan's upper torso--the upper torso and the face. This photograph shows a minimum of 10 separate impact fissures, injuries to the face.

Those are largely aggravated over the forehead and central front of the face but continue well into the mouth and onto the chin.

The face was massively fractured. There were capping fractures, which literally lifted the front of the skull from the rest of the facial bones.

The nose was crushed. All of the jaw bones were injured. The injuries on the front of the face primarily have a wedge shape, and they have a combination of sharp force margin characteristics as well as blunt trauma characteristics.

In particular I would point out that--

SVanisi2JDC03753

May I put this down?

THE COURT: Sure.

THE WITNESS: --that the injury on the center of the forehead has a specific wedge shape, which corresponds to a combination of cutting with the blade of the axe and/or cutting in combination with the glancing blow, which continues onto the under surface of the wedge shape aspect of the weapon.

Injuries which were on the-- that wound and those characteristics are better shown in State's Exhibit 10-B.

There is blunt force trauma implicated by the marginal abrasions, but there is also sharp force trauma indicated not only by the surface appearance of the wound but by fractures, which were subjacent to that and penetrated into the skull.

State's Exhibit 10-C shows detailed photographs of some relatively patterned injuries on the right facial cheek.

And you will notice that there is a straight edge, which begins with a curved edge, and the same pattern is reproduced here. These injuries correlate with the curved portion of the under surface of the axe.

And again there are sharp characteristics. The

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edge is very sharp along this portion of the weapon, and there are also blunt characteristics with tearing at the edges, which tend to be quite sharp.

State's Exhibit 10-D depicts injuries which were located on the left side of Sgt. Sullivan's scalp and head. These injuries are patterned on his scalp surface, also have patterning in the form of depressed and complex fractures on the skull beneath them.

These patterns are different than those with the curved margins and the wedge shaped margins in that they have very squared, rectangular corners, quite discrete margins and dimensions. And even though both of them have squared features and straight features some of the squares are relatively narrow, and there is a relatively broad--

These injuries correspond in dimension to the flat edge here of the weapon and the curved edge. If the weapon is impacted, for example, in this fashion here, the injury is created. If the weapon is turned somewhat or even impacted with the back, the injury is created.

State's Exhibit 10-E shows still another pattern configuration of a laceration on Sgt. Sullivan's scalp, this time toward the top of the scalp in the midline. This, too, was associated with the complex

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cranial fractures beneath them.

This has patterning, which is somewhat similar to that on the face, although the dimensions of the wound are much smaller. This injury corresponds in size and configuration to impact primarily against the curved edge of where the weapon would begin. Although this is an enlargement I have measured the weapon against the dimensions here.

State's Exhibit 10-F shows a less patterned injury. It shows Sgt. Sullivan's left hand in what can be construed as defensive wounds.

There was near detachment through a combination blunt sharp force injury of the tip of the left long finger as well as the index finger towards the knuckle or back of the hand. It was very extensive hemorrhage, and there are was crushing injury of many of the bones making up the fingers in that hand.

In addition to a minimum-- I'm through with that portion.

In addition to a minimum of ten separate impacts to the forehead and/or face there are seven-- conservatively seven separate impacts to the scalp or head within the hairline.

There are two impact portions on the body on the tops of the shoulders, upper back, and there is a very

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extensive injury to the left hand, which conservatively accounts for at least one additional impact for a total of a minimum of 20 separate impacts.

BY MR. GAMMICK:

Q Now, Dr. Clark, if statements were made that when Sgt. Sullivan or after Sgt. Sullivan lost consciousness there was some stomping of the head or face area, did you find any injuries that were consistent with that?

A There are injuries that indicate that the head and face were extensively crushed, primarily in a front-to-back direction, probably more distinctively from the left back of the head toward the right front of the face.

There are some relatively broad and non patterned abrasions, in particular on the front of the jaw and the right side of the chin as well as on the top of the back of the scalp.

These injuries, although not specific or as patterned as the others I've shown you, are consistent with a crushing impact, stomping maybe as an example of that.

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

THE COURT: All right. Mr. Fey or Mr. Specchio.

MR. FEY: No questions.

MR. SPECCHIO: I don't have any either.

THE COURT: Thank you, doctor. You are excused.

I'm going to take a break for my court reporter. It's to 20 to 3. How about if we reconvene at-- Let's make it five til 3.

(A break was taken.)

THE COURT: Please be seated.

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

Mr. Gammick or Mr. Stanton, call your next witness.

MR. GAMMICK: I call Detective Jim Duncan.

THE COURT: All right. Detective, if you will come up to my left, I will swear you in.

Please raise your right hand to be sworn.

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

THE COURT: Please be seated.

JIM DUNCAN,

produced as a witness herein, having been first duly sworn, was examined 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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up going to Salt Lake City, Utah?

A Yes, sir, I did.

Q That was after Mr. Vanisi had been taken into custody?

A Yes, sir.

Q And did you-- While you were in Salt Lake City did you make a comparison of a weapon to include a serial number with a Detective Keith Stephens from Salt Lake City?

A Yes, I did.

Q And the serial number that you gave him, who did that weapon belong to?

A Sgt. George Sullivan.

Q And that was a match with the weapon that was recovered in Salt Lake City?

A Yes, sir, it was.

MR. GAMMICK: That is all I have at this time, Your Honor.

THE COURT: Okay. Mr. Fey.

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

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

Call your next witness.

And the detective is free to go?

MR. FEY: No objection.

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MR. GAMMICK: Yes.

THE COURT: All right. Officer, if you would come up to my left, I will swear you in.

MR. GAMMICK: Your Honor, if I may, my understanding in talking to Mr. Specchio is that he is willing to stipulate that on January 26th, 1998 Fernando Moreira, M-o-r-e-i-r-a, of Washoe County Search and Rescue found a black colored wig and a hat in the Orr Ditch after the water had been lowered behind the address of 1215 Beach Street in Reno, which is up close to the university campus.

THE COURT: All right. Mr. Specchio.

MR. SPECCHIO: Your Honor, for the purpose of this hearing that is correct, Your Honor.

THE COURT: All right. Thank you.

Officer, please raise your right hand and be sworn.

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

THE COURT: Please be seated.

LOUIS J. LEPERA,

produced as a witness herein, having been first duly sworn, was examined 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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Q And at that time did you see any other UNR PD Officers?

A Yes, I did.

Q Who was that?

A It was Sgt. George Sullivan and Officer Carl Smith.

Q What type of activity did they appear to be involved in at that time?

A When I saw Sgt. Sullivan, he was talking to Officer Smith.

Q Were you on duty then?

A No, sir.

Q And you were just in the area?

A Yes, I was driving home.

Q Okay. Did you see anyone else in that immediate area at that time?

A Yes, sir.

Q Would you please describe--

How many other people did you see?

A I remember a gentleman that was standing behind a tree, and then there was another vehicle traveling east.

Q Okay. Let's talk about the gentleman who was standing behind the tree. Would you please describe that person.

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A He was probably around five-ten, five-eleven, maybe six foot, real stocky build. He had long black hair, but it was really scarly-- scraggly looking. He had a mustache and beard. He was wearing a hat and a very dark, large jacket it looked like.

Q And did you get a good look at that person?

A Yes.

Q And do you see that person in court today?

A Yes, I do.

Q Would you please indicate where that person is at and what he is wearing today.

A He's over at the table right over there, and he's wearing an orange jump suit-- red jump suit.

Q When you saw the two officers talking to each other and you saw the individual who is--

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

THE COURT: It will.

BY MR. GAMMICK:

Q --and you saw Defendant Vanisi there, what did you do?

A I honked my horn, because I was saying good-bye to two officers-- saying good night to them.

And as I was going through, the gentleman behind the tree looked straight at me, and I looked straight