

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

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Volume 1 of 9

APPELLANT'S SUPPLEMENTAL APPENDIX

Appeal from Order Denying Petition
for Writ of Habeas Corpus (Post-Conviction)

Second Judicial District Court, Washoe County

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Terrence P. McCarthy
Washoe County District Attorney
tmccarth@da.washoecounty.us

Felicia Darensbourg
An employee of the Federal Public Defender's Office

1 officer?

2 A Tuesday morning? Yes.

3 Q What did he tell you? And could you please
4 tell the ladies and gentlemen of the jury as precise as you
5 can and using the words to the best of your memory, the
6 exact words, what Mr. Vanisi said about that?

7 A As in what do you mean? How did he say it?

8 Q Yes, ma'am.

9 A He just said yes.

10 Q He said yes to what?

11 A Because I asked him.

12 Q What did you ask him?

13 A I asked him, was I -- well, there's a policeman
14 killed. I was like, Did you do it? He was like, Yeah.
15 Sarcastically. So I didn't -- I was like, Did you? He's
16 like -- Come on, Renee, you know me better. I was like, Did
17 you do it? He was like, Yes.

18 MR. STANTON: Thank you. Nothing further.

19 THE COURT: Cross-examination?

20 MR. GREGORY: Court's indulgence, please.

21 (There was a pause in the proceedings while
22 Counsel and the defendant conferred.)

23 MR. GREGORY: Your Honor, we have no questions
24 at this time. However, we ask the Court to hold this
25 witness to her subpoena and also ask that the witness remain

1 outside in the hallway until we take our break.

2 THE COURT: Okay. Ma'am, they are not going to
3 ask you any questions at this time. They want an
4 opportunity to talk to you.

5 THE WITNESS: Okay.

6 THE COURT: I am going to order that you await
7 their speaking with you.

8 THE WITNESS: Okay, that's fine.

9 THE COURT: You will go with your victim,
10 witness unit person, your witness unit person, and they will
11 wait with you until counsel can come out in the hall and
12 visit with you. Thank you.

13 You are held to your subpoena. You may have to
14 come back and testify. You will have to stay until then.

15 THE WITNESS: That's fine.

16 (The witness stepped down and left the
17 courtroom.)

18 THE COURT: Counsel, is this a good time to
19 take our afternoon recess?

20 MR. STANTON: It is, Your Honor.

21 THE COURT: Ladies and gentlemen of the jury, I
22 am going to let you take your afternoon recess. Remember
23 you'll stay together and go on out into the jury room. But
24 remember the admonition that you've received at all the
25 breaks.

1 It is your duty not to discuss among yourselves
2 or anyone else any matter having to do with this case. It
3 is your further duty not to form or express any opinion
4 regarding the guilt or innocence of the defendant until the
5 case has been finally submitted to you for decision.

6 You are not to read, listen to or look at any
7 news media accounts regarding this case. Should any person
8 attempt to influence you in any manner regarding this case,
9 you are to notify the bailiff outside your fellow jurors'
10 presence, who in turn will notify me immediately.

11 Court is in recess. Counsel, see you back in
12 15 minutes.

13 (A recess was taken at 3:34 p.m.)
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RENO, NEVADA, THURSDAY, SEPTEMBER 23, 1999, 3:58 P.M.

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(Whereupon, the following proceedings were held in open court, in the presence of the jury.)

THE COURT: Thank you, please be seated.

Counsel stipulate to the presence of the jury?

MR. STANTON: State will so stipulate.

MR. GREGORY: Defense will so stipulate..

THE COURT: You may call your next witness.

MR. STANTON: May counsel approach regarding an administrative matter?

(There was a discussion at the bench off the record.)

MR. STANTON: Thank you, Your Honor. The next witness for the State is Maria Louis.

(One witness sworn.)

THE CLERK: Thank you. Please be seated at the witness stand.

MARIA LOUIS

called as a witness on behalf of the Plaintiff,

having been first duly sworn,

was examined and testified as follows:

/ / /

/ / /

DIRECT EXAMINATION

BY MR. STANTON:

Q Good afternoon.

A Good afternoon.

Q Could you please state your complete name and spell your first and last name for the court reporter?

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

Q Could you spell your middle name?

A L-o-s-a.

Q Is that how your friends call you, by the name of Losa?

A Yes.

Q Ma'am, I would like to direct your attention back to January of 1998. Where did you live at that time?

A 1098 North Rock Boulevard.

Q Who lived with you at that address?

A My brothers and sister.

Q And what are your brothers' and sister's name?

A Corrina Louis, William Louis, and Brandon Louis.

Q How old are your two brothers?

A 16 and 13.

Q And did you live in an apartment number there?

A Apartment A.

Q Do you know the defendant, Siaosi Vanisi?

1 A Yes, I do.

2 Q Do you see him in court?

3 A Yes, I do.

4 Q Could you please describe what he's wearing and
5 where he is in the courtroom?

6 A Navy blue suit, yellow tie, and he's on your
7 left, my right.

8 MR. STANTON: May the record reflect the
9 identification of the defendant?

10 THE COURT: Record may so reflect.

11 BY MR. STANTON:

12 Q Are you related to Mr. Vanisi?

13 A Yes, I am.

14 Q How are you related to him?

15 A He is my uncle.

16 Q What other names do you know Mr. Vanisi by?

17 A Pe.

18 Q Any others?

19 A Siasosi.

20 Q And how many times prior to January of 1998,
21 different occasions had you seen Mr. Vanisi?

22 A Couple of days.

23 Q And when he came to Reno in 1998, was that a
24 scheduled visit or surprise visit?

25 A Surprise visit to me.

1 Q Okay. And when was the first time -- where
2 were you and what were you doing when you first saw
3 Mr. Vanisi in January of 1998?

4 A I was at a dance, the Tongan society, for the
5 youths of Reno, Tongans.

6 Q I want to put it in context with Sergeant
7 Sullivan's murder. Sergeant Sullivan was murdered
8 approximately 15 minutes after midnight January 13, Monday
9 night or Tuesday morning, depending on your perspective.
10 When was the dance in relation to that?

11 A It was on a Saturday, the 10th.

12 Q Okay. So the Saturday just before the murder?

13 A Yes.

14 Q What was the defendant wearing when you saw him
15 for the first time at that dance?

16 A Some baggie pants, a leather jacket, he had a
17 wig and a beanie.

18 Q Okay. Did you ever see Mr. Vanisi with a
19 hatchet?

20 A Yes.

21 Q Can you describe that hatchet?

22 A A little small ax.

23 Q How long was it? With your hands, if you
24 would.

25 A That long (indicating).

1 MR. STANTON: May the record reflect the
2 witness approximated 12 to 18 inches?

3 THE COURT: Record will so reflect.

4 BY MR. STANTON:

5 Q What color was that hatchet?

6 A Silver with a black rubber handle.

7 Q Where were you when you first saw it?

8 A Starlite Bowling.

9 Q Showing you Exhibit 21, take a close look at
10 that, Ms. Louis.

11 A Yeah, this is it.

12 Q Okay. Where did Mr. Vanisi have that hatchet
13 on his body when you first saw it?

14 A In his waist, had it like in his waist by his
15 stomach.

16 Q Was it concealed or was it out in the open?

17 A He covered it with his jacket, concealed.

18 Q Did you ask him what it was for?

19 A No. I just asked him why he had it.

20 Q What did he say?

21 A He didn't answer me.

22 Q He didn't answer?

23 A I don't think he heard me.

24 Q Did you ever hear the defendant make any
25 comments about police officers?

1 A Yes.

2 Q What did he say?

3 A He wanted to kill a cop.

4 Q Did he tell you why he wanted to kill a cop?

5 A No. Yes, he wanted to kill them because they
6 took so much -- well, he wanted to kill a white cop because
7 they took so much from the Polynesians.

8 Q Did he say what he wanted to take from the
9 white police officer once he killed them?

10 A Their radio, the gun.

11 Q Did he ever say anything about taking money
12 from them?

13 A No.

14 Q How many times do you recall Mr. Vanisi making
15 those statements prior to Sergeant Sullivan's murder?

16 A I only heard him, I would say more than three
17 times.

18 Q Were other people present when he made those
19 statements?

20 A Yes.

21 Q Did you ever hear Mr. Vanisi make any of those
22 statements after the murder of Sergeant George Sullivan 15
23 minutes after midnight on January 13?

24 A No.

25 Q On Tuesday morning, approximately 1:30 a.m., do

1 you remember being at your Rock Boulevard address?

2 A Yes.

3 Q Who else was there at that time of the morning
4 on Tuesday, the 13th of January?

5 A My sister, Teki and Renee and my brothers.

6 Q What were you doing at that time?

7 A I was on the computer.

8 Q In your house?

9 A Yes.

10 Q And do you remember anybody coming into your
11 apartment about that time?

12 A Pe did.

13 Q Pe?

14 A Yes.

15 Q Is that Mr. Vanisi?

16 A Yes.

17 Q Are you certain about the time?

18 A Yes.

19 Q How are you certain?

20 A Because he walked in. I just glanced at a tiny
21 clock on the side of the computer.

22 Q What time was it?

23 A I say between 1:00 and 1:15.

24 Q And how was he dressed when he walked through
25 your door?

1 A He just had the jacket, the gloves. He didn't
2 have the wig on, and his baggie pants.

3 Q You said he had a pair of gloves on?

4 A Uh-huh.

5 Q I show you Exhibit 25. I ask you to take a
6 close look at that. Do they look familiar?

7 A Yes.

8 Q How do they look familiar to you, ma'am?

9 A Because those were the gloves that he wore.

10 Q Was he wearing a wig?

11 A No.

12 Q Had you seen him wear a wig before that
13 morning?

14 A Tuesday morning? Monday morning?

15 Q Before he walked in the apartment, had you ever
16 seen the defendant wear a wig?

17 A No.

18 Q You said you saw him with a wig at the dance?

19 A Yes.

20 Q How many times, when you first saw him at the
21 dance until the time he walked into the apartment, did you
22 see Mr. Vanisi?

23 A I just saw him at the dance and the apartment
24 and that was it, when he came over that night.

25 Q Was he carrying anything with him?

1 A No.

2 Q When he walked into your apartment at 1:30?

3 A Oh, yes, he was.

4 Q What was he carrying?

5 A A little white plastic bag, a grocery bag.

6 Q I show you Exhibit 26. Do you see that

7 photograph?

8 A Yes.

9 Q Where is Exhibit 26, that photograph, taken?

10 A In my kitchen.

11 Q And in the center of that photograph, a cabinet

12 door is open. Do you see what is inside of the cabinet on

13 the top shelf?

14 A Yes.

15 Q Does that look like what Mr. Vanisi carried in

16 with him?

17 A No.

18 Q It doesn't?

19 A No, it doesn't.

20 Q What is different between what is in the center

21 of that photograph and what he carried in?

22 A When he came in the first time, the bag looked

23 empty. It wasn't full like that.

24 Q Okay. So, when you found it, it was full?

25 A Uh-huh, yes.

1 Q It appeared empty when he walked in?

2 A Yes.

3 Q Did you ask him what was in the bag when he
4 walked into your apartment?

5 A No.

6 Q What did he do with the bag when he walked into
7 your apartment?

8 A He didn't put it down. He went back outside
9 with it.

10 Q How long after he came into your apartment did
11 he walk out with the bag?

12 A I would say like 15 minutes.

13 Q In that 15-minute time period, where did
14 Mr. Vanisi go?

15 A He walked in. He came and sat by me while I
16 was on the computer. And Renee and I were asking him what
17 was wrong. He didn't say anything. He said nothing.

18 Q Was he acting unusual?

19 A He wasn't saying anything.

20 Q Was that unusual for him?

21 A Yes.

22 Q How is Mr. Vanisi normally?

23 A He's always talking.

24 Q And he wasn't that morning?

25 A No.

1 Q Do you know where he went when he was inside
2 your apartment for those 15 minutes besides sitting next to
3 you at the computer?

4 A No. Then he just got up and went to the living
5 room, and I guess he went outside after that.

6 Q Before he went outside, that 15-minute time
7 period, did you see where in your apartment he went?

8 A No.

9 Q I show you photographs 23-A and B. First,
10 photograph 23-A, I ask you if you recognize first, ma'am,
11 where that photograph is taken?

12 A In my hallway.

13 Q And do you recognize the maroon jacket on that
14 chair?

15 A Yes.

16 Q Who's jacket is that?

17 A Pe's.

18 Q Mr. Vanisi's?

19 A Yes.

20 Q Is that the jacket that he was wearing when he
21 walked into your apartment?

22 A Yes.

23 Q 23-B, do you recognize that?

24 A Yes.

25 Q And in the center of that photograph is a pair

1 of gloves. Are those the gloves you previously identified
2 as being Mr. Vanisi's?

3 A Yes.

4 MR. STANTON: Your Honor, I move for admittance
5 of 23-A and B.

6 MR. GREGORY: We would submit those items, Your
7 Honor.

8 THE COURT: Exhibit 23-A and 23-B are admitted.
9 (Plaintiff's Exhibit Nos. 23-A and 23-B
10 admitted.)

11 BY MR. STANTON:

12 Q Did there come a time, ma'am, when you were
13 down at the Reno Police Department on January 13 to talk to
14 Reno homicide detectives?

15 A Yes.

16 Q Was that in the late evening hours of
17 January 13?

18 A Yes.

19 Q While you were being interviewed, did
20 detectives come in and show you a photograph from a video
21 camera at a minimart?

22 A Yes.

23 Q Ma'am, I show you Exhibit 27. Do you remember
24 seeing this photograph on January 13 at the Reno Police
25 Department?

1 A Yes.

2 Q In the center of that photograph with his left
3 arm bent, touching his chin, is an individual. Do you
4 recognize who that individual is?

5 A Yes.

6 Q Who is that?

7 A Mr. Vanisi.

8 Q And you were asked that same question by
9 homicide detectives that evening, correct?

10 A Yes.

11 Q And you gave them the same answer?

12 A Yes.

13 MR. STANTON: Move for Exhibit 27 to be
14 admitted.

15 MR. GREGORY: Again, Your Honor, we will submit
16 it.

17 THE COURT: Exhibit 27 is admitted.

18 (Plaintiff's Exhibit No. 27 admitted.)

19 MR. STANTON: May I publish, Your Honor?

20 THE COURT: You may.

21 (The exhibit was displayed to the jury.)

22 BY MR. STANTON:

23 Q On Tuesday morning, the 13th of January, 1998,
24 at your apartment, were you present when Mr. Vanisi asked to
25 have his appearance changed?

1 A Yes.

2 Q And what happened there?

3 A I heard him from the other room. He was asking
4 Shamari to shave his beard.

5 Q And did you see Mr. Vanisi after Shamari had
6 shaved his beard?

7 A Yes.

8 Q What kind of difference did Mr. Vanisi present
9 after shaving his beard?

10 A There wasn't that much difference. He just
11 took some hair out because he wanted the Elvis look.

12 Q When you say the Elvis look, what type of look
13 was that?

14 A What's on the picture.

15 Q Okay. And could you describe it, what you mean
16 by an Elvis look?

17 A Long sideburns.

18 Q How was his facial hair before the Elvis look?

19 A Bushy.

20 Q I show you Exhibit 24-B. Do you recognize in
21 this photograph the facial hair of Mr. Vanisi?

22 A Yes.

23 Q Is that the Elvis look that you referred to?

24 A Yes.

25 MR. STANTON: Move for 24-B in evidence, Your

1 Honor.

2 MR. GREGORY: We submit both items, Your Honor.

3 MR. STANTON: Just 24-B, Your Honor.

4 THE COURT: 24-B is admitted.

5 (Plaintiff's Exhibit No. 24-B admitted.)

6 MR. STANTON: May I publish?

7 THE COURT: You may.

8 (The exhibit was display to the jury.)

9 BY MR. STANTON:

10 Q Did there come a time, Ms. Louis, that you

11 became aware that police were looking for certain items

12 involved in this case?

13 A Yes.

14 Q How did you know what the police were looking

15 for?

16 A I saw it on the news.

17 Q And what items did you see on the news the

18 police were looking for?

19 A Gammick held up the belt, the police belt.

20 Q You said "Gammick." You're talking about the

21 District Attorney, Dick Gammick, here in court?

22 A Uh-huh.

23 Q You saw him on television?

24 A Yes.

25 Q What was it he held up?

1 A The police belt.

2 Q You watched that on the news?

3 A Yes.

4 Q After you watched that on the news, did you

5 find those items?

6 A Yeah.

7 Q Where were they?

8 A In my kitchen cabinet.

9 Q Exhibit 26, the photograph I showed you

10 previously. Where were -- is this a photograph of where you

11 found them?

12 A Yes.

13 Q Could you point out where in the photograph you

14 found them?

15 A (Indicating.)

16 Q Turn that around. Could you once again point

17 to it?

18 A (Indicating.)

19 Q Is this in the same or similar condition as you

20 found it?

21 A Yes.

22 Q This was taken by the police?

23 A Yes.

24 Q They came to your house?

25 A Yes.

1 Q Did you permit them to photograph this?

2 A Yes.

3 Q After you found the items, what did you do?

4 A I called a detective.

5 Q And how soon after you called did they come to

6 your house?

7 A I would say they were there in like 15 minutes.

8 MR. STANTON: Court's indulgence just a moment.

9 THE COURT: Yes.

10 MR. STANTON: Move for 26 into evidence, Your

11 Honor.

12 MR. GREGORY: Again we will submit it, Your

13 Honor.

14 THE COURT: Exhibit 26 is admitted.

15 (Plaintiff's Exhibit No. 26 admitted.)

16 MR. STANTON: May I publish?

17 THE COURT: Yes, you can.

18 (The exhibit was displayed to the jury.)

19 BY MR. STANTON:

20 Q Do you have any idea how that bag got into your

21 apartment?

22 A No, I don't.

23 MR. STANTON: No further questions.

24 MR. GREGORY: Court's brief indulgence?

25 THE COURT: Yes, counsel.

1 (There was a pause in the proceedings while
2 Counsel and the defendant conferred.)

3 MR. GREGORY: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. GREGORY:

6 Q Is it Louise (pronouncing)? Is that how you
7 pronounce your last name?

8 A Louis.

9 Q Louis? Prior to your testifying today, when
10 was the last time you talked with the District Attorney's
11 representatives?

12 A Oh, gosh, I don't remember.

13 Q Well, let's try a guess. Was it within the
14 last month?

15 A Yeah, I'll say last month.

16 Q Okay. Sometime in August, is that what you're
17 saying?

18 A Yes.

19 Q Did you talk to them today or yesterday prior
20 to your testimony?

21 A No.

22 Q So, the last time you talked to them was in
23 August of this year?

24 A Yes.

25 Q Okay. Do you remember testifying at the

1 preliminary hearing? Do you not?

2 A Yes.

3 Q And do you remember giving a statement to
4 Detective Duncan on January 15 of 1998 when you went to the
5 police station?

6 A Yes.

7 Q I assume, ma'am, you remember testifying on the
8 14th of January of this year, some nine months ago?

9 A Yes.

10 Q Ma'am, I've gone through each and every one of
11 those statements. I don't see you use the word "white"
12 anywhere. You mentioned that Mr. Vanisi said he was going
13 to kill a cop. But you never used the term "white." Why
14 did you decide to use it today?

15 A I don't know, because I have heard him.

16 Q Pardon me?

17 A I have heard him say it.

18 Q Say that he was going to kill a cop?

19 A Uh-huh.

20 Q All right. But you're missing my distinction
21 here, ma'am. I've gone through these transcripts. You
22 never used the word "white" anywhere. Not from the first
23 statement you gave to the police, not at the preliminary
24 hearing, not at the last time you testified before this
25 Court. And then today, you decided to use the word "white

1 cop" as opposed to "kill a cop."

2 MR. GREGORY: May I approach the witness, Your
3 Honor?

4 THE COURT: You may.

5 BY MR. GREGORY:

6 Q I'll show you, this is your testimony, Volume 4
7 of the transcript, page 773, starting at line 19. Would you
8 read that to yourself?

9 Going to page 774, line five, did you see the
10 word "white"?

11 A No.

12 Q What did you indicate at that time? That he
13 wanted to kill a cop; is that correct?

14 A Correct.

15 MR. GREGORY: I have nothing further from this
16 witness.

17 THE COURT: Anything further, Mr. Stanton?

18 MR. STANTON: Briefly.

19 REDIRECT EXAMINATION

20 BY MR. STANTON:

21 Q Ms. Louis, when you met with the District
22 Attorney's office, the question Mr. Gregory didn't ask you,
23 did we ever ask you to say the word "white"?

24 A No.

25 Q Why is it your testimony that he said "a white

1 cop" today?

2 A Well, we just had been discussing it and
3 talking amongst ourselves, with other witnesses.

4 Q Is that because that's what he said,
5 Mr. Vanisi?

6 A Yes.

7 MR. STANTON: Nothing further.

8 RECROSS-EXAMINATION

9 BY MR. GREGORY:

10 Q But you didn't -- I'm not going to beat this
11 too far. You gave a statement to the police on January 15,
12 1998. You testified at the preliminary hearing. And you
13 testified under oath in this Court last January, asked that
14 question many times by Mr. Stanton, and by Detective Duncan.
15 You Never used the word "white"; is that correct?

16 MR. STANTON: Objection, asked and answered.

17 THE COURT: Sustained.

18 MR. GREGORY: Thank you, Your Honor.

19 THE COURT: May the witness be excused?

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

22 MR. GREGORY: Yes, Your Honor.

23 THE COURT: You may step down. You may be
24 excused.

25 / / /

1 (The witness was excused and left the
2 courtroom.)

3 THE COURT: Call your next witness.

4 MR. STANTON: The State would call William
5 Louis.

6 (One witness sworn.)

7 THE CLERK: Thank you. Please be seated at the
8 witness stand.

9 WILLIAM LOUIS
10 called as a witness on behalf of the Plaintiff,
11 having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. STANTON:

15 Q You can pull your seat up as close as you can
16 to the microphone.

17 Could you please state your name?

18 A William Christopher Louis.

19 Q And how old are you, sir?

20 A Sixteen.

21 Q And I direct your attention back to January of
22 1998. How old were you during that time period?

23 A Fourteen.

24 Q Where were you living?

25 A 1098 North Rock Boulevard, Apartment A.

1 Q Speak up a little.

2 A 1098 Rock Boulevard, Apartment A.

3 Q Who lived with you at that location?

4 A Me, my brothers and sisters and my cousin.

5 Q And who is your cousin?

6 A Laki.

7 Q Do you know an individual by the name of Siaosi
8 Vanisi?

9 A Yes.

10 Q How do you know him?

11 A He's my uncle.

12 Q Do you see him in court today?

13 A Yeah.

14 Q Could you describe where he is in the courtroom
15 and what he's wearing?

16 A To the right of me, wearing a blue suit and a
17 yellow tie.

18 MR. STANTON: May the record reflect the
19 identification of the defendant?

20 THE COURT: Yes, the record will so reflect.

21 BY MR. STANTON:

22 Q In January of 1998 when you first saw
23 Mr. Vanisi here in Reno, where did you see him at?

24 A At a dance.

25 Q And how was he dressed?

1 cop" today?

2 A Well, we just had been discussing it and
3 talking amongst ourselves, with other witnesses.

4 Q Is that because that's what he said,
5 Mr. Vanisi?

6 A Yes.

7 MR. STANTON: Nothing further.

8 RECROSS-EXAMINATION

9 BY MR. GREGORY:

10 Q But you didn't -- I'm not going to beat this
11 too far. You gave a statement to the police on January 15,
12 1998. You testified at the preliminary hearing. And you
13 testified under oath in this Court last January, asked that
14 question many times by Mr. Stanton, and by Detective Duncan.
15 You Never used the word "white"; is that correct?

16 MR. STANTON: Objection, asked and answered.

17 THE COURT: Sustained.

18 MR. GREGORY: Thank you, Your Honor.

19 THE COURT: May the witness be excused?

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

22 MR. GREGORY: Yes, Your Honor.

23 THE COURT: You may step down. You may be
24 excused.

25 / / /

1 (The witness was excused and left the
2 courtroom.)

3 THE COURT: Call your next witness.

4 MR. STANTON: The State would call William
5 Louis.

6 (One witness sworn.)

7 THE CLERK: Thank you. Please be seated at the
8 witness stand.

9 WILLIAM LOUIS

10 called as a witness on behalf of the Plaintiff,

11 having been first duly sworn,

12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. STANTON:

15 Q You can pull your seat up as close as you can
16 to the microphone.

17 Could you please state your name?

18 A William Christopher Louis.

19 Q And how old are you, sir?

20 A Sixteen.

21 Q And I direct your attention back to January of
22 1998. How old were you during that time period?

23 A Fourteen.

24 Q Where were you living?

25 A 1098 North Rock Boulevard, Apartment A.

1 Q Speak up a little.

2 A 1098 Rock Boulevard, Apartment A.

3 Q Who lived with you at that location?

4 A Me, my brothers and sisters and my cousin.

5 Q And who is your cousin?

6 A Laki.

7 Q Do you know an individual by the name of Siaosi
8 Vanisi?

9 A Yes.

10 Q How do you know him?

11 A He's my uncle.

12 Q Do you see him in court today?

13 A Yeah.

14 Q Could you describe where he is in the courtroom
15 and what he's wearing?

16 A To the right of me, wearing a blue suit and a
17 yellow tie.

18 MR. STANTON: May the record reflect the
19 identification of the defendant?

20 THE COURT: Yes, the record will so reflect.

21 BY MR. STANTON:

22 Q In January of 1998 when you first saw
23 Mr. Vanisi here in Reno, where did you see him at?

24 A At a dance.

25 Q And how was he dressed?

1 A Some raggedy clothes, a leather jacket, I
2 think.

3 Q How about his hair and his face? How did he
4 look in that area?

5 A He had a beard and some -- I think it was a
6 wig, brown hair.

7 Q Were you ultimately able to see on television a
8 composite drawing regarding a person that the police were
9 looking for in the murder of Sergeant Sullivan?

10 A Yeah.

11 Q I show you Exhibit 6. Do you recognize that?

12 A Yes.

13 Q When you saw that on the television news, did
14 you have an idea who that was?

15 A Yes.

16 Q Did you have that idea immediately after you
17 saw this picture?

18 A Yes.

19 Q Who was that?

20 A Pe.

21 Q Mr. Vanisi?

22 A Yes.

23 Q After the dance -- was this Saturday night, the
24 dance?

25 A Yes, Saturday night.

1 Q After the dance, did Mr. Vanisi show you
2 anything?

3 A No.

4 Q Do you remember ever seeing Mr. Vanisi with a
5 hatchet?

6 A Yes.

7 Q When was the first time you saw him with a
8 hatchet?

9 A I think it was that night.

10 Q The night of the dance? You have to answer out
11 loud.

12 A Yeah.

13 Q And where were you when he showed you the
14 hatchet?

15 A He didn't show it to me. I just seen it.

16 Q Where did you see it?

17 A At the front of the door.

18 Q At where?

19 A At the dance.

20 Q Was he wearing it?

21 A Yes.

22 Q Where was he wearing it?

23 A In his pants.

24 Q And did you ever hear Mr. Vanisi talk about
25 killing a police officer?

1 A Yes.

2 Q When was the first time you heard that?

3 A The following Sunday night.

4 Q The Sunday night after the dance?

5 A Yeah.

6 Q Where were you when he first told you about

7 that?

8 A I was in my bedroom.

9 Q At Rock Boulevard?

10 A Uh-huh.

11 Q Did you think he was serious?

12 A No.

13 Q Can you describe the hatchet to me?

14 A It was just metal with a rubber black handle.

15 Q How long was it?

16 A What?

17 Q How big was it?

18 A I'm not sure.

19 Q If you saw it again, do you think you would

20 recognize it?

21 A Yes.

22 Q Exhibit 21?

23 A Yes.

24 Q Is that it?

25 A Uh-huh.

1 Q When you first saw the hatchet, Mr. Louis, how
2 did it look to you?

3 A It looked brand new.

4 Q Did you ever see that hatchet Tuesday morning
5 at your apartment?

6 A Yeah.

7 Q Did it look different?

8 A Yeah.

9 Q How did it look when you saw it Tuesday?

10 A Scraped up, as if it had been used.

11 Q Did you see anything on the hatchet?

12 A Yes.

13 Q What did you see on it?

14 A Some brown spots and stuff.

15 Q What did you think those brown spots were when
16 you first saw them?

17 A I thought it was blood.

18 Q Where did you see the hatchet on Tuesday?

19 A On top of my drawer.

20 Q In your bedroom?

21 A Uh-huh.

22 Q Did you do anything to the hatchet when you saw
23 it in that condition?

24 A No.

25 Q Did you see the hatchet in the possession of

1 somebody else later on Tuesday?

2 A Yes.

3 Q Who?

4 A My little brother had it.

5 Q What is your little brother's name?

6 A Brandon Louis.

7 Q At the time you saw your little brother with
8 the hatchet later on Tuesday, how old was your little
9 brother?

10 A I think 11.

11 Q Pardon me?

12 A He was 11.

13 Q And what did you think when you saw your
14 brother holding the hatchet?

15 A I told him not to touch it.

16 Q And what did you do after you told your brother
17 that?

18 A I grabbed it from him and threw it on the
19 floor.

20 Q Where did you throw it on the floor in your
21 apartment?

22 A By the door, the front door.

23 Q I'm showing you photographs 20-A and 20-B and
24 ask you, Mr. Louis, if you recognize the photographs?

25 A Yeah.

1 Q And do they accurately depict the hatchet where
2 you placed it based upon your testimony?

3 A Yes.

4 Q Where are those photographs taken?

5 A In my house.

6 Q Where in your house?

7 A At the front door.

8 MR. STANTON: Move 20-A and 20-B into evidence.

9 MR. GREGORY: We will submit both items, Your
10 Honor.

11 THE COURT: May I see those? 20-A and 20-B are
12 admitted.

13 (Plaintiff's Exhibit Nos. 20-A and 20-B
14 admitted.)

15 MR. STANTON: May I publish to the jury?

16 THE COURT: You may.

17 (The exhibits were displayed to the jury.)

18 BY MR. STANTON:

19 Q On Tuesday, did you ever see Mr. Vanisi in
20 possession of that hatchet?

21 A No.

22 Q How many times did you hear Mr. Vanisi say he
23 wanted to kill a cop?

24 A I don't know, I'm not sure. A few times maybe.

25 Q More than five?

1 A I don't know. I think so.

2 Q Did he ever tell you why he wanted to kill a
3 police officer?

4 A No.

5 Q Did he ever tell you what he was going to kill
6 the police officer with?

7 A No.

8 Q Do you remember giving a statement to police
9 officers?

10 A Yeah.

11 Q Do you think that might help refresh your
12 memory about what you saw?

13 A Yes.

14 Q A transcript given the 14th of January, 1998.
15 Take a look at that. See if you recognize what that
16 transcript is about.

17 Does that look familiar to you?

18 A Uh-huh.

19 Q And I would like you to turn, Mr. Louis -- at
20 the very bottom of the page there's references to page
21 numbers. If you could turn to page four and read to
22 yourself line 13 through 22.

23 A Read it out loud?

24 Q No, read it to yourself and tell me when you're
25 done reading it. Thank you.

1 Does that help you remember?

2 A A little bit.

3 Q Okay. On line 21, you talk to the police about
4 what Mr. Vanisi told you about why he wanted to kill a cop.
5 Do you remember that? What did you tell the police when you
6 talked to them about --

7 A I said about money right here.

8 Q Do you remember saying that to the police?

9 A Yeah. I don't know. I'm not sure. Kind of.

10 Q Do you have any reason to believe this
11 transcript is inaccurate for any reason?

12 A A little bit.

13 Q Okay. Do you think that's wrong about the
14 money?

15 A No, I don't think that's wrong.

16 Q Were you telling the police the truth when you
17 told them about the money?

18 A I think that's all I heard, I guess, just heard
19 that.

20 Q So you heard that from Mr. Vanisi?

21 A I think so.

22 Q If you could turn, Mr. Louis, to page eight.
23 If you could read lines 12 through 16 to yourself, and tell
24 me when you're finished.

25 Do you remember Mr. Vanisi making that comment

1 to you now?

2 A Yeah, I think so.

3 Q Could you tell the ladies and gentlemen of the
4 jury what Mr. Vanisi told you about how he was going to kill
5 a cop?

6 A Right here?

7 Q You don't need to read it. If that refreshes
8 your memory?

9 A Yeah, I think so. He wanted to kill a cop with
10 the hatchet, I guess.

11 Q That's what Mr. Vanisi told you?

12 A Well, he didn't really told me. I heard him.

13 Q You heard him say it to somebody else; is that
14 correct?

15 A Yeah.

16 Q On Tuesday morning, Mr. Louis, did you happen
17 to be in the kitchen of your apartment on Rock Boulevard
18 when it was just you, the defendant, Mr. Vanisi, and Renee
19 Peaua?

20 A In the morning?

21 Q Morning, afternoon, right around noontime?

22 A I can't remember.

23 Q Let me see if I can put it into a context that
24 you might remember. It was when Mr. Vanisi whispered
25 something to Renee. Do you remember that?

1 A Yeah. Or she whispered something to him,
2 like -- I don't know. They were just talking.

3 Q Where was this conversation?

4 A Like in between the kitchen and the living
5 room, like because it's kind of -- yeah.

6 Q Who was talking?

7 A Pe and Renee.

8 Q Mr. Vanisi and Renee?

9 A Yeah.

10 Q Renee is who?

11 A Is my cousin.

12 Q Renee Peaua?

13 A Yes.

14 Q What did you hear between Mr. Vanisi and Renee?

15 A I heard her say, "There's like a big manhunt
16 for you."

17 Q How was Renee saying that to Mr. Vanisi?

18 A Whispering.

19 Q What did Mr. Vanisi say in response to that?

20 A I didn't see him say anything. I don't know.

21 Q If you could turn to page 21 of that
22 transcript. If you could, read lines six through ten. If
23 you would once again read that to yourself and tell me when
24 you're finished.

25 Does that help you?

1 A No, I don't know.

2 Q Do you remember talking to the police about
3 that?

4 A Yeah.

5 Q And what did you tell the police was said in
6 that conversation that you overheard between Mr. Vanisi and
7 Renee?

8 A Well, I told them that he said yeah, that he
9 killed him.

10 Q Killed who?

11 A In there. Sergeant Sullivan.

12 MR. STANTON: Thank you. No further questions.

13 THE COURT: Cross?

14 MR. GREGORY: Court's indulgence.

15 (There was a pause in the proceedings while
16 Counsel and the defendant conferred.)

17 MR. GREGORY: Thank you, Your Honor. No
18 questions.

19 THE COURT: You may step down.

20 (The witness was excused and left the
21 courtroom.)

22 THE COURT: Call your next witness.

23 MR. STANTON: The State would next call
24 Priscilla Endemann, Your Honor.

25 (One witness sworn.)

1 THE CLERK: Thank you. Please be seated at the
2 witness stand.

3 PRISCILLA ENDEMANN

4 called as a witness on behalf of the Plaintiff,

5 having been first duly sworn,

6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. STANTON:

9 Q Could you please state your complete name and
10 spell your first and last name for the court reporter?

11 A Priscilla Lupe Endemann. First name
12 P-r-i-s-c-i-l-l-a; Endemann, E-n-d-e-m-a-n-n.

13 Q Ma'am, I want to go back to January 1998.
14 During that time period, ma'am, did you ever have occasion
15 to meet a person by the name of Siaosi Vanisi?

16 A Yes.

17 Q When was the first time you met him?

18 A On Saturday, January 10.

19 Q And prior to that day, had you ever known
20 Mr. Vanisi before that?

21 A No.

22 Q What were you introduced to him as, his name?

23 A Pe.

24 Q Do you see that person in court today?

25 A Yes.

1 Q Could you please point him out, where he is in
2 the courtroom and what he's wearing?

3 A He's second to the right. He's wearing a blue
4 suit, yellow tie, and his hair is a lot longer.

5 MR. STANTON: May the record reflect the
6 identification of the defendant?

7 THE COURT: The record will so reflect.

8 BY MR. STANTON:

9 Q Did you ever hear Mr. Vanisi ever state during
10 the time period that you knew him that he wanted to hurt
11 anyone?

12 A Yes.

13 Q What specifically did he tell you?

14 A "I want to kill a cop."

15 Q How many times did you hear him say that during
16 the time period you knew him?

17 A About ten times.

18 Q And did there come a time where he told you
19 where he wanted to catch this cop or in what situation he
20 wanted to do that?

21 A While he was taking a coffee break.

22 Q Did there come a time on Tuesday, the 13th of
23 January, where you saw a composite drawing on television?

24 A Yes.

25 Q I show you Exhibit 6. Is that the drawing you

1 saw?

2 A Yes.

3 Q When you first saw this drawing on television,
4 ma'am, what was your reaction?

5 A That it fit him so perfect.

6 Q Fit who so perfect?

7 A Pe.

8 Q On the 13th of January, did you have occasion
9 to be present with Mr. Vanisi in an automobile traveling
10 towards the university?

11 A Yes.

12 Q What time of day was that?

13 A It was during the evening.

14 Q Do you remember what time?

15 A Say around 7:00, 7:00 or 8:00 p.m.

16 Q Where were you going?

17 A Towards the church.

18 Q Which church is that?

19 A The Mormon church by the university.

20 Q Is that on the west side of the campus?

21 A I believe so, yes.

22 Q And who was driving the vehicle?

23 A I was.

24 Q And what route were you taking to go to church?

25 A Right in front of the university parking. I'm

1 not sure what street that is.

2 Q Who else was in the vehicle?

3 A Laki, Corrina, and Pe.

4 Q The defendant, Mr. Vanisi?

5 A Yes.

6 Q I show you State's Exhibit 8. I ask you to
7 take a moment to look at that map and orient yourself.

8 A The university, okay. I think it was Ninth
9 Street. It was right by the parking where the scene of the
10 murder was.

11 Q And that was the way you normally go to church?

12 A Yes.

13 Q Where was Mr. Vanisi physically in that car
14 when you were driving over to church?

15 A In the far back seat.

16 Q As you got to the university, did Mr. Vanisi's
17 behavior and demeanor change?

18 A Yes.

19 Q Could you explain to the jury how Mr. Vanisi's
20 demeanor changed and what, if anything, he said as you got
21 close to the university?

22 A As I started heading to the university, he said
23 that the campus was closed, that the roads were blocked off.
24 I told him earlier that day it was open, so we can go
25 through. He just got quiet.

1 Q Do you remember how his demeanor was, how he
2 was acting?

3 A He was paranoid.

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

5 THE COURT: Cross-examination?

6 MR. GREGORY: Court's indulgence.

7 (There was a pause in the proceedings while
8 Counsel and the defendant conferred.)

9 MR. GREGORY: Thank you, Your Honor. No
10 questions.

11 THE COURT: You may step down. You are
12 excused.

13 (The witness was excused and left the
14 courtroom.)

15 MR. STANTON: Your Honor, the time is now 5:00
16 o'clock. The State has one additional witness that would be
17 relatively brief. If that fits in with the Court's
18 schedule, the State would like to call that witness and then
19 conclude today.

20 THE COURT: All right. The clock in the
21 courtroom shows five or six minutes. This witness was on
22 for about the same amount of time. Are we talking about a
23 similar length of time?

24 MR. STANTON: Yes, Your Honor.

25 THE COURT: Go ahead and call them.

1 MR. STANTON: The State would call Manaoui
2 Peaua.

3 (One witness sworn.)

4 THE CLERK: Please be seated at the witness
5 stand.

6 MANAOUI PEAUA

7 called as a witness on behalf of the Plaintiff,

8 having been first duly sworn,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. STANTON:

12 Q Could you state your complete name, spelling
13 your first and last name for the court reporter?

14 A Manaoui Peaua, M-a-n-a-o-u-i and P-e-a-u-a.

15 Q How old are you?

16 A Twenty-seven.

17 Q How long have you lived in the Reno area?

18 A About 21 years.

19 Q Where do you live, or where did you live in
20 January of 1998?

21 A 1645 Sterling Way.

22 Q And do you know an individual by the name of
23 Renee Peaua?

24 A Yes.

25 Q Who is she?

1 A My younger sister.

2 Q Sir, do you know who Siaosi Vanisi is?

3 A Yes.

4 Q Who is he?

5 A My cousin.

6 Q Do you see him in court today?

7 A Yes, I do.

8 Q Would you please describe where he is in the
9 courtroom and what he's wearing?

10 A Sitting in the defendant's chair, wearing a
11 blue suit.

12 Q Is he wearing a tie?

13 A In the middle, yes.

14 Q What color is that tie?

15 A Yellow.

16 MR. STANTON: May the record reflect the
17 identification of the defendant?

18 THE COURT: Record will so reflect.

19 BY MR. STANTON:

20 Q How many times have you seen Mr. Vanisi prior
21 to his arrival in Reno in January of 1998?

22 A Maybe three or four times.

23 Q When he arrived in Reno in January of 1998, do
24 you know who picked him up?

25 A I did.

1 Q Where did you pick him up at?

2 A The airport.

3 Q In reference to the murder of Sergeant Sullivan
4 which occurred approximately 15 minutes after midnight on
5 January 13, 1998, how many days prior to that day did you
6 pick up the defendant at the airport?

7 A Maybe a week, maybe less than a week.

8 Q And when you first saw Mr. Vanisi at the
9 airport, how was he dressed and how did he appear to you?

10 A He had a wig and a beanie on, and a jacket.

11 Q I want to direct your attention to Monday
12 evening, the 12th of January, approximately 10:00 p.m. Were
13 you at the Sterling Way address that evening?

14 A Yes.

15 Q What were you doing at home around that time?

16 A Watching T.V.

17 Q Did you see the defendant, Mr. Vanisi, in your
18 home?

19 A Yes.

20 Q Where was he around that time when you saw him?

21 A Sleeping.

22 Q Where was he sleeping?

23 A In my bedroom.

24 Q Your bedroom?

25 A Yes.

1 Q And where were you in the home from there until
2 approximately 1:00?

3 A In my brother's bedroom.

4 Q And where is that in location to where
5 Mr. Vanisi was sleeping?

6 A In the back of the house.

7 Q Are the rooms, are they anywhere near each
8 other?

9 A No.

10 Q Who was watching movies with you?

11 A Myself, my brother, his wife.

12 Q At some point early in the morning, did you see
13 Mr. Vanisi again where he asked something of you?

14 A Around 2:00 o'clock.

15 Q From the time that you saw him sleeping until
16 the time he asked you at approximately 2:00 o'clock for
17 something, did you see him in that interim time period?

18 A No.

19 Q What did he ask you?

20 A For a ride.

21 Q To where?

22 A To my cousin's house.

23 Q Where does your cousin live?

24 A Off Rock Boulevard.

25 Q Do you know the address?

1 A No.

2 Q What is your cousin's name?

3 A Losa.

4 Q When Mr. Vanisi approached and asked you in

5 your home for that ride, was he wearing a wig?

6 A No.

7 Q Was he carrying anything with him?

8 A Plastic bag.

9 Q What color was the plastic bag?

10 A White.

11 Q Shopping bag?

12 A Yes.

13 Q Was there anything in the bag?

14 A Yeah, there was.

15 Q Do you know what it was?

16 A No.

17 Q How did the defendant act when you were driving

18 from your home to Losa's house?

19 A Quiet.

20 Q Was that normal for him?

21 A It depended, you know. It was 2:00 o'clock in

22 the morning. I'm sure he wasn't very loud.

23 Q Did he say anything to you on the ride over?

24 A We just chitchatted on the way over.

25 Q Was he upset?

1 A No.

2 Q Was he acting abnormal in any way?

3 A Not -- no, no.

4 Q And after you dropped him off -- did you drop
5 him off?

6 A Yes.

7 Q Did you go into Losa's house?

8 A No.

9 Q Where did you go after that?

10 A Home.

11 MR. STANTON: No further questions.

12 THE COURT: Cross-examination?

13 MR. GREGORY: Court's indulgence.

14 (There was a pause in the proceedings while
15 Counsel and the defendant conferred.)

16 MR. GREGORY: Thank you, Your Honor. No
17 questions.

18 THE COURT: You may step down. You are
19 excused.

20 (The witness was excused and left the
21 courtroom.)

22 THE COURT: Ladies and gentlemen of the jury,
23 our schedule tomorrow is going to be that we are going to
24 come in the morning and we are going to hear some testimony.
25 We are going to start at 9:00 a.m. I don't know how long it

1 will take. We may get done a few minutes before lunch. I
2 just don't know for sure.

3 Then I'm going to excuse you for the remainder
4 of the day. The attorneys have some legal issues that I
5 have to look at, one of which is the jury instructions that
6 you will ultimately get in this case. They have an
7 opportunity to go over what they want me to give and I think
8 about it and we discuss it. We need a little time to do
9 that. We are going to do it tomorrow afternoon.

10 You are going to be able to have your afternoon
11 off. That gives you an idea of what your schedule is going
12 to be.

13 After tomorrow, you will come back on Monday
14 morning. I think Monday morning we are starting at 9:00. I
15 don't think there's anything scheduled before this trial.
16 We will be back in court Monday morning at 9:00. So you are
17 going to be Friday morning at 9:00, probably not into the
18 afternoon. You'll probably have the afternoon off. Then
19 Monday morning you will be here at 9:00.

20 Tomorrow I'll give you a little bit better idea
21 of what your day will be like on Monday. For now I expect
22 it to be a full day on Monday. So you should make those
23 kinds of arrangements.

24 During this break, I ask that you remember the
25 admonition you received at all of your breaks. You are not

1 to form or express any opinion about the ultimate outcome of
2 this matter until it is finally submitted to you for your
3 decision.

4 You are not to discuss among yourselves or
5 anyone else any matter having to do with this case. It is
6 your further duty not to form or express any opinion
7 regarding the guilt or innocence of the defendant until the
8 case has been finally submitted to you for decision.

9 You are not to read, listen to or look at any
10 news media accounts regarding this case. Should any person
11 attempt to influence you in any manner regarding this case,
12 you are to notify the bailiff outside your fellow jurors'
13 presence, who in turn will notify me immediately.

14 Ladies and gentlemen of the jury, you are
15 excused until tomorrow morning at 9:00 a.m.

16 (Whereupon, the following proceedings were held
17 in open court, outside the presence of the
jury.)

18 THE COURT: Counsel, I wanted to make a record
19 so the transcript is clear. We have a lot of "Court's
20 indulgence" and that's fine. I have absolutely no problem
21 with that, but I did want to make the record clear that you,
22 during that time, you and Mr. Bosler and the defendant are
23 able to communicate and are visiting, and this does seem to
24 be active discussion between the defendant and counsel,
25 before you make a decision whether to cross-examine or not.

1 So I just wanted to put that on the record. I didn't want
2 to do it after each witness.

3 MR. GREGORY: Thank you, Your Honor. Court's
4 indulgence.

5 (There was a discussion between defense
6 counsel.)

7 MR. GREGORY: Mr. Bosler did make a point.
8 Mr. Vanisi's involvement is more as a courtesy. The
9 exchange is primarily between Mr. Bosler and myself.

10 THE COURT: Obviously I am not listening to
11 whatever is being discussed. I do see him listening and
12 from time to time giving you comments, and then the two of
13 you talking. I want to make sure the record is clear that
14 you weren't looking at paperwork or something and that you
15 really were talking to each other. I didn't want to do it
16 in front of the jury and I didn't want to have a hearing
17 outside of the presence of the jury every time.

18 MR. BOSLER: The record should reflect
19 Mr. Vanisi is actually sitting between Mr. Gregory and I.
20 He has to actually pull his seat out so we can talk.

21 THE COURT: I don't hear what he says, but I do
22 see him nodding, communicating.

23 Counsel, the schedule tomorrow?

24 MR. STANTON: Your Honor, we have tomorrow
25 scheduled five witnesses, six witnesses --

1 MR. GREGORY: Seven, eight, nine, ten.

2 MR. STANTON: Six witnesses. They are all
3 relatively short in order, although the first witness is
4 Detective Jim Duncan which will take some period of time.
5 The State is comfortable now that we will conclude prior to
6 the noon hour.

7 There are a couple additional items that I
8 would like to address the Court whenever the Court is ready
9 this afternoon.

10 THE COURT: That's fine. Go ahead.

11 MR. STANTON: Couple of things, Your Honor. We
12 would request of the Court and the Court staff that the
13 supplemental questionnaires of the jurors and the alternates
14 that have been selected in this case, as well as the
15 supplemental questionnaires of the jurors that were excused
16 for cause, as well as the ones that were used for peremptory
17 challenges by both the State and defense, be made a part of
18 the permanent record in this case.

19 THE COURT: They have been marked already.

20 MR. BOSLER: We join in that request.

21 THE COURT: It was already done. You didn't
22 have to ask.

23 MR. STANTON: I didn't know. I felt I had to.

24 In addition, Your Honor, there is the issue
25 that was undecided in trial number one in this case relative

1 to a photograph that is marked 33-A. I want to just
2 re-raise that issue because that photograph is going to
3 become relevant for debate and evidentiary value with the
4 Salt Lake City witnesses scheduled for testimony this coming
5 Monday morning.

6 The issue, I don't know if the Court
7 remembers --

8 THE COURT: The picture of Jesus and the elders
9 of the Mormon church?

10 MR. STANTON: Yes, Your Honor.

11 THE COURT: I remember that much of it.

12 MR. STANTON: Does the Court -- the testimony
13 that the State believes is going to occur regarding Exhibit
14 33-A is testimony that, in the presence of a relative of
15 Mr. Vanisi's, he pointed Sergeant Sullivan's handgun at
16 photographs of Jesus Christ and elders of the Mormon church
17 and said he is going to kill these white people.

18 That is the nature and extent of the testimony
19 regarding the photograph.

20 THE COURT: And the relevance of that
21 testimony?

22 MR. STANTON: The relevance is that that state
23 of mind of his intent is exhibited by that conduct and
24 specifically with the depiction of those individuals, and
25 the photographs of those individuals depict the intent of

1 Mr. Vanisi's mind that relates back to the target and the
2 victim in this case, Sergeant Sullivan, a white police
3 officer; and that it reaffirms Mr. Vanisi's previously
4 stated intent to kill a white police officer, and that the
5 ethnicity of that individual was specific, designed, and
6 premeditated.

7 THE COURT: Mr. Gregory?

8 MR. GREGORY: Your Honor, I believe that the
9 Court heard arguments on this earlier and I can't remember
10 if the Court ruled that that picture was not to be admitted
11 or not. But we are in a position, Your Honor, where the
12 only thing we can do at this time is submit the matter to
13 the Court.

14 THE COURT: You can argue its evidentiary value
15 or lack thereof.

16 MR. GREGORY: Your Honor, I will go this far.
17 We are going to get into the relationship of Mr. Vanisi with
18 the Mormon church or with Jesus Christ the savior. I don't
19 assume they are accusing him of killing Jesus, although that
20 might have been implied in what Mr. Stanton said. We have
21 so muddied the waters of this trial.

22 With that, Your Honor, I don't feel comfortable
23 going beyond that. I'm just going to submit it.

24 MR. STANTON: Well, Your Honor, as I stated,
25 the State's intention is not to suggest or imply that

1 Mr. Vanisi is the killer of Jesus Christ. As a fundamental
2 matter, I don't know how that can be reasonably inferred
3 from what the State's proffered at this juncture or in any
4 way, shape or form by use of that photograph.

5 As an alternative, the State would suggest that
6 absent an -- I think the test -- let me back up.

7 Counsel submitting the matter about the
8 admission of this document as well as all the other
9 documents, I am confident that at some point a record is
10 going to be made that the strategy of not only submitting it
11 to this Court, but the theory of cross-examination through
12 these witnesses is one of a strategic decision-making
13 process and not for any other reason.

14 In addition, Your Honor, the question about
15 this photograph and about the proffer the State has made I
16 submit to the Court is a question ultimately for this Court
17 to weigh the probative value versus the prejudicial effect.
18 The State is cognitive of the fact that any statement
19 remotely suggesting what Mr. Vanisi did -- once again, I'm
20 not the one that said it, I'm not the one that did it.
21 Mr. Vanisi did it. He did it in front of a relative of his,
22 a very religious man, by the way, David Kinikini. This is
23 the witness who, when testifying to this fact at the
24 preliminary hearing, brought a Bible to the witness stand.
25 He is a devoutly religious Mormon.

1 The State is just offering what the defendant
2 did. And if the Court determines that in its analysis the
3 prejudicial effect would outweigh the probative value, then
4 the State would suggest that an alternative is at least the
5 State be able to inquire of the witness that he pointed a
6 gun at a photograph of white people that were on
7 Mr. Kinikini's wall and stated that he was going to kill
8 those white people.

9 That would eliminate the prejudicial effect, if
10 there is any in these circumstances, of the figures that he
11 is stating that he wants to kill.

12 Obviously, religious and prominent religious
13 figures in significant religious groups here in the United
14 States.

15 THE COURT: Mr. Gregory?

16 MR. GREGORY: Eighty percent of the people in
17 this country are white. For him to extrapolate from
18 Mr. Vanisi's act of pointing the weapon at the pictures that
19 has something to do with his wanting to kill white people is
20 taking it a step that I don't think he can take with it at
21 this point. I think it is so inherently prejudicial and so
22 unnecessary in this case to open up the religious can of
23 worms.

24 This man was an elder in the Mormon church.
25 The Mormon church is about 99.9 percent white. He has shown

1 through his participation in that church and the levels that
2 he rose to that he is not a racist. If we are going to get
3 into those issues, I think we go down a rabbit trail and run
4 the risk of distracting this jury.

5 THE COURT: I am not going to admit it in the
6 case in chief. I may reconsider that if it becomes
7 relevant if we have a penalty hearing. But I think it is
8 unnecessary to show, to prove motive in this case.

9 I am concerned about the prejudicial effect not
10 only with regard to -- I don't know if we have any
11 Christians or Mormons on our jury, but I assume that we
12 probably do have, there's potential for either one. Easily
13 recognized figures. It could imply that he should be found
14 guilty because he wanted, if the testimony is believed, to
15 kill the elders and/or was being sacrilegious with respect
16 to a picture that could be purported to be Jesus Christ.

17 For those reasons I think there's potential for
18 the jury to misunderstand the relevancy of the evidence. I
19 find the prejudicial effect outweighs the probative value.
20 I will not allow the admission of the exhibit. You can
21 reapply if there's a penalty hearing if you think about it.
22 See if it may at that point become more relevant.

23 MR. STANTON: That's all the items that the
24 State has at this juncture.

25 THE COURT: Okay. Anything further for the

1 defense?

2 MR. GREGORY: No, Your Honor.

3 THE COURT: Okay, then. Court is in recess.

4 (The trial adjourned at 5:16 p.m.)

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Code No. 4185

FILED

SEP 23^{MS} 1999

AMY HARVEY
By: *[Signature]*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,

Plaintiff,

vs.

SIAOSI VANISI,

Defendant.

Case No. CR98-0516
Dept. No. 4

TRIAL - VOLUME 5
September 24, 1999
Reno, Nevada

APPEARANCES:

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SIAOSI VANISI

Reported by:

DENISE PHIPPS, CCR No. 234
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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
JIM DUNCAN	800	--	--
FERNANDO MOREIRA	835	--	--
LOUIS HILL	841	--	--
PATRICIA MISITO	846	--	--
CALEB BARTELHEIM	855	858	860
DIANA SHOUSE	861	--	--

<u>EXHIBITS:</u>	<u>Marked for Identification</u>	<u>Admitted into Evidence</u>
11	--	817
21	--	820
22	--	833
23A & B	--	816
24C	--	828
25	--	818
29A & B	--	827
31A	--	838
31C, D & G	--	839
31E & F	--	838
32A & B	--	844
42	--	852

RENO, NEVADA, FRIDAY, SEPTEMBER 24, 1999, 9:10 A.M.

-000-

THE COURT: Counsel stipulate to the presence of the jury?

MR. GAMMICK: Yes, Your Honor.

MR. GREGORY: Defense would so stipulate, Your Honor.

THE COURT: Thank you. Call your next witness.

MR. GAMMICK: Detective Jim Duncan, please.

THE CLERK: Please raise your right hand.

(Witness sworn.)

THE CLERK: Please be seated at the witness stand.

JIM DUNCAN

called as a witness on behalf of the Plaintiff,

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 Jim Duncan, D-u-n-c-a-n.

1 Q What's your profession or occupation?

2 A I'm a police officer for the City of Reno.

3 Q And how long have you been a police officer?

4 A About 14 years now.

5 Q And do you have any specific duties that you do
6 at this time?

7 A Yes, I'm assigned to the robbery/homicide unit
8 as a detective.

9 Q And how long have you been a detective?

10 A About seven years.

11 Q And in January of 1998 were you in that
12 capacity?

13 A Yes, sir, I was.

14 Q And doing robbery/homicide then, too?

15 A Actually, then it was called the major crimes
16 unit.

17 Q How long have you been investigating murders,
18 homicides?

19 A Most of the seven years.

20 Q Do you know what POST stands for, P-O-S-T?

21 A Yes.

22 Q What is that?

23 A Those letters stand for the Peace Officers
24 Standards in Training.

25 Q And what is that? How does that affect your

1 life?

2 A Those are the minimum requirements or
3 requirements set by the state of Nevada that a person must
4 achieve to become a licensed or a sworn peace officer.

5 Q And is it a certification process?

6 A Yes, it is.

7 MR. GREGORY: Your Honor, I'll stipulate to the
8 expertise of Detective Duncan. I've known him for several
9 years.

10 MR. GAMMICK: I just have a couple more
11 questions in this area that I believe are pertinent, Your
12 Honor, and then that would be fine.

13 THE COURT: Okay.

14 MR. GAMMICK: Thank you.

15 BY MR. GAMMICK:

16 Q Is part of that training weaponless defense?

17 A Yes, sir.

18 Q And what is that?

19 A That's the use of force necessary to effect
20 arrests or protect yourself or other persons. It includes
21 things not only physically with your hands, impact weapons,
22 batons, chemical sprays, pepper sprays, all of the items
23 that a peace officer uses or has at their disposal.

24 Q And then do you receive weapon training?

25 A Yes.

1 Q And what does that entail?

2 A That's the actual use of the deadly force or
3 the different weapons we have, the hand-carried weapons and
4 long rifles, long guns, all the weapons that can effect
5 deadly force.

6 Q Now, as a sworn peace officer, are you required
7 to do this type of training on an annual basis, refresher
8 training, so to speak?

9 A Yes, to maintain your proficiency in all of it.

10 Q And Sergeant Sullivan as a uniformed officer
11 would have gone through the same training you did?

12 A Yes.

13 MR. GREGORY: I'm going to object to Detective
14 Duncan's testifying as to what Sergeant Sullivan did, Your
15 Honor.

16 THE COURT: Lay a foundation.

17 BY MR. GAMMICK:

18 Q Do these requirements pertain to all police
19 officers that are uniformed police officers that work on the
20 street?

21 A Yes.

22 Q And Sergeant Sullivan, to your knowledge, was a
23 uniformed police officer?

24 A Yes, sir.

25 MR. GAMMICK: Is that sufficient, Your Honor?

1 THE COURT: Yes.

2 BY MR. GAMMICK:

3 Q January 13th, 1998, Tuesday morning, sometime
4 after 1:00 in the morning, were you called out?

5 A Yes, sir, I was.

6 Q And where were you?

7 A I was at home in bed.

8 Q When you have a major crime -- and I believe
9 you stated at that time you were on the major violators
10 unit -- when you had a major crime, how would you be
11 notified?

12 A I was in the major crimes unit and we were
13 notified, if it was after normal business hours, you would
14 be called at home by one of your supervisors.

15 Q And were you part of a team?

16 A Yes.

17 Q And on this particular night was the entire
18 team called out?

19 A Yes, it was.

20 Q About what time -- or did you arrive at the
21 university campus?

22 A I did.

23 Q About what time was that?

24 A Just after two a.m.

25 Q And if you'll notice in front of you are

1 Exhibits 7 and 8. Do you recognize, first of all, start
2 with the upper exhibit, No. 7, do you recognize that and
3 what it depicts?

4 A Looks like a map of parts of Reno and Sparks.

5 Q And then No. 8, the overhead photograph?

6 A Definitely aerial photos. Looks like the
7 university area.

8 Q And I'll call your attention to this area right
9 here at the south end of the university on either chart. Is
10 that the area you responded to?

11 A Yes. Near the intersections of Center and
12 Ninth Street.

13 Q Can you see this all right or do I need to get
14 it up higher?

15 A Not the bottom of it.

16 Q We won't do much with that, then.

17 When you arrived, what did you observe?

18 A Well, there were numerous uniformed officers
19 that were stationed along the sidewalk on Ninth Street
20 adjacent to the property of the campus. They were stationed
21 in increments obviously to secure that area and not let
22 people come and go. Also the yellow crime scene barrier
23 tape had been strung the entire length of Ninth Street, and
24 then numerous officers right at what's really the main
25 entrance and no gates or anything that would stop traffic,

1 they had more officers to physically stop traffic.

2 Q And does Reno have a mobile operations center?

3 A Yes, we do.

4 Q Was that also brought to the scene?

5 A Yes, it was.

6 Q To the best you can recall at this time, name
7 some of the agencies that were present, not only when you
8 arrived but also arrived after you did.

9 A Nevada Highway Patrol had people there. The
10 Washoe County Sheriff's Office, the Sparks Police
11 Department, UNR Police Department and Reno Police Department
12 that I can think of right off the bat.

13 Q And do you know who Raven is?

14 A Yes.

15 Q What is that?

16 A Raven is a name or the call sign for the Washoe
17 County Sheriff's Office helicopter air unit.

18 Q And were they also in the air?

19 A Yes, they were.

20 Q Did there come a time when dogs were brought
21 in?

22 A Yes.

23 Q For what purpose?

24 A The dogs can track human scent and article
25 searches; such as anything that a human has touched and

1 thrown in a bush, they will actually go into the bush and
2 pull it out.

3 Q Now, when an investigation such as this one or
4 even when this investigation gets started, is there a time
5 line on it? Do people go home at the end of their shift?
6 Do you only work so many hours and then go home? How does
7 this work?

8 A The way the Reno Police Department has always
9 worked in my experience is we don't stop unless we're at a
10 point where there are no leads and there's nothing else to
11 do. We just generally go 24 hours a day.

12 Q I'll jump ahead a little bit. Was there a time
13 when a suspect was taken into custody?

14 A Yes, sir.

15 Q Do you recall approximately when that was?

16 A I believe it's, I want to say, Wednesday, maybe
17 Tuesday. Tuesday evening -- well, it would be the 14th,
18 that's Wednesday.

19 Q The 14th was Wednesday. Would that be the day?

20 A I believe so, yes.

21 Q From the time you responded Tuesday morning,
22 arrived at about 2:00 until he was taken into custody
23 Wednesday on the 14th in the evening, did the investigation,
24 everyone continue this investigation?

25 A Yes, sir.

1 Q What type of activities were going on?

2 A Well, initially we have the crime scene and
3 what we believe to be an outstanding suspect. So we've got
4 to process the primary crime scene, which is where the
5 actual murder occurred, and then branch out. And in effect
6 what happened was we had SWAT teams that searched every
7 building on the campus, the interiors. The Washoe County
8 Hasty Team came out and did a shoulder-to-shoulder,
9 inch-by-inch search of all the grounds outside the buildings
10 to pick up everything that looked like or even possibly
11 could be an item of evidence.

12 They also drained the lake, Manzanita Lake, I
13 believe it's called, and lowered the ditches, the
14 tributaries that run into the lake and around the campus,
15 lowered the water levels and searched those areas too.

16 Q I call your attention to Tuesday afternoon.
17 About two in the morning. We'll go on past noon to Tuesday
18 afternoon. Were there any active leads that were being
19 followed up at that time, possible suspects?

20 A No.

21 Q Were you looking for someone at that time,
22 though?

23 A No.

24 Q Were you looking for someone in connection with
25 the possibility of being a witness or having been on campus?

1 A Yes, sir, we were.

2 Q As a result of that, I'll back up a little bit,
3 on Tuesday morning, did you release a composite to the
4 media?

5 A Yes, we did.

6 Q I'll show you No. 6 and ask if you recognize
7 that?

8 A Yes, that is the composite.

9 Q So that was being shown on the media but you
10 didn't have any active leads come Tuesday afternoon?

11 A Correct.

12 Q Tuesday evening did something happen?

13 A Yes, it did.

14 Q And what was that?

15 A We received a call to the Secret Witness hot
16 line and that information was immediately filtered to us,
17 the investigators.

18 Q What was the subject matter of that call?

19 A It was that a Tongan male had committed a 187.

20 MR. GREGORY: Your Honor --

21 MR. GAMMICK: This is not being offered --

22 MR. GREGORY: Is it being offered for his state
23 of mind?

24 MR. GAMMICK: Yes.

25 MR. GREGORY: No objection.

1 THE COURT: Thank you. You may proceed.

2 BY MR. GAMMICK:

3 Q Go ahead, please.

4 A That was the main portion of the call, the
5 parts of interest was that a Tongan male had committed a 187
6 recently.

7 Q What does 187 mean to you as a homicide
8 investigator?

9 A 187 is the Penal Code or the number for
10 California Penal Code of murder.

11 Q Was any identifying information besides the
12 fact that it was a Tongan male given to the investigators
13 through the Secret Witness call?

14 A Yes. It was the name Baya, B-a-y-a, was
15 written on the sheet.

16 Q Were you able to identify Baya?

17 A Yes.

18 Q And who was identified as being Baya?

19 A The defendant, Siaosi Vanisi.

20 Q Do you see him in court today?

21 A Yes, I do.

22 Q Would you please indicate where he's seated and
23 what he's wearing?

24 A He's sitting next to Mr. Gregory, a gray suit
25 and a tie with red and gray in it.

1 MR. GAMMICK: May the record reflect the
2 identification of the defendant, Vanisi, Your Honor?

3 THE COURT: The record will so reflect.

4 BY MR. GAMMICK:

5 Q As a result of your investigation now and
6 having a suspect identified, or was he a suspect now at this
7 time, after receiving that information?

8 A Well, initially, yes. He would certainly be
9 our best person to look at at that point.

10 Q In fact, at that time we're talking a suspect
11 as compared to the suspect?

12 A Yes.

13 Q And was there investigation continued along
14 this line of Mr. Vanisi?

15 A Yes, there was.

16 Q And as a result of this continued investigation
17 did you wind up going to a residence in Sparks?

18 A Yes, sir, I did.

19 Q And where was that?

20 A It was on Rock Street. It was 1098 Rock.
21 Apartment A.

22 Q Right where I'm pointing the pointer at now on
23 No. 7?

24 A Yes, sir.

25 Q When you arrived, why did you go there?

1 A Well, we had information that that was one
2 local residence that Mr. Vanisi had visited and may in fact
3 be there or come back to.

4 Q Did you have information about a possible other
5 residence he may be at?

6 A Yes.

7 Q Where was that?

8 A On Sterling, 1645.

9 Q Right in the area I'm pointing at now?

10 A Yes.

11 Q And did you have any information about
12 somewhere else where he may be hanging out or he used to
13 stay at?

14 A Well, we had heard he'd been at a Mormon
15 church.

16 Q Again, the location of that about where I'm
17 pointing now on the chart?

18 A Yes, just up off the university, yes.

19 Q So did officers respond to all of those
20 locations?

21 A Yes.

22 Q And you went to 1098 Rock?

23 A Yes, sir.

24 Q Describe that. Did you know where Mr. Vanisi
25 was?

1 A No, we didn't.

2 Q Did you have information concerning Sergeant
3 Sullivan's handgun and whether or not it had been recovered?

4 A Yes, I did. It hadn't been recovered and we
5 knew it was missing from the scene and from Sergeant
6 Sullivan's person.

7 Q So how do you as police officers handle going
8 to 1098 Rock Boulevard knowing you have the possible suspect
9 that may be armed out there?

10 A We actually had several detectives on all
11 locations in what we call a surveillance or stakeout.
12 Initially we don't make contact but we do set up so we can
13 see visually the area of people coming and going and any
14 vehicles or any activities. And that's what we did at each
15 location.

16 Q Did you take any other type of action, you
17 meaning collectively as the police officers, take any other
18 type of action on Rock Boulevard before you approached that
19 residence?

20 A No. We sat up, made sure that all exits and
21 entrances were covered and we could see it. And we watched
22 it for just a short time.

23 Q Was there any concern for the neighbors if
24 there was some kind of problem there?

25 A Yes. We do usually and did clear out neighbors

1 that would be at least in the immediate danger area if there
2 is gun fire. They usually can travel through the walls. So
3 you can move out at least a few neighbors on either side.

4 Q Did there come a time when you did approach
5 that residence?

6 A Yes.

7 Q And would you please explain what occurred.

8 A There were some Tongan juveniles kind of
9 playing around outside. We hadn't seen any other movement.
10 So we did approach, my partner and I approached, and talked
11 with them. They said they lived there. They were locked
12 out of the house. Their parents or the adults that lived
13 there had the keys, were coming home at any time. So they
14 were just waiting for them. So we waited outside with them
15 for a few minutes.

16 Q Did you identify those individuals?

17 A Yes, we did.

18 Q Bill and Mossy?

19 A Yeah. I don't remember their names. I
20 remember we spoke with them and got their identity at that
21 time.

22 Q Brothers of the person that actually --

23 MR. GREGORY: I'm going to object.

24 BY MR. GAMMICK:

25 Q Were they related to the person that actually

1 lived there?

2 A Yes.

3 Q What was the relationship?

4 A They said they were brothers and sisters of the
5 people.

6 MR. GREGORY: I'm going to object to
7 Mr. Gammick testifying, Your Honor, and leading the witness.
8 If he doesn't remember, he doesn't. I don't mean to be
9 difficult.

10 THE COURT: I think Mr. Gammick realized he was
11 leading and rephrased his question. So the objection for
12 leading is sustained. But I think it's been corrected.

13 MR. GAMMICK: Thank you, Your Honor.

14 BY MR. GAMMICK:

15 Q Did there come a time when you did enter the
16 residence?

17 A Yes, sir.

18 Q And was Mr. Vanisi there?

19 A No, he wasn't.

20 Q How did you secure the residence for your own
21 safety?

22 A We do what we call a security sweep and just
23 quickly go through all the rooms and look where a human
24 being could be hiding, not a search of small drawers or
25 anything like that, just to look for our own safety where a

1 person could be hiding.

2 Q I'm going to show you 23-A and 23-B, ask you to
3 look at those. Do those accurately depict what you found
4 there that evening?

5 A Yes, they do.

6 MR. GAMMICK: I'd move for 23-A and 23-B, Your
7 Honor.

8 MR. GREGORY: Thank you, Your Honor. We would
9 submit it.

10 THE COURT: Exhibit 23-A and 23-B are admitted.

11 (Plaintiff's Exhibits 23-A and 23-B were
12 admitted.)

13 BY MR. GAMMICK:

14 Q What's depicted in those photographs, sir?

15 A There's a maroon or burgundy colored leather
16 type jacket.

17 Q If I can stop you there for a second. We'll
18 talk about that for a minute. Did you ultimately wind up
19 collecting that jacket from that scene?

20 A Yes, sir.

21 Q And I'll show you what's been marked as Exhibit
22 No. 11, see if you recognize this, sir?

23 A That's the jacket.

24 Q And you took this and submitted it to the
25 laboratory people or the evidence collection people to be

1 submitted to the laboratory?

2 A We actually had the crime lab people come out
3 and pick it up physically after they photographed it, yes.
4 And they kept it.

5 MR. GAMMICK: I'd move for No. 11, please.

6 THE COURT: Counsel?

7 MR. GREGORY: Again, we would submit it.

8 THE COURT: Exhibit 11 is admitted.

9 (Plaintiff's Exhibit 11 was admitted.)

10 BY MR. GAMMICK:

11 Q Then I believe you were going to start talking
12 about another item being in those photographs.

13 A Yes, there's a beige or cream colored leather
14 glove.

15 Q I'll show you what I believe is item 25 and ask
16 you to look at these and see if you recognize those.

17 A Yes, sir, I do.

18 Q Are those the gloves that are depicted in that
19 photograph?

20 A Only one glove is depicted, but two were
21 actually there. One was still inside the pocket.

22 Q And again, did you have the crime lab come down
23 and collect the gloves as well as the jacket?

24 A Yes, sir.

25 Q And who is responsible for requesting specific

1 types of tests to be done in the laboratory?

2 A The actual final responsibility lies with the
3 primary detectives, the case agents.

4 Q Were you the case agent in this case, or one of
5 them?

6 A Yes, sir, I was.

7 Q Did you request any kind of testing on these
8 gloves and on that jacket?

9 A Yes, sir.

10 Q What type?

11 A To test for the presence of what appeared to me
12 to be blood.

13 MR. GAMMICK: If I haven't moved for 25, I
14 will, Your Honor.

15 MR. GREGORY: Again, we will submit it.

16 THE COURT: Exhibit 25 is admitted.

17 (Plaintiff's Exhibit 25 was admitted.)

18 MR. GAMMICK: May I publish these to the jury,
19 Your Honor?

20 THE COURT: You may.

21 BY MR. GAMMICK:

22 Q These photographs show the condition that these
23 items were in when you entered the apartment?

24 A Yes, sir.

25 Q When you entered the residence, did you see

1 another item that you ultimately seized as evidence?

2 A Yes, sir.

3 Q What was that?

4 A It was a hatchet laying on the floor just
5 inside the door.

6 Q Show you what has been marked as 20-A and 20-B,
7 ask you if you recognize those photographs.

8 A Yes, sir, that's the hatchet just as I saw it.

9 Q And are those accurate photographs of what you
10 saw when you came in the door of 1098 Rock Boulevard,
11 Apartment A?

12 A Yes, they are.

13 MR. GAMMICK: Your Honor, I'd move for those
14 two photographs to be admitted.

15 MR. GREGORY: I believe they already are, Your
16 Honor.

17 THE COURT: Yes, I think so. 20-A and B were
18 previously admitted.

19 MR. GAMMICK: Thank you.

20 May I publish?

21 THE COURT: Yes, you may.

22 BY MR. GAMMICK:

23 Q I'm going to show you item 21 and ask if you
24 recognize this item.

25 A Yes, sir, I do. That's the hatchet you just

1 had in the pictures.

2 Q The one you found inside the door and had
3 picked up by forensic investigators?

4 A Yes, sir.

5 MR. GAMMICK: Your Honor, I move for 21 to be
6 admitted, please.

7 THE COURT: Counsel?

8 MR. GREGORY: We submit it, Your Honor.

9 THE COURT: Exhibit 21 is admitted.

10 (Plaintiff's Exhibit 21 was admitted.)

11 BY MR. GAMMICK:

12 Q Now, at the time you found this, did you see
13 anything on it that raised your suspicions and resulted in
14 you requesting testing on this item?

15 A Yes, sir. In the little crevices on it, in the
16 shaft and also on the blade itself, there appeared to be
17 dried blood.

18 Q Did you request testing for blood?

19 A Yes.

20 MR. GAMMICK: May I publish, Your Honor?

21 THE COURT: You may.

22 BY MR. GAMMICK:

23 Q Did there come a time when during the course of
24 the investigation the at least suspected origin of that
25 hatchet was determined?

1 A Yes.

2 Q And was that a local store?

3 A Yes, sir, a WalMart store.

4 Q Were there other hatchets purchased at that
5 store by you or your team of investigators during the course
6 of this investigation?

7 A Yes, sir, there were.

8 Q Let me show you what's been marked Exhibit 5
9 which is for demonstrative purposes and ask if you recognize
10 that?

11 A Yes, that's one of the hatchets we purchased
12 for the investigation.

13 MR. GAMMICK: Your Honor, I'd ask this be
14 admitted for demonstrative purposes only.

15 THE COURT: It has been.

16 BY MR. GAMMICK:

17 Q Did you also submit a request for the testing
18 of the blood found on Sergeant Sullivan's car?

19 A Yes, sir.

20 Q At the time you were at the stakeout at 1098
21 Rock Boulevard, did you have communications capabilities?

22 A Yes, I did.

23 Q What did you have with you?

24 A I had a cell phone and a Reno Police Department
25 hand-held radio.

1 Q And did you monitor some activity that you felt
2 may have been tied in with this case or what you were doing?

3 A Yes, sir.

4 Q What was the nature of that activity?

5 A I heard a couple two or three calls that seemed
6 to be related. One was a stolen car in the northeast Reno
7 neighborhood, and minutes after that, within a short time of
8 that stolen car, we had two armed robberies of convenience
9 stores. When the dispatcher put out the armed robberies and
10 descriptions, she described in one a Hawaiian looking male
11 and the other one, one of the victims or witnesses at the
12 robbery was familiar with weapons and had mentioned it was
13 definitely a Glock pistol that was being brandished by the
14 Hawaiian type male in that one. So those three to me seemed
15 all related to Mr. Vanisi.

16 Q Why did Glock -- is that a brand name for a
17 handgun?

18 A Yes. And that's the same type that Sergeant
19 Sullivan had and that we were missing in our investigation.

20 Q That's Tuesday night that that happened.
21 Anything else major develop on through Tuesday night and on
22 into Wednesday morning?

23 A No. After the robberies, the stakeouts
24 continued. The robberies stopped and it was pretty quiet as
25 far as our investigation. We had no more leads and there

1 was no real activity going on.

2 Q Did you make application for an arrest warrant?

3 A Yes, sir.

4 Q And through a judge?

5 A Yes.

6 Q Was an arrest warrant granted?

7 A Yes, there was.

8 Q Once you an arrest warrant, then what do you do
9 with that information?

10 A We put it on the national crime computer,
11 which -- so that any law enforcement officer that may come
12 in contact with Mr. Vanisi at least would have the
13 information that he was wanted for a violent crime out of
14 Reno.

15 Q Did you receive such information?

16 A Yes, we did.

17 Q And what agency or who contacted you with
18 respect to Mr. Vanisi?

19 A The Salt Lake County Sheriff's Office, Salt
20 Lake, Utah.

21 Q Do you recall about what time that was?

22 A I think it was in the early afternoon or early
23 evening on Wednesday.

24 Q As a result of the information you received
25 from Salt Lake City, what did you do?

1 A My partner and I made arrangements to get on
2 the very next flight out of Reno to go to Salt Lake.

3 Q Your partner being?

4 A At that point it was Detective David Jenkins.

5 Q Did something happen while you were en route to
6 Salt Lake City or were you advised of something?

7 A Yes. At the time we carried pagers that were
8 alpha or alpha pagers that they could type a message. As we
9 were on the runway just starting to lift off, we got
10 messages that Mr. Vanisi had been taken into custody.

11 Q Did you go ahead and go to Salt Lake City?

12 A Yes, we did.

13 Q You and Detective Jenkins?

14 A Yes, sir.

15 Q Did you meet with investigators there?

16 A Yes, sir.

17 Q From where?

18 A From the Salt Lake County Sheriff's Office.

19 Q Did you meet a person by the name of Vainga
20 Kinikini?

21 A Yes, we did.

22 Q What was your understanding of his relationship
23 to the defendant, Mr. Vanisi?

24 A He was a cousin to Mr. Vanisi.

25 Q Did you receive information from Mr. Kinikini?

1 with respect to some evidence that had not been recovered
2 yet in Reno?

3 A Can you repeat that?

4 Q Did you receive some information from
5 Mr. Kinikini about some evidence that had not been recovered
6 yet in Reno?

7 A Yes, sir.

8 Q And did that pertain to a wig and a hat?

9 A Yes.

10 MR. GREGORY: I'm going to object to the
11 leading, Your Honor.

12 THE COURT: Sustained.

13 BY MR. GAMMICK:

14 Q What did it pertain to?

15 A Mr. Kinikini said that when he spoke with
16 Mr. Vanisi, that he told him that he had been wearing a wig
17 and a hat and he discarded that after the crime.

18 Q Was a more specific location given?

19 A He told him that he had thrown it in a ditch
20 area or in an area leaving the campus to the east or towards
21 the Sterling house.

22 Q And did that information ring true to you from
23 your knowledge of the area just east of the campus?

24 A Yes, I knew the area that he was describing.

25 Q And is there a ditch there?

1 A Yes.

2 Q Does it have running water?

3 A Depending on the time of year, yes.

4 Q And did you bring that information back to
5 Reno?

6 A Yes.

7 Q Was there -- to your knowledge was there a
8 search made of that area?

9 A Yes. The hasty team or the search and rescue
10 did do a search.

11 Q Did you bring other items back with you from
12 Salt Lake City?

13 A Yes, we did.

14 Q I'll show you what's marked as 29-A and B, ask
15 you to look at those photographs. Do you recognize those
16 photographs?

17 A Yes.

18 Q And are those true and accurate depictions of
19 what's contained in them?

20 A Yes, it is.

21 MR. GAMMICK: Your Honor, I move for 29-A and
22 B.

23 THE COURT: May I see them?

24 MR. GREGORY: Submit it.

25 MR. GAMMICK: Did you ask to see them, Your

1 Honor?

2 THE COURT: Yes, please.

3 You say submitted?

4 MR. GREGORY: Yes, Your Honor.

5 THE COURT: They're admitted.

6 (Plaintiff's Exhibits 29-A and 29-B were
7 admitted.)

8 BY MR. GAMMICK:

9 Q What do these depict?

10 A It's the clothing that the Salt Lake Sheriff's
11 Office told us Mr. Vanisi was wearing at the time of his
12 arrest.

13 Q And I believe in 29-A is shown a pair of boots?

14 A Yes.

15 Q And you were advised that all of that clothing
16 belonged to Mr. Vanisi or at least was on Mr. Vanisi at the
17 time of his arrest?

18 A Yes, we were.

19 Q Was there anything on the boots that prompted
20 you to request further testing?

21 A Yes. There was what appeared to be blood on
22 those also.

23 Q And did you request further testing on those
24 boots?

25 A Yes, I did.

1 MR. GAMMICK: May I publish, Your Honor?

2 THE COURT: You may.

3 BY MR. GAMMICK:

4 Q Did you bring back any other items?

5 A Yes.

6 Q What was the next item, please?

7 A Well, we brought back fingerprint cards of

8 Mr. Vanisi. We brought back photographs of Mr. Vanisi.

9 Q Let me show you what's been marked as 24-C and
10 ask you if you recognize that.

11 A Yes, sir, I do.

12 Q Is that a true and accurate picture?

13 A Yes. That's his booking photo from the Salt
14 Lake --

15 Q Excuse me just a second. I move for 24-C to be
16 admitted.

17 THE COURT: Counsel?

18 MR. GREGORY: We would submit it.

19 THE COURT: Admitted.

20 (Plaintiff's Exhibit 24-C was admitted.)

21 BY MR. GAMMICK:

22 Q Go ahead.

23 A It's the booking photo that the Salt Lake
24 County Sheriff's Office gave to us of Mr. Vanisi.

25 Q That's the person whose clothing you brought

1 back and the fingerprint card and other items that you're
2 describing?

3 A Yes, sir.

4 MR. GAMMICK: May I publish?

5 THE COURT: You may.

6 BY MR. GAMMICK:

7 Q Did you bring a weapon back?

8 A Yes, sir, we did.

9 Q And was that recovered in Salt Lake City by the
10 sheriff's department?

11 A Yes, sir, it was.

12 Q Let me show you 15-A, B and C and ask if you
13 recognize these items.

14 A Yes, sir, I do.

15 Q Are those the items you brought back from Salt
16 Lake City?

17 A Yes, they are.

18 MR. GAMMICK: I'd move for 15-A, B and C, Your
19 Honor.

20 THE COURT: Counsel.

21 MR. GREGORY: We would submit it, Your Honor.

22 THE COURT: 15-A, B and C are admitted.

23 (Exhibits 15-A, B and C were admitted.)

24 BY MR. GAMMICK:

25 Q Were you present -- first of all, is the

1 weapon, is that a Glock weapon?

2 A Yes, it is.

3 Q Does it have a serial number?

4 A Yes, it does.

5 Q Were you present when a comparison was made
6 between the serial number on that weapon and Sergeant
7 Sullivan's weapon?

8 A I made that comparison, yes.

9 Q And was it the same serial number?

10 A Yes, it was.

11 Q Is that Sergeant Sullivan's weapon?

12 A Yes, it is.

13 MR. GAMMICK: May I publish, Your Honor?

14 THE COURT: You may.

15 BY MR. GAMMICK:

16 Q I guess as to items B and C, what are those?

17 A The bullets and the magazine that were actually
18 in the gun when Salt Lake City recovered it. That's just
19 unloaded now.

20 Q After you returned from Salt Lake City, was
21 there a time that you were contacted to go back to 1098 Rock
22 Boulevard?

23 A Yes, there was.

24 Q And did you return to that address?

25 A Yes, sir, I did.

1 Q Did you find other items of evidentiary value
2 there?

3 A Yes, sir.

4 MR. GREGORY: May I see that?

5 MR. GAMMICK: I'm sorry.

6 BY MR. GAMMICK:

7 Q Let me show you photographs, start with 26,
8 which I believe is already in evidence. Do you recognize
9 that photograph?

10 A Yes, sir, I do.

11 Q And what does that depict?

12 A That's the kitchen area and specifically a
13 kitchen cabinet in 1098-A with the door open and some white
14 plastic bags sticking out of it.

15 Q Describe the bags. What are they?

16 A They're the type that when you go to the
17 grocery store, they ask if you want paper or plastic with
18 the handles, just small plastic bags.

19 Q Was there something inside of that bag? And
20 I'll show you -- first of all, let me do this, I'll show you
21 22, ask if you recognize that photograph.

22 A Yes, sir, I do.

23 Q Is it true and accurate?

24 A Yes.

25 MR. GAMMICK: Move for 22, Your Honor.

1 THE COURT: Do you have any objection?

2 MR. GREGORY: We would submit it, Your Honor.

3 THE COURT: Would you lay a better foundation,
4 please. I didn't understand it was fair and accurate of --

5 MR. GAMMICK: Of what it depicts.

6 THE WITNESS: Yes, it is.

7 THE COURT: Counsel approach.

8 (Bench conference between Court and counsel
9 outside the presence of the jury as follows:)

10 THE COURT: I just wanted to make it clear that
11 when counsel is submitting and not interposing an objection,
12 I'm being careful that I'm sure that the foundation is laid.
13 At this stage in the proceedings, although there's no
14 objection, I do not feel that a proper foundation has been
15 laid for admission.

16 MR. GAMMICK: My concern is I know the Court
17 doesn't want me to get into what the subject matter of the
18 photograph is. I know I can do this without getting into
19 the subject matter, so I won't do that until it's admitted.

20

21 (Whereupon, the following proceedings were held
22 in open court, in the presence of the jury.)

22

23 THE COURT: You may proceed.

24 BY MR. GAMMICK:

25 Q Was the photograph taken at 1098 North Rock

1 Boulevard?

2 A Yes, it was.

3 Q Does it involve the subject we've just been
4 discussing?

5 A Yes.

6 MR. GAMMICK: I move for its admittance.

7 MR. GREGORY: Again, we would submit it.

8 THE COURT: It's admitted.

9 (Plaintiff's Exhibit 22 was admitted.)

10 BY MR. GAMMICK:

11 Q What are we looking at?

12 A In the second photo you gave me, it's actually
13 a picture of my hands, and I'm holding the bag open for the
14 photograph. And what's inside, a flashlight, a hand-held
15 radio, items of leather, similar with what a police officer
16 would carry, and in fact similar to the same items we were
17 missing in the investigation from Sergeant Sullivan's body.

18 Q Let me show you item 16 which has been admitted
19 and ask you to look at the items contained therein.

20 A It's the same items that were in the bag.

21 Q And are the bags also contained in that box?

22 A Yes.

23 Q Did you request any further testing with
24 respect to the white plastic bags?

25 A Yes, I did.

1 Q What type of testing did you request?

2 A Requested that the bags be tested for the
3 presence of a fingerprint or any fingerprints.

4 Q To your understanding were there any
5 fingerprints found on the bags?

6 A Yes, sir.

7 Q Was that done by Investigator Stevenson,
8 Investigator Leal from the crime lab?

9 A Yes.

10 MR. GAMMICK: Those are all the questions I
11 have at this time. Thank you.

12 MR. GREGORY: May I have the Court's
13 indulgence, please?

14 THE COURT: Yes.

15 (Discussion between counsel and defendant.)

16 MR. GREGORY: No questions, Your Honor.

17 THE COURT: You may step down. You're excused.

18 MR. GAMMICK: May we approach for just a
19 moment, Your Honor?

20 THE COURT: Yes.

21 (Bench conference between Court and counsel
22 outside the presence of the jury as follows:)

23 MR. GAMMICK: Detective Duncan inquired that
24 once he had been excused if he could come back into the
25 courtroom to watch further testimony of the trial.

1 THE COURT: Do you anticipate using him in the
2 penalty phase?

3 MR. GREGORY: No.

4 THE COURT: Do you anticipate using him in your
5 case?

6 MR. GREGORY: No.

7 THE COURT: Do you have any objection to him
8 coming back in?

9 MR. GREGORY: We would submit it.

10 No, we don't.

11 THE COURT: Thank you.

12

13 (Whereupon, the following proceedings were held
14 in open court, in the presence of the jury.)

15 THE COURT: Call your next witness.

16 MR. GAMMICK: Fernando Moreira, Your Honor.

17 (Witness sworn.)

18 FERNANDO MOREIRA

19 called as a witness on behalf of the Plaintiff,

20 having been first duly sworn,

21 was examined and testified as follows:

22

23 DIRECT EXAMINATION

24 BY MR. GAMMICK:

25 Q Would you please state your name and spell your

1 last name, sir.

2 A My first name is Fernando, last name Moreira,
3 M-o-r-e-i-r-a.

4 Q Mr. Moreira, do you have some involvement with
5 the sheriff's department?

6 A Yes, sir. I'm involved with the search and
7 rescue for the last six years.

8 Q And would you describe a little bit about what
9 you do with search and rescue.

10 A I'm involved in actually, I'm one of the
11 rescue swimmers around the state of Nevada. I do scuba
12 diving. I do everything to do with water. I also do a lot
13 of back country search, mine rescues and evidence searches.

14 Q You say you've been involved how long doing
15 that?

16 A Six years.

17 Q I'll call your attention to January of 1998.
18 Were you involved in a search of the University of Nevada
19 campus and just off campus?

20 A Yes, sir, I was.

21 Q And are you familiar with the Orr Ditch?

22 A Yes, sir. I was inside the ditch.

23 Q And that was part of your search area?

24 A Yes, sir.

25 Q Was there a -- did there come a time when you

1 were looking in the ditch for specific items?

2 A Actually, my sergeant, Sergeant Emerson from
3 the sheriff's department, called me in the morning, January,
4 he asked me to start looking for any kind of evidence like
5 clothing, a wig, mask, hood, anything.

6 Q Did there come a time when you found some
7 items?

8 A Yes, sir.

9 Q Where were those -- were they in the ditch, out
10 of the ditch? Where were they?

11 A It was on the northeast inside the ditch.

12 Q Let me show you 31-E and 31-F and ask if you
13 recognize those items.

14 A Yes, sir, I do.

15 Q And do those depict the area that you were
16 searching that morning?

17 A Yes, sir.

18 MR. GAMMICK: I'd move for those two items,
19 please, Your Honor.

20 THE COURT: Counsel?

21 MR. GREGORY: We would submit it, Your Honor.

22 THE COURT: Can you hold it so I can see it?
23 31-A and 31-F are admitted.

24 MR. BOSLER: I believe it's E and F.

25 THE COURT: E or A?

1 MR. GAMMICK: Your Honor, E as in Edward.

2 THE COURT: E as in Edward.

3 Thank you, Mr. Bosler.

4 (Plaintiff's Exhibits 31-E and 31-F were
5 admitted.)

6 BY MR. GAMMICK:

7 Q In the areas that are depicted in those
8 photographs, did you recover some items?

9 A Yes. I recovered pictures of baseball cap like
10 with colors on it.

11 Q If you'd stop for a minute, I'd like to show
12 you 31-A and B and ask you to look at those photographs.

13 A Yes, that's the thing I found.

14 MR. GAMMICK: Your Honor, I'd move for
15 admission of 31-A and B.

16 THE COURT: May I see them, please?

17 MR. GREGORY: Thank you, Your Honor. We would
18 submit it.

19 THE COURT: You can have one or the other.

20 MR. GAMMICK: 31-A.

21 THE COURT: It's admitted.

22 (Plaintiff's Exhibit 31-A was admitted.)

23 BY MR. GAMMICK:

24 Q Did you recover any other items from the ditch?

25 A Yes, sir, I recovered also a wig.

1 Q Let me show you 31-C, D and G, and ask if you
2 recognize those.

3 A Yes, sir, that's the one I found.

4 Q The same wig?

5 A Yes, sir.

6 MR. GAMMICK: Your Honor, I move for the
7 admission of those three photographs. And I'll show the
8 Court.

9 THE COURT: Counsel?

10 MR. GREGORY: We've seen the exhibits. We will
11 submit it.

12 THE COURT: 31-C, D and G are admitted.
13 (Plaintiff's Exhibits 31-C, D and G were
14 admitted.)

15 MR. GAMMICK: May I publish these items to the
16 ladies and gentlemen, Your Honor?

17 THE COURT: You may.

18 BY MR. GAMMICK:

19 Q When you found these items in the Orr Ditch,
20 was it behind a residence?

21 A Yes, sir, it was behind an apartment complex.
22 I think on the 1200 block.

23 Q Do you remember which street?

24 A It was right across the street from a park.
25 Actually, I forgot the name of the street, sir.

1 Q Would that be in this area that's depicted by
2 the No. 1215 Beech?

3 A Yes, that's what it is.

4 Q Do you know which way that Orr Ditch flows, the
5 water flow is?

6 A It was going up north. If I don't make a
7 mistake, it's going towards Sparks, like behind the K-Mart
8 in Sparks. I think that's where the Orr Ditch actually goes
9 all the way around.

10 Q Does it flow toward the University of Nevada
11 campus or away from it?

12 A Oh, away from it.

13 Q When you were doing your search of that ditch,
14 did you run across some barking dogs?

15 A Yes, sir, I did.

16 Q Is that anywhere?

17 A There were some residences actually was like
18 when I was going down the creek on my right side is some
19 residences out there and there was a blue house and they
20 have about two or three dogs there.

21 Q They were barking at you?

22 A Yes, sir.

23 MR. GAMMICK: Those are all the questions I
24 have at this time, Your Honor.

25 THE COURT: Cross-examination?

1 MR. GREGORY: Court's indulgence.
2 (Discussion between counsel and defendant.)

3 MR. GREGORY: No questions.

4 THE COURT: You may step down. You are
5 excused.

6 MR. GAMMICK: Your Honor, the State would call
7 Louis Hill.

8 THE CLERK: Please raise your right hand.
9 (Witness sworn.)

10 THE CLERK: Thank you. Please be seated at the
11 witness stand.

12 LOUIS HILL
13 called as a witness on behalf of the Plaintiff,
14 having been first duly sworn,
15 was examined and testified as follows:

16
17 DIRECT EXAMINATION

18 BY MR. GAMMICK:

19 Q Would you please state your name and spell your
20 last name, sir.

21 A My name is Louis Daniel Hill. Last name is
22 Hill, H-i-l-l.

23 Q Mr. Hill, I want to call your attention back to
24 January of 1998. Did you own a car at that time, sir?

25 A Yes, I did.

1 Q Would you please describe it.

2 A It was a black Toyota '92 Camry.

3 Q And on the evening or nighttime of January
4 13th, which would have been a Tuesday, did you have your car
5 with you?

6 A Yes, I did.

7 Q Where were you?

8 A At 1998 Helena Street.

9 Q Is that in the area I'm pointing to right now
10 with the pointer?

11 A Yes.

12 Q Can you see that all right?

13 A Yes.

14 Q What were you doing?

15 A I had my car outside warming up and I was in
16 the house. When I came out two minutes later, it was gone.

17 Q Your car was gone?

18 A Yeah.

19 Q Did you ever get it back?

20 A Yes, I did.

21 Q Where was that?

22 A My parents went down to Utah to get it.

23 Q I ask you to look at the gentleman seated at
24 the table to your right in the gray suit with the red tie.
25 Do you know that man?

1 A No, I don't.

2 Q Did he have permission to have your car?

3 A No.

4 Q Let me show you what's been marked 32-A and B,
5 ask if you recognize what's in those photographs.

6 A Yes. I recognize my car.

7 Q Both of those are of your car?

8 A Yes.

9 MR. GAMMICK: Would the Court like to see them,
10 Your Honor?

11 THE COURT: Yes.

12 Counsel?

13 MR. GREGORY: Submitted, Your Honor. Thank
14 you.

15 THE COURT: I'll require you to lay a little
16 bit more foundation as to the different conditions.

17 MR. GAMMICK: Certainly.

18 BY MR. GAMMICK:

19 Q 32-A and B are of both of the same car?

20 A Yes, sir.

21 Q Is there an item in 32-A that is not in 32-B?

22 A Yes, the car cover.

23 Q Is that your car cover?

24 A No, it ain't.

25 Q Do you know where that came from?

1 A No.

2 MR. Gammick: I'd move for their admission,
3 Your Honor.

4 THE COURT: Counsel?

5 MR. Gregory: Again, Your Honor, submit it.

6 THE COURT: 32-A and B are admitted.

7 (Plaintiff's Exhibits 32-A and B were
8 admitted.)

9 MR. Gammick: May I publish?

10 THE COURT: You may.

11 MR. Gammick: Those are all the questions I
12 have of Mr. Hill, Your Honor. Thank you.

13 THE COURT: Cross-examination.

14 MR. Gregory: Court's indulgence.

15 (Discussion between counsel and defendant)

16 MR. Gregory: No questions.

17 THE COURT: You may step down. You are
18 excused.

19 Call your next witness.

20 MR. Gammick: May we approach, Your Honor?

21 THE COURT: Yes.

22

23 (Bench conference between Court and counsel
24 outside the presence of the jury as follows:)

25 MR. Gammick: We're going to call Ms. Misito next

1 from the 7-Eleven. We have a videotape that we couldn't do
2 before but it's been done now to show -- it's so dark it's
3 not going to work on this projection system. So we have a
4 TV set or the regular TV cart and everything here. So we
5 just need time to roll that in, set it up, put out the two
6 small sets.

7 THE COURT: We'll take a short recess. This is
8 a good time to take a little a recess.

9
10 (Whereupon, the following proceedings were held
11 in open court, in the presence of the jury.)

12 THE COURT: This is a good time to take our
13 morning recess. We will be in recess for probably 10 or 15
14 minutes. It's going to be a brief recess if at all possible
15 so we can get back on the record. During this break do not
16 discuss the case among yourselves or with anyone else. Do
17 not form or express any opinion about the ultimate outcome
18 of this matter. Do not allow anyone to attempt to influence
19 you or speak to you about the case in any way. If anyone
20 should attempt to influence you with regard to this case,
21 report that occurrence to the bailiff immediately. Do not
22 read, listen to or view any news media accounts regarding
23 this case.

24 Ladies and gentlemen of the jury, you may go in
25 the jury room now. Court's in recess.

1 (Recess taken.)

2 THE COURT: Counsel, can you stipulate to the
3 presence of the jury?

4 MR. GAMMICK: The State will so stipulate.

5 MR. GREGORY: The defense so stipulates, Your
6 Honor.

7 THE COURT: Thank you. Mr. Gammick, you may
8 call your next witness.

9 MR. GAMMICK: Patricia Misito, please.

10 THE CLERK: Please raise your right hand.

11 (Witness sworn.)

12 THE CLERK: Thank you. Please be seated at the
13 witness stand.

14

15 PATRICIA MISITO

16 called as a witness on behalf of the Plaintiff,

17 having been first duly sworn,

18 was examined and testified as follows:

19

20 DIRECT EXAMINATION

21 BY MR. GAMMICK:

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

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

25 Q Ms. Misito, I'll call your attention to January

1 13th, 1998. Where were you employed at that time?

2 A Bearing 7-Eleven on Baring Boulevard.

3 Q I'll call your attention to Exhibit No. 7. Do
4 you recognize -- this is a map?

5 A Sparks.

6 Q Here where it says 7-Eleven, 710 Baring, is
7 that where you were employed?

8 A Yes.

9 Q By the YMCA there in Sparks?

10 A Uh-huh.

11 Q About 10:15 to 10:20 at night, somewhere in
12 that neighborhood, were you on duty?

13 A Yes, I was.

14 Q Did you have anyone else in the store with you
15 at that time?

16 A Yeah. I had a 19-year-old boy in the cooler.
17 He was stocking. I had a customer at the magazine rack and
18 a customer came in to buy Copenhagen, 19-year-old boy.

19 Q So you had a customer at the counter with you?

20 A Yes.

21 Q And have you since determined what that person,
22 at least his first name is, the one that was the customer?

23 A No, I don't know his first name.

24 Q Did something unusual happen to you?

25 A Yeah. Well, before he came up to the counter,

1 I looked up at the door and there was a man standing in the
2 door, and he had a turtleneck shirt on but the turtleneck
3 was basically split here because I could see skin in
4 between. It was a purplish color. It was up around his
5 face. He was doing this with it, which made me believe he
6 was taking it down. It was January and it was cold.

7 Q Let me put the brakes on here for just a
8 second. The lady right in front of you is trying to get
9 everything you say down word-for-word. If we could get you
10 to take maybe ten miles an hour off.

11 A That's the Jersey in me.

12 Q You are nervous today?

13 A No, I'm from New Jersey. We talk fast. We
14 have to.

15 (Laughter.)

16 BY MR. GAMMICK:

17 Q I'll get you to slow down just a little bit.

18 You mentioned a shirt. Let me show you Exhibit
19 29-B, which is in evidence, and ask if you recognize that.

20 A Yes. The purple shirt. In the middle -- the
21 collar was cut off. That's the way it looked to me. It
22 looked like the collar was cut off because I seen skin in
23 between and the thing was pulled up by his face.

24 MR. GREGORY: I don't mean to be difficult.
25 I'd ask that the witness just answer the question that's

1 asked instead of narrating.

2 THE COURT: Okay. The question was did she
3 recognize it.

4 MR. GAMMICK: Yes.

5 BY MR. GAMMICK:

6 Q Do you recognize this photograph?

7 A Yes, I do.

8 Q What do you recognize?

9 A The purple shirt in the center.

10 Q One other little bad habit -- let me finish
11 what I'm saying because she needs to get each one of us.
12 Okay. I know in New Jersey you want to talk fast, but slow
13 down a little bit for me.

14 This purple shirt, is that what the man was
15 wearing that night when he came in your store?

16 A Yes.

17 Q You had him at the doorway. Then what
18 happened?

19 A I had him at the doorway. My first thought was
20 he's going to rob me. My second thought was it's cold, so
21 he's pulling it up or down around his face, because he was
22 playing with it. Then I had the kid at the counter buying
23 the Copenhagen, so automatically I had to ID him, take care
24 of him. So I lost track of the other guy. And as the kid
25 gave me a \$20 bill and I think some change, and I went to

1 ring it up --

2 MR. GREGORY: Again, we're going to object to
3 her narrating.

4 THE COURT: I think this was responsive.
5 Overruled. Go ahead.

6 THE WITNESS: When I had the drawer open,
7 giving the change back, the man stepped up to the counter.
8 He said, "While you got that open, can you help me out?"

9 BY MR. GAMMICK:

10 Q Let me stop you here right now. The man in the
11 purple shirt stepped up?

12 A Yes.

13 Q And he said --

14 A While you got that drawer open, can you help me
15 out.

16 Q Then what happened?

17 A I looked up. He picked his shirt up, showed me
18 the gun, took the gun out. I reached over to the drawer,
19 took the drawer out of the register, put it on the counter,
20 told him help yourself -- looked him in the face, told him
21 help yourself, turned and faced the window.

22 Q Where was this young man that was buying --

23 A Right next to him.

24 Q Again, let me finish my sentence. Was buying
25 the Copenhagen, is what I was going to say.

1 A Right next to him.

2 Q So you gave the man in the purple shirt the
3 cash drawer?

4 A The cash drawer.

5 Q Why?

6 A Because he had a gun.

7 Q Were you scared?

8 A Yeah.

9 Q The man that was in the purple shirt that had
10 the gun, is he in this courtroom today?

11 A Yes, he is.

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

14 A He's sitting right over there with the grayish
15 blue jacket on, in the middle of the two men.

16 Q Is he wearing a tie?

17 A Yes, he is. It's got red in it.

18 MR. GAMMICK: Your Honor, may the record
19 reflect the identification of Defendant Vanisi?

20 THE COURT: Yes, the record will so reflect.

21

22

23

24

25

1 BY MR. GAMMICK:

2 Q Do you have or did you have when you worked at
3 that store any type of surveillance equipment in the store?

4 A Yes, we had video cameras.

5 Q And since then have you been shown a videotape
6 of what occurred?

7 A Yes, I have.

8 Q Let me show you what's been marked as No. 42
9 and ask if you recognize that.

10 A Yes, that's my signature.

11 Q When did you sign that?

12 A Two weeks ago.

13 Q Did you see the tape first?

14 A After I seen the tape and then I signed it.

15 MR. GAMMICK: I move for No. 42 to be admitted.

16 THE COURT: Counsel?

17 MR. GREGORY: Again, Your Honor, we would
18 submit it.

19 MR. GAMMICK: She did testify that this was a
20 videotape from surveillance that she has seen and then
21 signed.

22 THE COURT: I was reading that. But thank you.
23 I'll admit 42.

24 (Plaintiff's Exhibit 42 was admitted.)

25 MR. GAMMICK: Thank you. May I publish?

1 THE COURT: You may.

2 THE COURT: Does the room need to be darkened?

3 MR. GAMMICK: This tape is so dark I don't know
4 that it would really make any difference, so we'll just show
5 it at this time.

6 (Whereupon the videotape was played.)

7 BY MR. GAMMICK:

8 Q I believe the tape at the top shows 1999. Is
9 that an error?

10 A Yes.

11 Q This was January 13th, 1998?

12 A '98.

13 Q Can you see the tape?

14 A I know what's -- I could tell you what it's
15 doing.

16 Q Is that the young man you were talking about
17 who just walked in?

18 A Yeah, the kid's up. He had given me his ID.

19 Q The young man buying the Copenhagen?

20 A Yeah. I think he's looking for change to go
21 with the 20. See him? There he comes up on the side. Now
22 he's standing right in front of the register.

23 Q Is that Mr. Vanisi, or the defendant, that just
24 walked up behind him?

25 A Yeah, it's the defendant. As soon as I hand

1 the kid back his change, that's when he says about helping
2 him out. Then I take the drawer out of the register, put it
3 on the counter, tell him help yourself.

4 Q Did he take money?

5 A Yes. Then I turned to face the window, he's
6 saying to the kid, "Times are hard, man." I was just
7 watching the kid out of the corner of my eye. Then he
8 talked to me again. He said, "Is there anything else you
9 can do, anything else you could help me with?" I turned
10 back and I said, "No, I'm sorry." I looked at him, turned
11 back to the window. He asked again. I said the same thing.
12 At that point -- I don't know if you see the kid, he goes to
13 hand him his change. I don't know if that happened yet.

14 The kid went to hand his change from the
15 Copenhagen. He said, "No thanks, man." Gave it back to
16 him. Then the last thing he said was, "Just don't call the
17 cops or I'll be back." And then he left.

18 (Video concluded.)

19 BY MR. GAMMICK:

20 Q Could you please describe the loss.

21 A There was approximately \$99. The only reason
22 it was that much was there was one 20 that I think the young
23 man had just given me. There was like four or five fives,
24 maybe 25 to 30 singles. And there was \$11 in half dollar
25 bills which I was collecting. And there was a \$2 bill

1 underneath, too. We just broke the drawers down, that's why
2 I know. At 10:00 we break the drawer down to one drawer.
3 We know how much is in that drawer at that time. That's why
4 I could be pretty precise.

5 MR. GAMMICK: Thank you. That's all the
6 questions I have at this time.

7 THE COURT: Cross-examination.

8 MR. GREGORY: Court's indulgence.

9 (Discussion between counsel and defendant).

10 MR. GREGORY: No questions.

11 THE COURT: You may step down. You are
12 excused.

13 Call your next witness.

14 MR. GAMMICK: Caleb Bartelheim, Your Honor.

15 THE CLERK: Please raise your right hand.

16 (Witness sworn.)

17 THE CLERK: Thank you. Please be seated at the
18 witness stand.

19 CALEB BARTELHEIM

20 called as a witness on behalf of the Plaintiff,

21 having been first duly sworn, ____

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. GAMMICK:

25 Q Would you please state your name and spell your

1 last name, sir.

2 A My name is Caleb Bartelheim,
3 B-a-r-t-e-l-h-e-i-m.

4 Q We'll call your attention to January 13th,
5 1998, at about 10:15 in the evening. Were you at the
6 7-Eleven on Baring Boulevard in Sparks?

7 A Yes, I was.

8 Q And why were you there?

9 A I was buying a can of chewing tobacco.

10 Q Something unusual happen to you?

11 A Yes.

12 Q What was that?

13 A The store was robbed.

14 Q Were you present while it was robbed?

15 A Yes, I was. I was at the counter.

16 Q Two or three weeks ago did you have the
17 opportunity to see a videotape?

18 A Yes, I was.

19 Q It was explained it was a videotape of the
20 robbery?

21 A Yes.

22 Q And there's an individual -- it's a pretty dark
23 tape, but there's an individual standing right in front of
24 the counter. Was that you?

25 A Yes, it was.

1 Q When did you first become aware that there was
2 a robbery happening?

3 A When he said, "Be cool. Give me the money," I
4 believe.

5 Q Did you see a weapon?

6 A Yes, I did.

7 Q Do you have any knowledge of weapons?

8 A Yes, I do.

9 Q Did you recognize the make of the weapon?

10 A It was a Glock.

11 Q Was that a brand name of a handgun?

12 A Yes, it is.

13 Q Let me show you 15-A and ask if you recognize
14 that?

15 A Yes.

16 Q Is that the weapon or at least looked like the
17 weapon that was used?

18 A Yes, it is.

19 Q Who had this weapon?

20 A Will you repeat the question, I'm sorry?

21 Q Pardon?

22 A Will you repeat the question?

23 Q Sure. Who had this weapon?

24 A A gentleman behind me.

25 Q The man who robbed the store?

1 A Yes.

2 Q Is he present in this courtroom today?

3 A Yes, he is.

4 Q Would you please indicate where he's at and
5 what he's wearing.

6 A He's right there sitting in the gray suit.

7 Q Gray suit?

8 A Yes, I believe so.

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

11 THE COURT: Yes, the record will so reflect.

12 MR. GAMMICK: Those are all the questions I
13 have at this time.

14 THE COURT: Cross-examination.

15 MR. GREGORY: Again, Court's indulgence.

16 THE COURT: Yes.

17 (Discussion between counsel and defendant.)

18 MR. GREGORY: A couple questions, Your Honor.

19 THE COURT: Go ahead.

20

21 CROSS-EXAMINATION

22 BY MR. GREGORY:

23 Q Sir, when was the last time you saw the
24 videotape?

25 A I believe three or four weeks ago, I believe.

1 Q I assume that this was a fairly striking event
2 in your life. Do you remember what occurred?

3 A Yes, I do.

4 Q Over and beyond that videotape; is that
5 correct?

6 A Yes.

7 Q Did the person you've identified as the
8 defendant ever tell you to lie down on the floor or --

9 A He just told us to be cool.

10 Q I noticed on the videotape that you were
11 handing him some money. Did he request that money from you,
12 sir?

13 A No. I just held it up, and he said, "No
14 thanks."

15 Q Is that all he said to you?

16 A He said, "Times are rough and you know how it
17 is," before I held up the money.

18 Q And then he said, "No thanks"?

19 A Yes.

20 MR. GREGORY: Nothing further. Thank you, Your
21 Honor.

22 THE COURT: Anything further?

23 MR. GAMMICK: Quickly, Your Honor.
24
25

REDIRECT EXAMINATION

BY MR. GAMMICK:

Q You've already testified that he had the gun that you've identified. Did he point that gun at you at any time?

A When he was pulling it out, he went towards me and then towards -- away from me with his -- yeah, with his right hand.

Q He pointed it at you and then away from you. Did you ever see him point it at the clerk?

A Yes, it was pointed at the clerk.

Q So he pointed the gun at both you and the clerk?

A Yes.

MR. GAMMICK: Thank you.

MR. GREGORY: Is that reflected on the video?

THE WITNESS: I believe so.

MR. GREGORY: Nothing further.

THE COURT: Okay. You may step down. You are excused.

Call your next witness.

MR. GAMMICK: Diana Shouse, please, Your Honor.

THE CLERK: Please raise your right hand.

(Witness sworn.)

1 DIANA SHOUSE
2 called as a witness on behalf of the Plaintiff,
3 having been first duly sworn,
4 was examined and testified as follows:
5

6 DIRECT EXAMINATION

7 BY MR. GAMMICK:

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

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

11 Q I want to call your attention to January 13th,
12 1998, at about 10:15 to 10:30 at night. Where were you
13 working at that time?

14 A Jackson Food Stores.

15 Q And where was that located? Where is it
16 located?

17 A Winners Circle and McCarran.

18 Q Is that what's depicted her? It says Jackson's
19 Market up here around McCarran and Clear Acre?

20 A Uh-huh.

21 Q What were you doing?

22 A I was working there. It was like 10:30. He
23 came in and --

24 Q Let me ask this: In what capacity were you
25 working there?

1 A Just a clerk.

2 Q You say about 10:30 he came in. What happened?

3 A He came in, laid a gun in his hand on the
4 counter and told me to empty the cash drawer into a paper
5 bag.

6 Q Did you?

7 A Yes.

8 Q Why?

9 A If you point a gun at me, you can have anything
10 you want.

11 Q Were you scared?

12 A Definitely.

13 Q Did he say anything after you gave him the
14 money?

15 A He was complaining that it wasn't much, that he
16 should get a job. I told him to get two like me.

17 Q Do you have some type of surveillance in the
18 store?

19 A Yeah, video cameras.

20 Q And were some photographs taken of that? Let
21 me show you No. 27 which has already been admitted into
22 evidence, ask if you recognize that photograph.

23 A That's him walking out of the store, with the
24 paper bag.

25 Q Is there someone else at least partially shown

1 in that photograph?

2 A That's me behind the counter.

3 Q Now, you say "That's him." Let me back up here
4 just a second.

5 Is the time correct on that photograph?

6 A No. They just bought the store, didn't know
7 how to change the time on the videos. And it was daylight
8 savings or it was backwards, an hour.

9 Q It's an hour off?

10 A (Witness nodded head affirmatively.)

11 Q And where it shows 2341, which I believe would
12 be 11:41 at night, it should be 2241?

13 A Right.

14 Q Do you know what the loss was, what he took?

15 A Like 52.34 or something like that.

16 Q What was the make-up of that money?

17 A 10s, fives, ones and change, because I was
18 giving him everything in the drawer.

19 Q Do you know how many 10s?

20 A No. I had just made a drop and I don't
21 remember what was --

22 Q Was it predominantly small bills?

23 A Yes.

24 Q Ma'am, the man you've talked about that came
25 into the store, presented the gun and took the money, is he

1 in the courtroom today?

2 A Yes, he's sitting at the table there in the
3 gray suit.

4 Q Gray suit. Does he have a tie on?

5 A Yes.

6 Q What color?

7 A Maroon, gray.

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

10 THE COURT: The record will so reflect.

11 MR. GAMMICK: That's all the questions I have
12 of Mr. Shouse.

13 THE COURT: Cross-examination?

14 MR. GREGORY: Court's indulgence.

15 No questions, Your Honor.

16 THE COURT: You may step down. You are
17 excused.

18 Counsel, call your next witness.

19 MR. GAMMICK: I believe that will be Monday
20 morning, Your Honor, since we have some other things to do
21 the rest of the day.

22 THE COURT: Okay. That's fine.

23 Ladies and gentlemen of the jury, we went
24 quickly this morning. I appreciate your attentiveness this
25 morning. As I had told you last night, you were going to

1 get off early today. It's even earlier than I expected.
2 Now during this recess, it's going to be the rest of the
3 afternoon today and all over the weekend. And then you'll
4 be coming back here on Monday morning.

5 Now, I want to remind you that I give you this
6 admonition at every break and you've gotten it in the
7 evenings, but this weekend I won't be reminding you every
8 few hours of it. So please remind yourself of the
9 admonition.

10 Remember, you are still on duty throughout the
11 weekend and you must follow the admonition.

12 We will begin on Monday morning at nine a.m.
13 Now, ladies and gentlemen of the jury, this case is going a
14 little quicker than I had originally anticipated. I
15 anticipate that you may well be deliberating on Monday. I
16 don't know for sure, because I never can tell until I
17 actually get through the witnesses, but there is a potential
18 for that. If that does occur, once you begin deliberating,
19 you will not be going home or calling, making calls, making
20 arrangements once you begin your deliberation process. So I
21 just want you to be kind of aware Monday night, it may be a
22 late evening for you. It may not happen on Monday. It
23 might happen on Tuesday. But I believe Monday or Tuesday
24 you'll be deliberating one of those days. Whichever day it
25 is, you may need to make some arrangements. If you had

1 someplace you normally are at 5:00, don't plan on being
2 there on Monday if you are deliberating, just to give you a
3 little heads up about what may be going on.

4 Now, during the recess that we're going to take
5 now, remember the admonition. You are not to form or
6 express any opinion about the ultimate outcome of this case
7 or the defendant's guilt or innocence until the matter is
8 finally submitted to you for determination. You are not to
9 allow anyone to attempt to influence you in any manner
10 regarding this case or speak of it in your presence.

11 If anyone should attempt to do so, you must
12 report such an attempt to the bailiff, who in turn will
13 report it to me.

14 You may not view any news media accounts
15 regarding this case, listen to or read any news media
16 accounts relating to this case, and you may not allow any
17 influences that I have advised you previously to allow to
18 take place. Do not talk about the case among yourselves or
19 with anyone else.

20 Ladies and gentlemen of the jury, I'll see you
21 Monday morning at nine a.m. You are excused.

22 (Whereupon the jury was excused.)

23 (Whereupon, the following proceedings were held
24 In open court, outside the presence of the
25 jury.)

1 THE COURT: Just for purposes of the record, I
2 want to make clear that again there were brief recesses
3 where counsel discussed their strategy amongst themselves
4 and with the defendant before each witness was excused.

5 Now, counsel, we had planned to make our legal
6 determination as to the jury instructions today. Do you
7 want to have a preliminary review of the jury instructions
8 in chambers and submit them to me or do you want to do them
9 all out on the record from the beginning to the end with
10 Mr. Vanisi present?

11 MR. GREGORY: We would ask that Mr. Vanisi be
12 present, Your Honor.

13 THE COURT: Then what I'd like to do is find
14 out if you have received the proposed instructions as
15 submitted by the District Attorney's Office.

16 MR. GREGORY: We have received -- yes, we have.

17 THE COURT: Why don't we take a short recess
18 and let you get those instructions in front of you, move the
19 TV cameras out, and --

20 MR. GREGORY: We're going to ask for a little
21 longer than that. We'd like to confer with our appellate
22 deputy, if we might, Your Honor. We may have some special
23 instructions to offer.

24 THE COURT: Okay. Then 1:00 today?

25 MR. GREGORY: That's excellent.

1 THE COURT: Can you get those special
2 instructions to me if you do want to offer them as soon
3 prior to 1:00 if at all possible.

4 MR. GREGORY: Yes, Your Honor.

5 THE COURT: Then we will be in recess until one
6 p.m. Court's in recess.

7 (Recess taken at 10:50 a.m.)
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1 RENO, NEVADA, FRIDAY, SEPTEMBER 24, 1999, 1:20 P.M.

2 --oOo--

3 (The following proceedings took place in open
4 court, outside the presence of the jury.)

5 THE COURT: Thank you. Please be seated. I don't
6 have anybody here, but it is open to anyone who wants to
7 attend.

8 Okay. This is the time set for settlement of jury
9 instructions. Let the record reflect that the jury is not
10 present. Counsel?

11 MR. GAMMICK: Your Honor, just so you can figure
12 them into the scheme of things here, we have requested two
13 additional instructions. One of those is, you have an
14 instruction now which says "Murder in the first degree is,"
15 and it defines it in a short paragraph. We just added a
16 second paragraph to that one that says it's further divided
17 into murder in the first degree and murder in the second
18 degree.

19 I've asked for one more instruction that states
20 that basically in this case murder in the first degree is,
21 A, premeditated and deliberate murder; B, murder committed
22 while lying in wait; C, murder committed in the course or
23 furtherance of a robbery. All other murders are second
24 degree murder.

25 I don't think those were clear in the current

1 instructions. We have those coming upstairs. We already
2 requested them.

3 THE COURT: Let's go through them in the order
4 that I have them in. I have not changed this order since
5 they were provided by the State. It may not be the order
6 they are actually given in.

7 MR. STANTON: It has been over a year, several
8 months since -- can I take off my jacket while we go through
9 these?

10 THE COURT: Certainly.

11 MR. GREGORY: Mr. Stanton indicated he
12 intentionally mixes up our stuff when he gives it to us.

13 THE COURT: Let the record reflect Mr. Gregory is
14 smiling.

15 MR. STANTON: Thank you, Your Honor.

16 THE COURT: Okay. I have "Ladies and gentlemen of
17 the jury."

18 MR. BOSLER: Judge, is it okay if Mr. Vanisi has a
19 hand free so he can write during today's proceedings?

20 THE COURT: Yes.

21 MR. BOSLER: Thank you.

22 THE COURT: Okay, ready? We have the first one,
23 "Ladies and gentlemen of the jury."

24 Then we have the instruction that starts, "The
25 defendant in this matter," which looks to be a restatement

1 of the Information.

2 "An Information is a formal method."

3 "If in these instructions any rule, direction, or
4 idea."

5 "If during this trial I have said or done
6 anything."

7 "Although you were to consider only the evidence
8 in this case in reaching a verdict."

9 "It is the duty of the attorneys on each side."

10 "Nothing counsel say."

11 "The penalty provided by law."

12 "Neither the prosecution nor the defense is
13 required."

14 "There are two types of evidence from which a jury
15 may reach a verdict."

16 "To the jury alone belongs the duty of weighing."

17 "A person is qualified as an expert."

18 "In every crime there must exist a union."

19 "Intent may be proved by circumstantial evidence."

20 MR. BOSLER: Your Honor?

21 THE COURT: Yes.

22 MR. BOSLER: We would interpose an objection to
23 the second segment, "Intent can be established by any other
24 means." Essentially that minimizes the State's burden of
25 proof. We don't object to the rest of the instruction.

1 MR. GAMMICK: The intent instruction?

2 MR. BOSLER: Just the second sentence. It's
3 normally given, and I always make an objection.

4 THE COURT: Counsel for the State?

5 MR. STANTON: In response to Mr.'Bosler?

6 THE COURT: Yes.

7 MR. STANTON: Your Honor, this is a pattern
8 instruction, number one. Number two, it is true as a
9 practical matter. Number three, it's been approved by the
10 Nevada Supreme Court on numerous occasions.

11 THE COURT: Okay. I'll make a ruling on what we
12 are going to keep after I hear the objections.

13 "Every person charged with the commission of a
14 crime."

15 "The burden rests upon the prosecution to
16 establish every element."

17 "A reasonable doubt is one based on reason."

18 MR. BOSLER: We submitted an alternating
19 instruction, so you know.

20 THE COURT: I do have some here. Is the
21 alternating one "The State has the burden of proving"? Is
22 that the one you want me to use?

23 MR. BOSLER: Yes, Your Honor. I believe there
24 should be a citation attached to the Court's copy.

25 THE COURT: Actually, the other three all have

1 citations, but that one doesn't.

2 MR. GREGORY: It did not, Your Honor.

3 THE COURT: Is there a citation I should add?

4 MR. GREGORY: Your Honor, this --

5 MR. GAMMICK: I was just going to say, that
6 instruction, Your Honor, came up during this last
7 legislature and it comes out of some language out of the, I
8 believe a case out of the United States Supreme Court
9 originally out of Arizona.

10 However, our Supreme Court has been very emphatic
11 that the instruction we give is the only instruction to be
12 given in this state. The legislature said that. The
13 Supreme Court said that. They did not adopt the proffered
14 instruction that has been given to the Court by the defense
15 today.

16 I don't believe there is any option but to give
17 the one that is in the package we submitted to the Court.

18 THE COURT: Mr. Gregory, did you want to say
19 something?

20 MR. GREGORY: Similar to what he said, although I
21 thought it was a Louisiana case. Mr. Petty would have the
22 exact case. And I apologize to the Court, I wasn't able to
23 see him during the break.

24 MR. BOSLER: We can provide the citation later,
25 Your Honor. It is taken from a U.S. Supreme Court case. We

1 agree, although the statute says that a certain instruction
2 should be given, we don't think it's a proper instruction
3 and we will keep objecting until someone hopefully
4 eventually listens.

5 MR. STANTON: Mr. Gammick spoke because of his
6 experience down at the legislature, Your Honor, relative to
7 the instruction. I have some authority to cite to the Court
8 regarding, and some argument regarding the definition of
9 reasonable doubt in the instructions in Nevada.

10 THE COURT: Okay. Go ahead.

11 MR. STANTON: The specific statute is NRS 175.211.
12 In addition, I think it's been the Washoe County Public
13 Defender's office has, in my review of the appellate records
14 that have gone down in murder cases from this county, has
15 consistently usually at least once a year proffered a
16 challenge to the statutory reasonable doubt instruction.

17 There are several Nevada Supreme Court cases that
18 have addressed suggested alternatives to the reasonable
19 doubt instruction. And as Mr. Gammick has said, the Supreme
20 Court of our state has consistently rejected those.

21 The ones that I have string cited in chronological
22 order would be the case of Gary versus State, 112 -- I have
23 the Nevada Advanced Opinion, decided December 20, 1996.

24 Also Evans v. State, once again 112 Nevada,
25 decided in October of 1996. Also Parker v. State, and

1 Canape, C-a-n-a-p-e, at 109 Nevada 864; Parker being 109
2 Nevada 383.

3 In addition, the Ninth Circuit Court of Appeals
4 heard in 1987 a challenge to the Nevada reasonable doubt
5 instruction in Darnell, D-a-r-n-e-l-l, v. Swinney,
6 S-w-i-n-n-e-y, 823 F2d 299, and upheld it on federal
7 constitutional principles.

8 In addition, the United States Supreme Court in
9 1998 rejected an attempt to have the reasonable doubt
10 instruction declared unconstitutional, once again on federal
11 constitutional principles. That case is Ramirez,
12 R-a-m-i-e-r-e-z, versus Hatcher, H-a-t-c-h-e-r. At the time
13 I wrote the notes it was not published in West, but it was a
14 1998 cert denial under that name.

15 That would be the authority.

16 THE COURT: Okay. I ask the clerk to mark "The
17 State has the burden of proving the defendant guilty beyond
18 a reasonable doubt" instruction offered by the defense as
19 Defendant's Offered Instruction A. I am going to refuse it
20 at this time. I will be giving the instruction as provided
21 by the State.

22 "Murder is the unlawful killing of a human being."
23 Is that the one?

24 MR. GAMMICK: Yes, Your Honor, this is one of
25 them. We have one more, too.

1 THE COURT: Thank you.

2 MR. GAMMICK: This is the other one that we asked
3 to be typed that further defines first and second degree.

4 THE COURT: Okay. Mr. Bosler, have you seen -- or
5 Mr. Gregory; I see that Mr. Bosler has them -- the new
6 instruction, "Murder is the unlawful killing of a human
7 being," with the second paragraph, "Murder is further
8 divided into murder in the first degree and murder in the
9 second degree." Do you have that instruction now?

10 MR. BOSLER: We just have been handed that
11 instruction. If I may have a moment, Your Honor?

12 THE COURT: Certainly.

13 MR. BOSLER: Your Honor, I think it's an accurate
14 statement of the law in Nevada at this point, but we have
15 offered a second instruction I think that maybe gives the
16 jury a little more guidance. That's the instruction that
17 begins "Willfulness, malice, premeditation may exist without
18 that cool purpose contemplated," and if so will result in
19 second degree murder, not first.

20 We offer that to the Court as a more appropriate
21 way to describe the difference between first and second
22 degree murder. The way the instructions are given now, the
23 way the statute reads, it's essentially unguided discretion
24 to the jurors to determine what second degree murder is.
25 It's all other murders. Without that guided decision-making

1 process, I think it would deprive Mr. Vanisi of his due
2 process rights.

3 We offer the instruction that is State v. Brown,
4 836 Southwest 2d at 530 at this point. And it's the
5 instruction that begins "Willfulness."

6 THE COURT: Okay. Mr. Gammick?

7 MR. GAMMICK: Your Honor, this introduces some new
8 language that I have never seen addressed by the Nevada
9 Supreme Court or anywhere in Nevada law. That is "without
10 that cool purpose contemplated."

11 I am not even sure what that stands for. If that
12 is talking about the absence of premeditation, deliberation,
13 that's part of the definition in this case because in this
14 case, as you are aware, he's charged with three alternative
15 theories of first degree murder. The cool purpose may go
16 to, if that's what it means, premeditation and deliberation,
17 it does not cover lying in wait nor in the course of a
18 robbery.

19 I have some real difficulty trying to apply this
20 to this case. I think it's confusing. I don't think it's
21 going to serve a useful purpose considering the rest of the
22 instructions.

23 THE COURT: You cite the same case for another
24 instruction that you provided me with, which is "Deliberate
25 means formed or arrived at or determined upon as a result of

1 careful thought and weighing considerations for or against
2 the proposed course of action."

3 Is that out of that same case?

4 MR. BOSLER: Yes, Your Honor, it's the same
5 citation. That instruction will be offered as an
6 alternative to the "instantaneous thoughts of the mind"
7 instruction, which we believe is improper. It doesn't --
8 essentially it says that every case is premeditated because
9 premeditation can happen as quickly as instantaneous
10 thoughts of the mind.

11 We think that instruction does away with other
12 degrees of murder and needs to be elaborated upon to give a
13 jury guidance in how to look at the killing. And the reason
14 we offer that, not at this point, but as an alternative to
15 the instantaneous thoughts of the mind instruction.

16 MR. GAMMICK: Well, that may work in Tennessee,
17 Your Honor, but in the State of Nevada, as is cited in the
18 instruction itself in Powell v. State, 108 Nevada 700; and
19 Kazalyn v. State, 108 Nevada 67, and in other cases, the
20 Nevada Supreme Court has upheld this on numerous occasions
21 as being the proper instruction to give in this state.

22 In Tennessee this "cool purpose" may fly, but I
23 suggest maybe we go with the Nevada Supreme Court and the
24 language they upheld on numerous occasions.

25 MR. BOSLER: Your Honor, I don't mean to have the

1 last word, but knowing that this case is charged in
2 alternate theories, it probably is proper to confine this
3 language to just the premeditated deliberate murder, not the
4 felony murder or the lying in wait murder.

5 We offer an amendment as "Any murder that alleges
6 premeditation, deliberation," and add the balance of that
7 instruction. Because I don't think it would apply
8 accurately to the lying in wait or the felony murder rule.

9 MR. STANTON: Your Honor, on top of all that, I
10 have an argument or a series of authorities and specific
11 quotations from Nevada Supreme Court opinions that deal with
12 premeditation and deliberation, which I see are two
13 additional proposed jury instructions by defense counsel.

14 When I first received defense counsel's proposed
15 instructions today, I wanted to make sure I put that on the
16 record; we had not received those instructions until just
17 after our break this morning. I thought the instruction,
18 the defense proposed instruction starting with "willfulness"
19 was indeed a term or an instruction where they wanted to
20 seek additional explanation or instruction on that term.

21 If the Court would allow me, I have a quote from a
22 Nevada Supreme Court case called Greene, G-r-e-e-n-e, v.
23 State, found at 113 Nevada 157, a 1997 case. I'll skip
24 through the citations. But quoting from that decision our
25 court said, "In Powell this Court reiterated that

1 premeditation and deliberation constitute a single term and
2 not separate elements requiring separate thought processes."
3 Citation is omitted. "After reviewing the law in other
4 jurisdictions, this Court further concluded that the terms
5 'premeditated, deliberate, and willful' are a single phrase,
6 meaning simply that the act or intent to commit the act and
7 attendant death is a result of that act."

8 That citation or quotation comes, or the string
9 citation within the quote is citing to Powell v. State, 108
10 Nevada 700, at page 709.

11 I think that and a couple other cases that I have
12 lifted specifically for premeditation and deliberation
13 encompasses what at least our Supreme Court has said about
14 the meanings and the interactions between those three key
15 terms: Premeditated, deliberate and willful.

16 MR. BOSLER: Your Honor, it is our instruction. I
17 don't disagree with Mr. Stanton. The Nevada Supreme Court
18 has seemed to say, although the legislature put down three
19 different words, they all mean the same thing. We think
20 that flies in the face of basic statutory construction and,
21 in a sense, again doesn't guide the jury in how to interpret
22 the statute. That in turn deprives Mr. Vanisi of his due
23 process rights.

24 For that reason, we're offering separate
25 definitions for the three separate words that are placed in

1 the statute.

2 THE COURT: Okay. I have marked your instruction,
3 "Willfulness, malice and premeditation may exist without
4 that cool purpose contemplated" as Defendant's Offered
5 Instruction B.

6 I've marked "Deliberate means formed or arrived at
7 or determined upon as a result of careful thought" as
8 Defendant's Offered Instruction C.

9 Now, the one that you gave me, the defense gave me
10 called "Premeditation is a design, a determination to kill,"
11 that seems like -- I didn't see any variation in that from
12 what is frequently given.

13 Is there some variation in that instruction?

14 MR. BOSLER: Let me see, Your Honor.

15 MR. STANTON: Line five and six, I believe, is the
16 distinction between the pattern instruction.

17 THE COURT: "Premeditation need not be for a day,
18 an hour, or even a minute"?

19 MR. STANTON: No, Your Honor. "The very nature of
20 deliberation requires time to reflect, a lack of impulse,
21 and a cool purpose." I'm sorry, I'm reading from the other
22 instruction.

23 THE COURT: They gave me a set of three.

24 MR. STANTON: You're reading from "Premeditation
25 is a design"?

1 THE COURT: Yes, that's the one that looks very
2 familiar. I didn't see anything different in it. I want
3 you all to look at that and tell me if you think there is
4 something.

5 MR. STANTON: State would agree with the Court's
6 assessment.

7 THE COURT: So, do you still want that one in here
8 somewhere?

9 MR. BOSLER: Your Honor, may I have a moment?

10 THE COURT: Yes. You had a sticky on it that says
11 State versus Brown as the authority. That's why I asked you
12 if these were all from the same case. That looked like the
13 stock instruction I have seen on numerous occasions.

14 MR. BOSLER: I think the distinction is in the
15 first paragraph, Your Honor, lines one through three. It
16 implies a design, not merely successive thoughts of the
17 mind. In that sense, it's a further -- if I may have a
18 moment?

19 THE COURT: Yes.

20 MR. BOSLER: Your Honor, it does appear that the
21 instruction we have is a copy of the State's offered
22 instruction. It begins with the words "Unless felony murder
23 applies."

24 I believe there is another instruction our office
25 will offer with respect to premeditation. I don't think we

1 have it here. I don't think this is a correct offer.

2 THE COURT: You don't want to offer that at this
3 time?

4 MR. BOSLER: No.

5 THE COURT: I'll put that aside.

6 At this time I'm going to deny your Offered
7 Instructions B and C.

8 MR. BOSLER: Thank you, Your Honor.

9 THE COURT: Now we are back to the "Murder is the
10 unlawful killing of a human being with malice aforethought."

11 "As it applies to this case, murder in the first
12 degree is," and then three, A, B, C. That is the one that
13 Mr. Gammick just gave us.

14 MR. BOSLER: Yes, Your Honor.

15 THE COURT: Now, the next one I have in my packet
16 is "Murder is the unlawful killing of a human being," and
17 that is the one you want pulled; is that correct?

18 MR. GAMMICK: That should be the one. It's the
19 short single paragraph.

20 THE COURT: Yes. "NRS 200.020 defines malice,
21 express or implied, as follows."

22 "Malice aforethought as used in the definition of
23 murder means."

24 "The nature and extent of the injuries coupled
25 with repeated blows may constitute evidence of willfulness."

1 "Unless felony murder applies."

2 "Intent to kill as well as premeditation."

3 Now, do we really need that one and "The nature
4 and extent of the injuries"?

5 MR. STANTON: No, Your Honor. I think to some
6 extent it is duplicitous.

7 THE COURT: Should we take out "The nature and
8 extent of the injuries"? Or do you want to leave that one
9 and take out the other? You offered them.

10 MR. STANTON: Under the facts -- may I have the
11 Court's indulgence one moment?

12 THE COURT: Yes.

13 MR. STANTON: Your Honor, the State's preference
14 would be "The nature and extent of the injuries"
15 instruction.

16 THE COURT: Okay.

17 MR. STANTON: To keep, Your Honor.

18 THE COURT: We will take out "Intent to kill as
19 well as premeditation"?

20 MR. STANTON: Yes, Your Honor.

21 THE COURT: "Whenever death occurs during the
22 perpetration of certain felonies."

23 "All verdicts in this case must be unanimous."

24 "Robbery is the unlawful taking of personal
25 property."

1 "Grand larceny consists of the unlawful stealing,
2 taking, carrying away."

3 "A deadly weapon is an object, instrument, or
4 weapon which is used in such a manner."

5 MR. BOSLER: We would object to the fourth line of
6 that, Your Honor.

7 THE COURT: I'm sorry?

8 MR. BOSLER: We object to line four. I think
9 that's the jury's decision.

10 THE COURT: Counsel?

11 MR. STANTON: Your Honor, the line says "A hatchet
12 is capable of being used as a deadly weapon." It does not
13 make the decision for the jury.

14 THE COURT: No, but I don't think it's necessary.
15 I'm going to ask that you delete it.

16 MR. STANTON: Okay.

17 THE COURT: I think it's not something that is so
18 unique that they can't decide for themselves whether or not
19 it's capable of producing or likely to produce.

20 "Each count charges a separate and distinct
21 offense."

22 "It is your duty as jurors to consult with one
23 another."

24 "Upon retiring to the jury room you will select."
25 Then we have proposed verdict forms.

1 MR. STANTON: Your Honor, prior to that, after the
2 deadly weapon instruction that the Court asked the State to
3 remove the second line, the next instruction I have after
4 that is "If you find the defendant guilty."

5 THE COURT: I don't have it.

6 MR. STANTON: Don't have it? Does defense counsel
7 have that?

8 MR. BOSLER: Yes.

9 MR. STANTON: Your Honor, this is an instruction
10 that instructs the jury that they must make a determination
11 regarding the deadly weapon.

12 THE COURT: Okay.

13 MR. STANTON: On both the murder and robbery
14 offenses. I think that comports with the special verdict
15 forms.

16 THE COURT: Okay. Have counsel had an opportunity
17 to see that?

18 MR. BOSLER: Yes.

19 THE COURT: It was in your packet?

20 MR. BOSLER: Yes, Your Honor.

21 THE COURT: Okay. Then we have, we go to the
22 verdict forms. Okay?

23 MR. STANTON: Yes, Your Honor. In the verdict
24 forms the first one should be guilty of murder, and then a
25 second page which is two interrogatories of first and

1 second, and then whether there is a deadly weapon. The next
2 form would be the not guilty of Count I.

3 And the next jury instruction would be the robbery
4 Count II, with the guilty of robbery and the interrogatory
5 of the deadly weapon. Next one would be not guilty, Count
6 II.

7 Next would be guilty of Count III, robbery with
8 the interrogatory of the deadly weapon. And the next one
9 would be not guilty of Count III.

10 Next verdict form would be guilty of Count IV,
11 robbery, with the interrogatory of the deadly weapon. The
12 next verdict form is not guilty of Count IV.

13 And then we would have guilty of Count V, grand
14 larceny; and then not guilty of Count V.

15 THE COURT: Counsel, do you have additional
16 instructions to offer with regard to the verdicts?

17 MR. BOSLER: Your Honor, I have to apologize. I
18 know, I think your order was a little bit different than
19 mine. I would like to bring the Court back to the
20 instruction that begins "The crime of murder in the first
21 degree includes the lesser crime of second degree murder."

22 THE COURT: No, I don't have that in this packet,
23 I don't think. I didn't read it off just now.

24 MR. BOSLER: May I have a moment, Your Honor?

25 THE COURT: Do you want me to look at it?

1 MR. BOSLER: At this point, Your Honor, no, I
2 don't think so. That's fine.

3 THE COURT: You don't think it needs to be in
4 there?

5 MR. BOSLER: No.

6 THE COURT: Okay. Any others?

7 MR. BOSLER: I think that takes care of all the --
8 is that all four instructions, three instructions offered by
9 the defense today?

10 THE COURT: Yes. You withdrew one and then -- I
11 think that there were four. You withdrew one and marked
12 three.

13 MR. BOSLER: Just want to make that clear. That's
14 fine.

15 THE COURT: Now, do you have any verdict forms?
16 You don't have any additional verdict forms either?

17 MR. BOSLER: No, Your Honor, we are not offering
18 any lesser offense.

19 THE COURT: You are not offering a lesser
20 included?

21 MR. BOSLER: No.

22 THE COURT: If Mr. Vanisi chooses not to testify,
23 which we will deal with in a few minutes, but if he does
24 choose not to testify, do you want an instruction given?

25 MR. GREGORY: Well, Your Honor --

1 MR. BOSLER: We will have to reach that point
2 after the State is finished and Mr. Vanisi exercises his
3 right to either testify or not testify. If he does, then we
4 will offer that instruction.

5 THE COURT: Do you have that one? I would like to
6 see the original.

7 MR. BOSLER: I can provide that one this
8 afternoon.

9 MR. GREGORY: There may be other specials after we
10 conclude our case in chief. I don't want to mark or commit
11 to these at all at this point.

12 MR. BOSLER: Depending on what Mr. Vanisi's
13 testimony may be, we may want to offer instructions,
14 depending on those facts. That's not something we can offer
15 to the Court at this point.

16 THE COURT: I won't be too concerned if you feel
17 uncomfortable offering them to the Court now, obviously, in
18 open court with counsel for both sides present. However, I
19 do assume that you know what you are going to offer and they
20 have been prepared, so there won't be a delay in having them
21 prepared.

22 MR. GREGORY: We are not going to delay in
23 submitting them to the Court at all, Your Honor.

24 THE COURT: Now, do you have any objections to the
25 packet other than those that you have expressed thus far?

1 MR. BOSLER: None other than the objections
2 previously stated, Your Honor.

3 THE COURT: Mr. Stanton, do you have any objection
4 to the packet as proposed at this point?

5 MR. STANTON: No, Your Honor.

6 THE COURT: Do you have any additional
7 instructions to offer at this time? I will give you another
8 opportunity to offer additional instructions.

9 MR. BOSLER: Thank you, Your Honor.

10 THE COURT: Do you have any more to offer now?

11 MR. BOSLER: Not at the moment, Your Honor.

12 THE COURT: Mr. Stanton, any more to offer now?

13 MR. STANTON: No, Your Honor.

14 THE COURT: The instruction you think you are
15 going to want to find, Mr. Bosler, that you believe you got
16 the wrong one, what is that instruction about?

17 MR. BOSLER: It is an alternative instruction to
18 the "instantaneous thoughts of the mind" instruction that
19 has been approved by Nevada law.

20 THE COURT: It's an alternative to the one you
21 actually brought over?

22 MR. BOSLER: Yes.

23 THE COURT: I thought it was sort of strange.

24 Now, let's just talk about some logistics while I have you
25 all here. It looks like we have some witnesses from Utah

1 coming on Monday morning. I think currently we are set for
2 nine a.m. Monday morning.

3 And as I, I think I remember yesterday you all
4 thought that those witnesses would take approximately
5 two-and-a-half hours.

6 MR. STANTON: That's correct, Your Honor.

7 THE COURT: So with a break, which we kind of have
8 to do if we are going to start at nine, that puts us into
9 noon with the State resting its case?

10 MR. STANTON: I believe we may even rest our case
11 at 11.

12 THE COURT: Okay. That would mean that, that
13 would be the opportunity for the defense to make an opening
14 statement and present a case, if you -- whatever you are
15 going to do.

16 Do you anticipate you will be making an opening
17 statement?

18 MR. GREGORY: Your Honor, I won't know until
19 Monday. I'm not trying to be coy.

20 THE COURT: Okay. I'm trying to figure out the
21 schedule here in terms of the breaks.

22 MR. GREGORY: No, and I understand the Court's
23 concern.

24 THE COURT: Do you wish that I wait until Monday
25 to canvass your client?

1 MR. GREGORY: Yes, Your Honor.

2 THE COURT: Okay. Then what we'll probably do is,
3 I won't worry about canvassing your client in the morning
4 until the State rests. The State will rest; we'll send the
5 jury out. We will do the preliminary canvass.

6 And then as I indicated to counsel when you were
7 all talking about an administrative matter up here, that
8 there is going to have to be an in camera canvass that takes
9 place. That could take place also on Monday morning.

10 Depending on the determination from both of those
11 canvasses, you will be able to tell me at that point what
12 your opening statement will be?

13 MR. GREGORY: That's correct, Your Honor.

14 THE COURT: Let's, to kind of give me a sense, if
15 -- I'm not asking you to commit or say this is what is going
16 to happen, so I can get a sense of how long it might take.
17 If you were to make an opening statement and/or if your
18 client decides to testify or put on a defense, are we
19 looking at going to the jury on Monday anyway?

20 MR. GREGORY: I believe so, Your Honor.

21 THE COURT: It may be a situation where we might
22 keep the jury through the lunch hour and feed them? Rather
23 than send them out for an hour-and-a-half?

24 MR. GREGORY: That would be entirely up to the
25 Court.

1 THE COURT: In terms of time?

2 MR. GREGORY: Yes, Your Honor.

3 THE COURT: All right. That gives me an idea.

4 What we will do is, we will, when we take our recess after
5 the State rests, without the jury, we will do the
6 preliminary canvass of Mr. Vanisi about his constitutional
7 right to testify or not. And depending on what comes from
8 that, then we will have the in camera hearing. Then you all
9 can notify us back on the record in front of everyone
10 exactly what is going to happen in terms of the timing.

11 MR. GREGORY: Thank you, Your Honor.

12 THE COURT: Now, in terms of the instructions,
13 though, when were you going to try to get those to me?

14 MR. BOSLER: The one additional instruction I will
15 attempt to have to the Court within a half hour and also a
16 copy to the District Attorney's office. I thought it would
17 have been with the packets that were provided by my
18 secretary from Mr. Petty. I never spoke to him directly. I
19 think it's already drawn up. I think we need to have it
20 copied and distributed.

21 THE COURT: Okay. Because we are going to have to
22 put the finalization of the jury instructions on the record
23 and because you all will make arrangements in how to plan
24 your lives accordingly, I think we should tentatively plan
25 on closing arguments, if there is no evidence to be

1 presented by the defense, at 1:00.

2 So what will happen is, we will recess whenever we
3 get through with the State's witnesses. We will do the
4 finalization of the jury instructions and the admonition of
5 the defendant on his constitutional right to testify. We
6 will deal with all of that.

7 Even if it's 11:30 or 11:15 at that point and we
8 are ready to go to the jury, we will wait and do your
9 closing arguments to the jury beginning at one p.m. We will
10 give a little window there for you to, on both sides, to get
11 organized.

12 So I'm kind of thinking that's the way it will go,
13 rather than try to argue the instructions and get them all
14 finalized and start argument at 11:30 and keep the jury
15 through the lunch hour. I would rather send them, let them
16 go to lunch, have them come back and we'll start closing
17 arguments at 1:00. If that's the way it goes. It may be
18 much later in the day. There's no guarantees; I understand
19 that.

20 MR. GREGORY: Okay, Your Honor.

21 THE COURT: Anything further?

22 MR. GAMMICK: No.

23 MR. BOSLER: Your Honor, if I may?

24 THE COURT: Yes.

25 MR. BOSLER: I don't want to seem presumptuous or

1 anything like that. If this case were to reach a penalty
2 phase, I have talked to our investigator about trying to get
3 our witnesses up here early. We are still having difficulty
4 regarding our witnesses as far as avoiding subpoena service
5 and things like that.

6 We believe we will have everybody here on the 4th.
7 My concern, Mr. Vanisi's concern would be that I don't want
8 to put on an hour's worth of testimony with local people
9 here, bring the jurors in for an hour of testimony on a
10 mitigation case. That is a concern, and also the concern
11 that if you put on a full day of aggravation case, maybe on
12 Friday, then the jury has to go through the whole weekend
13 with just that on their mind.

14 I want to offer those ideas to the Court. I don't
15 know how the Court wants to do that, whether the State has
16 out-of-state aggravation witnesses. I know a lot of them
17 are coming from N.S.P. I think we will only have maybe an
18 hour, two-hours' worth of testimony with local witnesses.
19 Other people won't be here, other than on the 4th. We have
20 maybe almost a full day of testimony for people who come up
21 for the 4th. That's a Monday.

22 You know, we were just juggling ideas and numbers
23 when we sent the service and the out-of-state subpoena
24 information to California. My concern is if we start, we
25 have a full-blown aggravation case on Friday, then nothing,

1 then the jury has to think about that over the weekend, it's
2 kind of prejudicial to Mr. Vanisi. I don't have an answer.

3 MR. GREGORY: We are just bringing it to the
4 Court's attention. We don't want to get into a situation
5 where we bifurcate our witnesses or several days after the
6 aggravators are presented. Aggravating circumstances
7 witnesses.

8 THE COURT: Mr. Stanton?

9 MR. STANTON: Your Honor, the State's concern is
10 the delay in the proceedings from the guilt phase to the
11 penalty phase. Now you're talking about a week, a calendar
12 week delay.

13 If the defense is having difficulty in locating
14 those individuals or the difficulty is that they are being
15 reluctant, maybe we believe to a great extent the State
16 could be of some assistance. We have been provided with a
17 list of the names and we have had local law enforcement
18 contacting those individuals since we had the names provided
19 to us.

20 It is the State's understanding that the vast
21 majority of those witnesses are employees of the school
22 district in various different areas in the California area.
23 And I'm confident that we can import to those individuals
24 the necessity of coming up here and timely administration of
25 justice. I'm confident that collectively the defense and

1 the State can have the witnesses up here on Friday, the 1st.

2 THE COURT: Is that the soonest you think they can
3 be here?

4 MR. STANTON: They can be here in the same vein
5 whenever the Court felt it was appropriate. I'm sure those
6 individuals will understand and be up here.

7 THE COURT: Well, I would like them here for a day
8 before they go on the stand, so that counsel have an
9 opportunity to visit with them.

10 MR. STANTON: If the defense is having difficulty,
11 which apparently Mr. Bosler is representing that they are,
12 we apparently were quite successful in contacting the
13 individuals.

14 THE COURT: The reality is, there is a certain
15 amount of difference between being the Public Defender's
16 office and the District Attorney's office.

17 MR. STANTON: That's why I'm offering the
18 suggestion. That is, if the claim of defense counsel is now
19 that their abilities to get these people up here earlier
20 than the 4th have been unsuccessful in part by any of the
21 witnesses, the State is confident that we can accommodate
22 them when the Court wants those witnesses to come up here.

23 MR. BOSLER: Your Honor, it isn't the school
24 district people; the people in San Mateo aren't really the
25 problem. It's other people, witnesses who are not located

1 at the address where most of the teachers are.

2 The second issue is, while I gratefully
3 acknowledge the State's offer of assistance in this matter,
4 however, this is the reality of the situation: These people
5 have been given out-of-state subpoenas that compel their
6 attendance on the 4th. We've done that through all the
7 proper channels and by statute.

8 If the State and we came to an agreement, and
9 these people promised they would come up here on the 1st,
10 the 2nd, the 3rd, and they didn't honor that gentleman's
11 agreement, gentlewoman's agreement, we would be out of
12 witnesses and there would be nothing we can do to compel
13 their attendance.

14 THE COURT: Until the 4th.

15 MR. BOSLER: Until the 4th, and we would be in
16 that same situation. We would be in a very delicate
17 situation, letting people tell us they would come up here,
18 knowing they weren't legally obliged to do so. If they
19 didn't come up, we would be empty-handed. That, of course,
20 has to be a primary concern of ours.

21 I appreciate the State's offer.

22 THE COURT: That's why I thought they needed to be
23 here a day before so you can start your case if you had
24 everybody. So you can talk to them. That's why I said if
25 they can be found and located by law enforcement's efforts,

1 that would certainly facilitate it a little bit.

2 MR. BOSLER: Even then there's nothing that
3 compels them to stay. We can all believe they are going to
4 be good Samaritans and do their civic duty, but we don't
5 have the legal obligation of making them stay here if they
6 wanted to leave.

7 THE COURT: Once they are here, we have me. Once
8 they cross the Nevada state line, I have the authority to
9 order them to stay.

10 MR. BOSLER: If they are served again.

11 THE COURT: That's not a very difficult procedure.
12 I mean, my experience is that they don't leave. If they are
13 under subpoena, they are here, then we don't usually have a
14 problem unless they are going to just take off and we have
15 to arrest them.

16 But it's up to you. It's whatever -- I don't know
17 anything about these witnesses.

18 MR. BOSLER: Without delving into more, at this --

19 THE COURT: I am concerned about waiting a whole
20 week. I think that would be difficult on the jury.

21 MR. STANTON: The State's objection, and it is an
22 objection at this point, of delaying it to the 4th,
23 regardless of what the service of process of the defense has
24 laid on these individuals, is the delay is inappropriate.
25 It's too lengthy.

1 And if for some -- what Mr. Bosler is arguing, I
2 understand his position pragmatically, but it's
3 hypothetical. The same witnesses are going to turn around
4 and give a verbal agreement that they will be up here and
5 then turn around and with somewhat of a precise review of
6 the law saying, "Hey, look, you can't do anything to me
7 because technically I'm only supposed to be up there on the
8 4th."

9 According to the review of the witnesses that
10 we've interviewed, none of those individuals have expressed
11 an opinion or a concern about coming up here and testifying
12 to the point that they would be splitting legal hairs and
13 thumbing their nose at the judicial system in California or
14 Nevada.

15 If it got to the point where counsel said, "Well,
16 we can't have them up until the 4th," the State would be
17 requesting an evidentiary hearing to spell out specifically
18 what they've done and the attempts of the defense counsel,
19 who they have contacted, when they contacted them,
20 specifically what the witnesses' response were to that.

21 Frankly, Your Honor, our contact with them shows
22 that there is no problem.

23 THE COURT: You've gotten a hold of everybody?

24 MR. STANTON: I don't know if it's everybody on
25 the proposed list, but it's almost all of them.

1 MR. GREGORY: I don't think he's suggesting that
2 -- I mean, what motivation do we have to stretch this?

3 MR. STANTON: Motivation is, besides the obvious,
4 it's also the motion that they made pretrial regarding the
5 cooling off period that exists between the guilt phase and
6 the penalty phase. The motion, the defense motion itself
7 speaks to a strategy of delay between the two, because of a
8 perceived right or wrong --

9 MR. GREGORY: All right, as an officer -- sorry.

10 MR. STANTON: True or not, that there is some
11 result that would benefit the defendant by this, quote,
12 cooling off period, which is articulated in their own
13 motion.

14 MR. GREGORY: As an officer of this court, I can
15 assure this Court that is not our intention. We are doing
16 everything we can to try to accommodate this Court and the
17 District Attorney's office.

18 The District Attorney -- Your Honor, I'll offer
19 this. The District Attorney wants to put on their witnesses
20 on Friday. We will be ready to go on Monday. And we are at
21 the disadvantage. Everybody gets to weep all weekend long.

22 MR. STANTON: We would like to put on the penalty
23 phase on Thursday, Your Honor, and have the defense go on
24 Friday.

25 MR. GREGORY: I'm sure that would be their

1 preference. We are not able -- we can put on a few
2 witnesses that I have been able to line up on Friday, but it
3 would be a pitiful display and everybody else would be there
4 on Monday. I don't want to do that. I don't want to
5 bifurcate our witnesses.

6 THE COURT: I understand that. What I would like
7 to -- I'm beyond liking. I am going to order that you get
8 your investigator together with the D.A.'s investigator so
9 your investigator hears what the D.A.'s investigator has in
10 terms of the contact. So that if there is some different
11 phone numbers, different addresses, your investigator can do
12 it.

13 If we actually go to the jury on Monday, I was
14 looking at doing the penalty phase on Wednesday, not
15 Thursday, if we actually go on Monday and get a verdict.

16 Or if we're given a verdict early Thursday that
17 required a penalty hearing, I would want to do it right away
18 as soon as we could. That means I would require the State
19 to have their witnesses here Wednesday, not Thursday, and
20 the defense to be ready on Thursday, so that the jury -- you
21 know, the jury is going to want to deliberate on that
22 awhile, I'm sure, if they get to that point.

23 I would rather they got it on a Wednesday or a
24 Thursday evening than a Friday, or we tied them up a whole
25 other week. Many of the jurors, lots of them have things to

1 do. If we get it done, they all will be more willing to go
2 through the process again.

3 So that's some of my concerns.

4 MR. GREGORY: Judge, we'll do the best we can.

5 MR. STANTON: Your Honor, if the Court orders, as
6 I believe it did, the investigators from the District
7 Attorney's office to get together with the Public Defender's
8 office, that I think will resolve a lot of issues because
9 pursuant to the Court's directive, you're talking about
10 Thursday of next week, we can make any effort to see if
11 there's any problems with the witnesses that we have been
12 able to contact, with them being up -- I presume Mr. Gregory
13 would want them up here no later than Wednesday evening for
14 them to talk with them prior to presentation potentially on
15 Thursday.

16 And if there's any witness that expresses an
17 inability to do that, our investigative staff will provide
18 them with the names and addresses of how we have been able
19 to locate them and those that have indicated a problem
20 there.

21 MR. GREGORY: Do they take blackjacks to the
22 witnesses?

23 THE COURT: I don't know; I guess they just have a
24 way of finding them.

25 MR. GREGORY: Your Honor, we will accept any

1 assistance that the District Attorney has to offer.

2 THE COURT: I did order that your investigator get
3 together with the D.A.'s investigator in terms of location.

4 Anything else?

5 MR. GREGORY: No, Your Honor.

6 MR. STANTON: No, Your Honor.

7 THE COURT: Oh, I have something. The bailiff
8 received a note from Mrs. Bell yesterday, I think, yesterday
9 afternoon. And I really thought I should share this with
10 you. We haven't had a chance outside of the presence of the
11 jury.

12 It says, "Are we going to be able to see the
13 cousin's transcript?"

14 MR. BOSLER: They are all cousins, Your Honor.

15 MR. GREGORY: We will stipulate.

16 THE COURT: It was after -- It was the witness
17 that you used, the State utilized the transcript extensively
18 with.

19 MR. STANTON: That would be Renee Peaua.

20 THE COURT: Yes. It's Renee Peaua. That's when
21 the note was passed. Of course, I have not responded;
22 neither has the bailiff.

23 Do you want me to respond? Do you want to just be
24 forewarned this question has come pre-deliberations? She
25 apparently tore it off just as the jury went into the jury

1 room. It was something she was thinking about as the
2 witness was testifying.

3 MR. GREGORY: Your Honor, my preference is that
4 the Court not respond to it. I think that encourages, we're
5 liable to get a lot of notes following that.

6 MR. GAMMICK: Sitting here listening to what the
7 message says and what the Court is talking about, I believe
8 the juror is probably talking about her police transcript,
9 the one that Mr. Stanton had to keep referring to on
10 numerous occasions.

11 THE COURT: Yes.

12 MR. GAMMICK: Without a stipulation, I don't think
13 it's even proper for us to offer that into evidence.
14 Without that, then the jury is not going to get it. That's
15 pretty simple.

16 THE COURT: I know the answer, Mr. Gammick. I
17 just want to know whether you want me to tell the juror
18 anything.

19 MR. GAMMICK: Go ahead, you're bouncing.

20 MR. STANTON: I disagree with Mr. Gregory.

21 MR. GREGORY: Of course.

22 MR. STANTON: To some extent, to a great extent, I
23 think the juror's question is pursuant to the Court's
24 instructions all along in the trial, if they have any
25 questions or concerns, to bring it to the Court's attention.

1 By not responding to it, I think that flies kind of in the
2 face of what the Court has been instructing them.

3 I don't know, although I certainly agree with
4 Mr. Gregory that someone may perceive that it might be an
5 invitation to ask more questions, but I certainly think it's
6 appropriate that when jurors have questions regarding what's
7 happening in a case that they ask them and the appropriate
8 and correct answer be given to them as opposed to just
9 ignoring it.

10 Then you lead into the problem about, what happens
11 down the road if they have another question or problem?
12 They say: Well, we sent the one note in there and never
13 heard a response. So when this problem happened, I didn't
14 think we could get our questions answered, so I didn't write
15 any.

16 MR. GREGORY: They're asking a question about
17 something that is not in evidence. And it's not going to be
18 offered by the State. I think it will cause confusion, Your
19 Honor.

20 THE COURT: It's the kind of question,
21 Mr. Gregory, I might get during deliberations. If I got it
22 during deliberations, I would propose an answer that is
23 something like: You will be able to see the evidence that
24 has been admitted.

25 MR. GREGORY: That's correct. That's going to

1 imply if we answer it that way that maybe it was admitted.
2 I'm going to ask that at this time -- I'm going to submit
3 it, Your Honor.

4 THE COURT: I know you don't want me to do it.
5 I'm curious, why would it imply that it was admitted if I
6 say you will only be able to see those documents that are
7 admitted into evidence?

8 MR. GREGORY: I didn't understand the Court to
9 frame it that way.

10 THE COURT: That's kind of where I was going while
11 we were talking over each other. But that would be the
12 normal way I would answer the question.

13 I guess, do you see anything in there, any legal
14 reason not to say: You will only be reviewing the
15 documents, any documents that have been admitted into
16 evidence?

17 MR. GREGORY: Not the way the Court has phrased
18 it. If the Court wishes to phrase it that way, Your Honor,
19 again, we will submit it.

20 THE COURT: Mr. Gammick, Mr. Stanton, do either of
21 you see any legal reason why that would be an inappropriate
22 answer?

23 MR. STANTON: No, I believe that's a correct
24 statement of the law.

25 THE COURT: That's what I'll do. What we will do,

1 the way I normally do this and the way, so you all know if
 2 any jury questions come out during the deliberations, is we
 3 save the question, we mark it, the clerk saves it. We
 4 retype the question and my answer and it is saved and made
 5 part of the record. So all the communication is saved with
 6 the jury.

7 MR. GREGORY: Thank you, Your Honor.

8 THE COURT: Anything further?

9 MR. GREGORY: No.

10 THE COURT: Thank you. Court is in recess.

11 (The trial adjourned at 2:15 p.m.)
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STATE OF NEVADA,)
)
COUNTY OF WASHOE.)

WE, DENISE PHIPPS and KAREN YATES, Certified
Shorthand Reporters of the Second Judicial District Court of
the State of Nevada, in and for the County of Washoe, do
hereby certify:

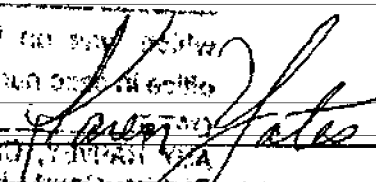
That we were present in Department No. 4 of the
above-entitled Court and took stenotype notes of the
proceedings entitled herein, and thereafter transcribed the
same into typewriting as herein appears;

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

DATED: At Reno, Nevada, this 24th day of
September, 1999.



DENISE PHIPPS, CCR No. 234



KAREN YATES, CCR No. 195

Code No. 4185

FILED

SEP 28 1999

AMY HARVEY
By: *M. Stone*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

--oOo--

THE STATE OF NEVADA,

Plaintiff,

Case No. CR98-0516
Dept. No. 4

-vs-

SIAOSI VANISI,

Defendant.

ORIGINAL

TRIAL - VOLUME 6
September 27, 1999
Reno, Nevada, Nevada

APPEARANCES:

For the Plaintiff:

RICHARD GAMMICK
District Attorney
DAVID STANTON
Chief Deputy District Attorney
75 Court Street
Reno, Nevada

For the Defendant:

STEPHEN GREGORY
and JEREMY BOSLER
Deputies Public Defender
One South Sierra Street
Reno, Nevada

The Defendant:

SIAOSI VANISI

Reported by:

KAREN YATES, CRR No. 195
ERIC V. NELSON, CCR No. 234

SIERRA NEVADA REPORTERS (702) 329-6560

SA00925

2JDC00986

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
DAVID MULI SULIAFU KINIKINI	909	--	--
KEITH STEPHENS	929	--	--
CRAIG MEYER	941	953	--
VAINGA IMOANA KINIKINI	954	--	--

<u>EXHIBITS</u>	<u>Marked for Identification</u>	<u>Admitted into Evidence</u>
33-C and 33-D	--	920
28	--	937
34-A and 34-B	--	946
33-B	--	947
15-C and 15-D	--	986
35	--	992
36	--	992
37	--	994

RENO, NEVADA, MONDAY, SEPTEMBER 27, 1999, 9:15 A.M.

--oOo--

(Whereupon, the following proceedings were held in open court, in the presence of the jury.)

THE COURT: Thank you. Please be seated.

Counsel stipulate to the presence of the jury?

MR. STANTON: State would so stipulate.

MR. GREGORY: So stipulated, Your Honor.

THE COURT: Call your next witness.

MR. STANTON: Thank you, Your Honor. The State would next call David Kinikini.

(One witness sworn.)

THE CLERK: Thank you. Please be seated at the witness stand.

DAVID MULI SULIAFU KINIKINI

called as a witness on behalf of the Plaintiff,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STANTON:

Q Good morning, sir. Could you please state your complete name for the record?

A David Muli Suliafu Kinikini.

Q Could you spell your middle names and your last

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1 name for the court reporter?

2 A M-u-l-i, S-u-l-i-a-f-u, K-i-n-i-k-i-n-i.

3 Q Mr. Kinikini, how old are you, sir?

4 A Twenty-six.

5 Q And where do you reside?

6 A Salt Lake City.

7 Q And do you know Siaosi Vanisi?

8 A Yes.

9 Q How do you know Mr. Vanisi?

10 A Relative of mine.

11 Q I'm sorry?

12 A A cousin of mine.

13 Q And I want to go back to January of 1998,
14 Mr. Kinikini, and ask you some questions about that time
15 frame. Specifically on January 14, 1998, do you recall the
16 address that you were living at?

17 THE COURT: I'm going to stop you for a minute.
18 I'm hearing a high shrill pitched noise. Is that irritating
19 the jury? I don't know where it's coming from.

20 Do you know, Deputy Brokaw?

21 THE COURT: Come on up and see me.

22 (There was a pause in the proceedings.)

23 THE COURT: Okay.

24 THE COURT: You may proceed.

25 MR. STANTON: Thank you, Your Honor.

1 BY MR. STANTON:

2 Q What other names did you know Mr. Vanisi by?

3 A We called him Pe.

4 Q And did you ever hear him called George?

5 A Once in awhile.

6 Q What does George stand for?

7 A George in English is Siaosi, Siaosi in Tongan.

8 Q Do you speak Tongan fluently?

9 A I do.

10 Q The Kinikini family, is it a large family in
11 Salt Lake City?

12 A Yes, it is.

13 Q How many people in the larger Kinikini family
14 reside in Salt Lake City?

15 A About 500 plus.

16 Q Do you play a particular role within the large
17 Kinikini family?

18 A What do you mean?

19 Q Are you a particular -- do people look to you
20 in the Kinikini family as a particular role?

21 A I am the oldest great-grandson.

22 Q Does that have significance in the Tongan
23 culture?

24 A It does.

25 Q What significance would that be?

1 A He kind of carries responsibility of the --- as
2 if he was the older son.

3 Q In January 14, 1998, Mr. Kinikini, do you
4 recall where you were living?

5 A Yes, I do.

6 Q Where was that?

7 A 1665 South Riverside Drive.

8 Q Is that in Salt Lake City?

9 A It's in Salt Lake City.

10 Q What do you do for a living, Mr. Kinikini?

11 A I work with youth corrections.

12 Q And what specifically do you do?

13 A I'm a counselor.

14 Q During the time period of January 14, 1998, who
15 was living with you at your South Riverside Drive home?

16 A A brother of mine, Vainga, and a youth in
17 custody, Jeremiah Talley.

18 Q I would like you to explain, if you would, to
19 this jury, Mr. Kinikini, why your brother, Vainga, and why
20 Jeremiah Talley were living with you in that time period?

21 A My brother had been released from probation in
22 Texas and I thought it would be good that he could return
23 home and stay with me. We can try to get him on his feet
24 again, get him a job. He was released from probation and I
25 went down and brought him back to Salt Lake City.

1 Jeremiah Talley is in State's custody. I took
2 custody of this 15-year-old because he was -- he didn't have
3 a home.

4 Q And do you do that as you testify here today?

5 A Yes, I do.

6 Q How many kids do you have living with you now?

7 A I currently have three juveniles living with
8 me.

9 Q These are all juveniles that the system has
10 adjudicated to be, at least in portions of their lives, in
11 trouble with the law?

12 A Yes.

13 Q Jeremiah Talley was your responsibility?

14 A He was.

15 Q And your brother Vainga, based upon your
16 previous testimony, was that your role with Vainga, to try
17 to straighten out his life?

18 A Yes.

19 Q On the 14th of January, did you have occasion
20 to see the defendant, Siaosi Vanisi, at your home in Salt
21 Lake City?

22 A Yes, he was there.

23 Q Was that a scheduled visit or a surprise?

24 A It was not a scheduled visit.

25 Q And when you first saw him, Mr. Kinikini, what

1 time of day was that?

2 A Approximately early afternoon. I just got off
3 school and I was coming home from school.

4 Q Mr. Kinikini, I want to show you two
5 photographs that have been admitted in evidence, photographs
6 29-A and 29-B. I ask you if you could take a look at the
7 clothing depicted in both those photographs.

8 Do you recognize that clothing?

9 A Yes.

10 Q How do you recognize it?

11 A Pe was wearing those clothes.

12 Q You say Pe was wearing them?

13 A When I first saw him.

14 Q During the course of that day, the 14th of
15 January, did you spend a period of time with the defendant?

16 A Yes, I did.

17 Q And generally, how was he acting and behaving
18 at that time?

19 A Very excited. He could name the majority of
20 our relatives, asking the status of certain cousins our age.
21 Very excited and anxious to visit with them.

22 Q Did there come a time where you, through
23 contact with another relative, became aware that the police
24 were looking for Mr. Vanisi?

25 A Yes.

1 Q Do you remember what time of day that was?

2 A Maybe around 3:00 or 4:00.

3 Q After being told by this relative that the
4 police were looking for the defendant, Siaosi Vanisi, were
5 you ultimately contacted by a detective sergeant from Salt
6 Lake County?

7 A Excuse me?

8 Q After you were advised by the relative that the
9 police were looking for Mr. Vanisi, were you then sometime
10 later contacted by police?

11 A Yes.

12 Q And what did they want to know when they
13 contacted you or met with you physically face-to-face?

14 A They wanted to know where he was. They
15 basically just gave me information on the reason why he was
16 wanted and where he was wanted from.

17 Q And that was from Reno and that he was wanted
18 for the murder of a police officer?

19 A Yes.

20 Q During that time period that you had seen
21 Mr. Vanisi and prior to the police contacting you, had you
22 ever seen Mr. Vanisi with a gun?

23 A Yes.

24 Q And where on Mr. Vanisi's person was that gun?

25 A It was in a pocket of his red coat. We were

1 eating at Arby's and he sat down and I could hear something
2 bump on the table. And just the lining, I could see the
3 shape of some sort of firearm.

4 Q A handgun as opposed to a rifle?

5 A Yes.

6 Q Did you get a close look at the weapon?

7 A No.

8 Q Did that concern you once you knew he had a
9 weapon?

10 A It did.

11 Q Why did it concern you?

12 A It concerned me, safety of the child that I had
13 in custody, the safety of those who were with me, and for
14 his own personal safety.

15 Q At the time that the police contacted you, was
16 Mr. Vanisi in your presence?

17 A No.

18 Q Where was Mr. Vanisi?

19 A He was at the youth rec center with my boy,
20 playing basketball.

21 Q When you say the term "my boy," is that
22 Jeremiah Talley?

23 A Yes.

24 Q The police and you discussed the fact that they
25 needed to take him into custody and you talked to the police

1 officers; is that a fair statement about generally what
2 occurred next?

3 A Yes.

4 Q Were you concerned and did you express your
5 concern to the police about them contacting Mr. Vanisi at
6 the rec center?

7 A I did. I told him there are too many kids
8 there. It was after school. Probably wouldn't be a good
9 idea.

10 Q From that concern, did there become an
11 agreement between you and the police officers what was going
12 to happen after the rec center?

13 A Yes.

14 Q What was that?

15 A They asked where he would be going afterwards.
16 We had plans to meet back at my place. And that's where
17 they were going to come to.

18 Q And indeed, did you go back to your home on
19 Riverside Drive after Mr. Vanisi and Jeremiah Talley left
20 the rec center?

21 A I did. I didn't know when they left the rec
22 center, but I immediately went back home.

23 Q And did Mr. Vanisi arrive at your home?

24 A Yes.

25 Q Did Mr. Talley?

1 A Yes.

2 Q Was there anybody else in your home?

3 A No one else.

4 Q At this point, what was your plan as far as
5 what was going to happen next?

6 A The first thing that was going to happen was
7 that the child that's in my custody, Jerry, I was to get him
8 out as soon as possible.

9 Q And did you do that?

10 A I had him take some trash outside and whispered
11 to him not to come back.

12 Q Did you know where the police were at that
13 point?

14 A I had an idea they were nearby.

15 Q And after Jeremiah left, what did you do?

16 A After Jeremiah left, me and Pe sat in the
17 living room and just talked for quite awhile.

18 Q And after you talked with Mr. Vanisi, was there
19 a telephone call?

20 A There was a few telephone calls.

21 Q Who were the people that were calling your
22 home?

23 A They were the detectives and SWAT team that was
24 outside, asking me to come out.

25 Q And did you go outside?

1 A Not immediately, no.

2 Q How long did you remain in the home?

3 A We sat in the living room for almost an hour
4 looking at family pictures and just kind of catching up on
5 his family, his immediate family.

6 Q You knew what was going to happen once you
7 left, right?

8 A Yes.

9 Q Is that why you stayed in longer?

10 A Yes.

11 Q I'm going to show you a series of photographs.
12 Exhibit 33-C and 33-D, and ask you if you recognize what's
13 contained in those photographs.

14 A Yes.

15 Q And is that the garage portion of your home
16 that you just described?

17 A Yes.

18 Q And does that accurately depict the condition
19 of your home or that area of your home after a series of
20 events that took place over the next couple of hours?

21 A Yes.

22 Q Specifically, Mr. Kinikini, in 33-D, which is a
23 close-up of an automobile, do you know whose automobile that
24 is?

25 A Yes, it's my brother Vainga's car.

1 Q On the front end of this car is a series of
2 burnt rags and the hood being opened. Was this car and
3 those rags in that condition prior to you leaving the home?

4 A Were they in that condition?

5 Q Yes. Were these rags here and was the hood up
6 when you left the home as you just testified?

7 A Yes.

8 Q They were there?

9 A Yes, they were there.

10 Q The condition that --

11 MR. STANTON: I move for 33-C and D in
12 evidence.

13 MR. GREGORY: We would submit it, Your Honor.

14 THE COURT: May I see them, please? Okay, they
15 are admitted.

16 (Plaintiff's Exhibit No. 33-C and 33-D
17 admitted.)

18 BY MR. STANTON:

19 Q Mr. Kinikini, in these two photographs the
20 vehicle is burnt. It wasn't in that condition, was it?

21 A Before?

22 Q Yes, before you left the home. I want to go
23 back and ask you a couple of questions. For purposes of
24 this next series of questions, Mr. Kinikini, I want you to
25 presume all my questions deal with the condition of that

1 area of your home when you finally left to meet the police.

2 The vehicle wasn't burnt when you left, was it?

3 A No, it wasn't burnt.

4 Q Was the hood and the rags there?

5 A No.

6 MR. STANTON: Your Honor, may I publish this to
7 the jury?

8 THE COURT: Yes.

9 (The exhibits were displayed to the jury.)

10 BY MR. STANTON:

11 Q 24-C, Mr. Kinikini, is this how Mr. Vanisi
12 looked when you saw him in Salt Lake on the 14th of January?

13 A Yes, it was.

14 Q When you left your home finally and walked
15 outside of your home on Riverside Drive, did you see police?

16 A Yes.

17 Q And approximately how many were there and where
18 were they situated in relationship to your home?

19 A There had to be 20 plus, 30. The roofs of the
20 complex that we live in, along the walls, the vehicles, the
21 other side of the vehicles that were parked in the parking
22 lot. Pretty much surrounding my -- the place I was living.

23 Q And when you left your home, was there anybody
24 else inside your home besides the defendant, Siaosi Vanisi?

25 A No.

1 Q You're certain?

2 A Yes.

3 MR. STANTON: No further questions at this
4 time.

5 THE COURT: Cross-examination?

6 MR. GREGORY: Court's indulgence, please.

7 THE COURT: Yes.

8 (There was a pause in the proceedings while
9 counsel and the defendant conferred.)

10 MR. GREGORY: Your Honor, may we approach?

11 THE COURT: Yes.

12 (Whereupon, a bench conference was held among
13 Court and counsel as follows:)

14 MR. GREGORY: Your Honor, there are some
15 questions we would like to ask Mr. Kinikini. However, we
16 would like to, after conferring with Mr. Bosler, we tried to
17 figure a way to ask the questions today. And for strategic
18 purposes, we would rather have him back on the penalty
19 phase.

20 I know I already told Mr. Stanton that I
21 thought I could ask those questions, but I don't feel
22 comfortable getting into the area that I want to go into
23 before the penalty phase. That doesn't mean he has to stay
24 in town. He can go back to Salt Lake and go back home.

25 MR. GAMMICK: Your Honor, that has been asked a

1 couple of times now. I am very uncomfortable with us being
2 held responsible for these people, particularly now we are
3 talking out of Salt Lake City.

4 MR. GREGORY: Wait a minute, hold your voice
5 down.

6 MR. GAMMICK: Does the Court have something to
7 say to me?

8 THE COURT: The only reason that I don't think
9 you are responsible for the transportation or the cost, but
10 I think that you are the only one that has the witness unit
11 that can kind of keep in touch with these people to assist.

12 MR. GAMMICK: I understand that. The Court so
13 far ordered them to stay in touch with our victim witness
14 center. The Public Defender's office has investigators.
15 They have subpoena power. These people are here at the
16 court under -- subject to subpoena by the defense. Why they
17 don't go ahead and serve them and then take full
18 responsibility for that, I'm not sure I understand.

19 Now we have Mr. Kinikini, who is -- he's got
20 three jobs. He's got three kids he's taking care of at his
21 house, a busy calendar, and he's still going to school. All
22 I'm saying, if they want him back, serve him and make
23 arrangements for the travel. That's all I'm asking.

24 THE COURT: I understand your concerns. My
25 concern is, if they want somebody for the penalty phase and

1 the person is here, I don't want to have a problem with the
2 person not showing up. That's why I felt it should be the
3 most responsible party for that group of people I know,
4 which is the witness unit.

5 MR. GAMMICK: I understand, but I feel that
6 that's not my job, not out of my budget.

7 THE COURT: You don't want to try the case
8 again, do you?

9 MR. GAMMICK: No, but the Court can order them,
10 defense can serve them, the defense can take care of making
11 travel arrangements.

12 THE COURT: We can't serve him in the
13 courtroom.

14 MR. GAMMICK: They can serve them as soon as
15 they leave court.

16 MR. STANTON: Your Honor --

17 THE COURT: Who are you holding on to now?

18 MR. GAMMICK: We were asked for, I believe -- I
19 know Renee was one witness.

20 MR. STANTON: Mele Mavani.

21 MR. GAMMICK: We chased Renee to Tonga, we
22 chased her to Australia and all over this world. Mele, she
23 is the one you had to sign the warrant on for L.A.

24 Those are my concerns. I don't want them to
25 sit here with the Court thinking we're taking care of this.

1 We are not going to mess with it either.

2 On the other hand, we have had to chase the
3 people all over the place. Now we have out-of-state
4 witnesses that have to be arranged for. I feel defense can
5 take some of that responsibility upon themselves.

6 MR. STANTON: Based upon the history of a
7 couple of witnesses, I talked to Mr. Kinikini last night
8 after his arrival in Reno and discussed with him that there
9 may be a possibility that the defense would want to use him
10 as a witness, because Mr. Specchio previously indicated in
11 the first trial that they wanted to use David Kinikini as a
12 penalty phase witness.

13 Mr. Kinikini expressed to me, as Mr. Gammick
14 just did to you, that he -- that would be an extreme
15 hardship on him. I think that the Court would need to know
16 his situation.

17 I also think that, as Mr. Gregory said, if they
18 want to use him, they need to coordinate with Mr. Kinikini
19 as far as when is the time to get him back in because he
20 certainly, I don't think, can stay in Reno pending the
21 penalty phase.

22 THE COURT: When did he arrive?

23 MR. STANTON: He arrived last evening at
24 approximately 7:00 p.m.

25 THE COURT: Is there a flight that can fly out

1 of Salt Lake at 5:00 or 5:30 and be here at that time?

2 MR. STANTON: I know that they arrived here at
3 7:15 p.m. Salt Lake City is one to two hours ahead of us.
4 I'm not sure what the departure time is. I know there's one
5 flight leaving back to Salt Lake City tonight.

6 THE COURT: It's a whole day he's gone?

7 MR. STANTON: Correct.

8 THE COURT: Twenty-four hours basically.

9 MR. STANTON: Is my understanding. I think
10 Mr. Kinikini needs to express so that everybody understands
11 whether or not he can and would be available, that he be
12 able to speak directly to the Court. I think that's only
13 fair.

14 THE COURT: Okay. Now, with regard to the
15 other two witnesses, have you gotten your investigator
16 together with the other two witnesses yet? Renee and Mele?

17 MR. GREGORY: We talked to Renee and Mele.

18 THE COURT: So, do they have a phone number to
19 keep in touch with?

20 MR. GREGORY: Yes, Your Honor.

21 THE COURT: So that now they are under -- they
22 understand that they have to stay in touch with you?

23 MR. GREGORY: Yes, Your Honor.

24 THE COURT: I think that alleviates your
25 concern with regard to your witness unit.

1 MR. GAMMICK: All I'm trying to do, if the
2 Court wants to order it, I'm not objecting at all. I want
3 to get removed as the middleman here when the defense wants
4 the witnesses. That's all.

5 THE COURT: What we need to do, before
6 Mr. Kinikini can be excused, we need to talk to him about
7 when he can come back.

8 MR. STANTON: If the defense wants to use him,
9 I don't have any objection to the defense asking him
10 questions that may not be directly relevant to the issues
11 now to alleviate the concerns of Mr. Kinikini being called
12 back at the penalty phase.

13 For example, if they want to ask him
14 questions --

15 MR. GREGORY: David, I'm telling you that I had
16 hoped to be able to do that. We are not in a position where
17 we can do that.

18 THE COURT: What I'm going to do is, I will ask
19 that you tell your investigator, Mr. Gammick, to ask
20 Mr. Kinikini to stick around the courthouse downstairs and
21 hold on to him for a little bit. We will get through the
22 rest of the witnesses and then we'll let Mr. Gregory and
23 Mr. Bosler talk to him and see what we can work out after
24 the jury is retired for lunch. We can always have a hearing
25 with Mr. Kinikini back here and explain what's going on.

1 For right now, I would like to hold everybody.

2 MR. GAMMICK: We will do that, Your Honor.

3 THE COURT: Until we can get out of court.

4 MR. STANTON: Can I have a brief moment after
5 we were to go back to the table so I can talk to my
6 investigator so that they can explain to Mr. Kinikini when
7 he gets off the stand what's going on?

8 THE COURT: Right. Okay.

9 (Whereupon, the following proceedings were held
10 in open court, in the presence of the jury.)

11 MR. GREGORY: Thank you. Your Honor, at this
12 time we have no further questions of Mr. Kinikini.

13 MR. GAMMICK: Excuse me, Your Honor. May
14 Mr. Kinikini step down?

15 THE COURT: I would like to go ahead -- the
16 court reporter wasn't plugged in when you indicated what
17 your preference was for continuing to cross-examine
18 Mr. Kinikini.

19 MR. GREGORY: At this time we will have no
20 cross-examination of Mr. Kinikini.

21 THE COURT: Thank you. Mr. Kinikini, you are
22 not excused at this time. But we aren't going to ask any
23 more questions of you right now. I'll have further
24 discussions with you a little bit later this morning. If
25 you can go ahead and step down and the investigator that you

1 have been dealing with will explain everything to you.

2 (The witness stepped down and left the
3 courtroom.)

4 THE COURT: Go ahead and call your next
5 witness.

6 MR. STANTON: The State would next call
7 Detective Keith Stephens.

8 (One witness sworn.)

9 THE CLERK: Thank you. Please be seated at the
10 witness stand.

11 KEITH STEPHENS

12 called as a witness on behalf of the Plaintiff,

13 having been first duly sworn,

14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. STANTON:

17 Q Good morning, sir. Could you please state your
18 complete name and spell your last name for the court
19 reporter?

20 A Keith Stephens, S-t-e-p-h-e-n-s.

21 Q Detective, how are you currently employed?

22 A An investigator with the Salt Lake County
23 sheriff's office.

24 Q How long have you been a police officer?

25 A Seventeen-and-a-half years.

1 Q What is your current duty assignment within
2 that division?

3 A Investigator with the homicide unit.

4 Q And how long have you been an investigator in
5 the homicide unit?

6 A A little more than five years.

7 Q Directing your attention, Detective, back to
8 January of 1998, specifically January 14, did your police
9 agency become involved in what is commonly referred to as an
10 A.T.L.?

11 A Yes, we did.

12 Q What is an A.T.L.? How does your agency
13 normally deal with those?

14 A Generally a teletype that's broadcast
15 throughout law enforcement via computer or other means.
16 This one came via computer.

17 It was a request looking for information and/or
18 a suspect in a crime that was occurring or occurred in Reno,
19 Nevada.

20 Q And when they used the phrase or the acronym
21 "A.T.L.," what does that stand for?

22 A An attempt to locate.

23 Q What was the nature of the crime and the
24 individual's name that this particular A.T.L. that came into
25 your division, what did it say?

1 A It involved a homicide of a police officer in
2 Reno, Nevada, and had a suspect name attached to it.

3 Q The police in your division conducted an
4 investigation regarding that A.T.L.?

5 A Yes. As a course of practice, daily we receive
6 teletypes. We go through the teletypes and seek out
7 information that may be relevant or pertinent to Salt Lake
8 City or our jurisdiction.

9 And this being a bordering state, we looked at
10 it a little closer and did some computer checks to see if
11 that individual ever had been in our jurisdiction or if we
12 have had contact with him.

13 Q You found that the defendant had, or the name
14 of Siaosi Vanisi had been to a location in Salt Lake City?

15 A We found references in Salt Lake City.

16 Q And based upon those, can you describe
17 generally to the ladies and gentlemen of the jury what your
18 police agency did to follow up on those leads?

19 A We went to the reference location and address
20 in Salt Lake City, made contact with the residents there,
21 advised them who we were, what the purpose of our visit was,
22 advised them of the crime and the suspect. Asked them if
23 they knew this individual.

24 They said they had, but it had been quite some
25 time since they had seen him. We left a card and number and

1 said if you do see or hear from him, please contact us.

2 Q Ultimately in this case, you came into contact
3 and became knowledgeable of an individual by the name of
4 David Kinikini; is that correct?

5 A Yes, sir.

6 Q That was not the home that you just testified
7 to?

8 A That was a relative.

9 Q Another relative other than Mr. Kinikini?

10 A Yes.

11 Q Ultimately, was your agency able to contact
12 David Kinikini in reference to confirming that Siaosi Vanisi
13 was indeed in Salt Lake City?

14 A Yes, sir. Mr. Kinikini contacted us by
15 telephone later that afternoon after speaking with his
16 family members and did in fact say that he was in Salt Lake
17 City.

18 Q What was the police perspective and operation
19 from that point forward?

20 A To take him into custody, locate and take into
21 custody.

22 Q The first information that you received about
23 where Mr. Vanisi was didn't lend itself easily to that
24 operation; is that correct?

25 A No. In speaking with Mr. Kinikini, the first

1 location that he was thought to be at was a police athletic
2 club or youth club, playing basketball with Mr. Kinikini's
3 son. There were too many civilians and innocent people
4 there to initiate a police arrest with a violent offender.

5 Q And what was the operational plan at that
6 juncture?

7 A To find him at a less populated location and
8 take him into custody more safely for everyone involved.

9 Q Ultimately did that location flesh out to be
10 David Kinikini's home in Salt Lake City?

11 A Yes, sir, it was.

12 Q And did you arrive at that location?

13 A Yes, I did.

14 Q Do you recall what time of evening you arrived?

15 A It was January. It was dark. Somewhere around
16 5:30, 6:00 p.m., in that general area.

17 Q How many officers or members of your unit were
18 at that location?

19 A Initially three.

20 Q Was Mr. Vanisi present at that time?

21 A Yes, he was.

22 Q And where was he?

23 A He was in the home, the Kinikini residence.

24 Q The police officers that were initially there,
25 did you make some sort of operational plan about how to take

1 Mr. Vanisi in custody at that juncture?

2 A We had spoken with Mr. Kinikini quite a bit and
3 asked him to please evacuate the home, leaving behind
4 Mr. Vanisi. He and his son, teenage son, left the residence
5 upon our request. And as soon as they were safely out of
6 the home, we spoke with them to confirm there were no other
7 persons inside the residence. At that point in time, one
8 detective went to the rear of the home to secure it. Myself
9 and another detective covered the front of the home and just
10 maintained our vigil there to watch for the suspect until a
11 SWAT team could arrive and relieve us from our positions and
12 take over the operation.

13 Q What is a SWAT team?

14 A It's a Special Weapons And Tactic Team that is
15 trained in procedures of safely entering homes, businesses,
16 to take people into custody.

17 Q You say that they are a specially trained unit?

18 A Yes.

19 Q How many SWAT officers were deployed in this
20 situation?

21 A In this situation, it was an apartment complex.
22 So there were numerous apartments we needed to evacuate. So
23 our entire unit, which was comprised of roughly 15
24 individuals, and the Salt Lake City SWAT team also assisted
25 in evacuating neighbors. There were numerous individuals

1 there.

2 Q And early or sometime after your arrival, did
3 you ever have visual contact with the defendant, Mr. Vanisi?

4 A In the time waiting for the SWAT team to
5 arrive, there were several times the windows had been peeked
6 out by an individual in the house.

7 At one point in time, the front door opened and
8 the defendant poked his head out. He was given commands by
9 myself and the detective to give up; that we were the
10 police. Come out with his hands up. Numerous commands
11 similar to that. The door was slammed and he retreated.

12 Q Do you see Mr. Vanisi in court today?

13 A I do, sir.

14 Q Could you please describe where he is in the
15 courtroom and what he's wearing?

16 A He's wearing a tan jacket and somewhat rust
17 colored tie, dark hair.

18 MR. STANTON: May the record reflect the
19 identification of the defendant?

20 THE COURT: Yes.

21 BY MR. STANTON:

22 Q Detective, at some point the operation of what
23 is occurring transferred from you and your detectives to the
24 SWAT team; is that correct?

25 A That's right. They came in and relieved us

1 from our positions.

2 Q Is that standard protocol under situations such
3 as that?

4 A Yes, it is.

5 Q At any time, were you advised of communications
6 by the defendant inside the home that he claimed other
7 people were in the residence?

8 A Yes. In the interim after we had been moved
9 from our positions around the perimeter of the home, we were
10 still close by, close enough to hear verbal communications
11 with some of the SWAT unit and detectives that were still on
12 the scene. There was verbal communication being yelled from
13 a window to the street. He claimed that he was merely
14 reading the children a book or something of that nature and
15 he didn't want to come out and comply with our wishes to
16 surrender himself.

17 Q And that was inconsistent with what David
18 Kinikini had told you about the condition of the home and
19 who was inside it?

20 A That's correct.

21 Q Ultimately there was a conclusion to these
22 events, correct?

23 A Yes, sir.

24 Q At the conclusion of those events, Detective
25 Stephens, did you have responsibility regarding the

1 collection of evidence?

2 A Yes, sir. After the individual was taken into
3 custody and the house was made safe, we moved into the area
4 and collected evidentiary items.

5 Q I would like to show you a series of
6 photographs. First, photograph 28. Do you recognize what
7 is depicted in that photograph?

8 A This is the firearm that was in the washroom of
9 the apartment.

10 Q Does that truly and accurately depict the
11 condition of that and other objects in that photograph as
12 you observed it after SWAT entry?

13 A Yes, sir, it does.

14 MR. STANTON: Move for 28 in evidence, Your
15 Honor.

16 THE COURT: Counsel?

17 MR. GREGORY: We would submit it, Your Honor.

18 THE COURT: Exhibit 28 is admitted.

19 (Plaintiff's Exhibit No. 28 admitted.)

20 BY MR. STANTON:

21 Q In addition, Detective Stephens, in the front
22 right foreground of that photograph is an object. Do you
23 know what that is and could you describe it to the ladies
24 and gentlemen of the jury?

25 A It is a wooden cutting board that is unattached

1 to anything. Just loose.

2 Q And I show you Exhibit 15-A. I ask you if you
3 recognize that, sir.

4 A Yes, sir, I do.

5 Q Is that the same handgun that is depicted in
6 that photograph you previously testified?

7 A Yes, it is.

8 Q Detective Stephens, next showing you two
9 photographs, 32-B and 32-A, and I ask you if you recognize
10 what is depicted in those photographs?

11 A This is an automobile we were directed to that
12 was parked some distance from the Kinikini residence that
13 was covered with a car cover.

14 Q Were you advised, Detective, that that
15 automobile was stolen out of the Reno area and also sought
16 by Reno police?

17 A We were verbally told that and we confirmed
18 with computer check. It was true, indeed.

19 Q Do those photographs accurately depict the
20 condition of the automobile as you found it in Salt Lake
21 City?

22 A Yes, sir.

23 Q Photographs 29-A and 29-B, I ask you if you
24 would take a look at those. Do you recognize what is in
25 those photographs?

1 A Yes, sir.

2 Q And did you actually assist in those
3 photographs being produced in that fashion?

4 A I was in that area, but I did not take the
5 photograph.

6 Q Are you aware of what those items are?

7 A Yes, sir.

8 Q What are they?

9 A The defendant's clothing.

10 Q Is that the clothing that he was wearing at the
11 time he was taken into custody?

12 A I believe some of it was. I believe he had
13 disrobed with some of it during the entire incident, but I'm
14 not sure exactly what.

15 Q Finally, 33-D and 33-C, do you recognize that?

16 A Yes, sir, it's a picture of the garage and the
17 automobile and the fire damage inside and the vehicle that
18 was outside on the carport at the time, the driveway.

19 Q Detective, as best you can, with 33-D, holding
20 it over your right shoulder, could you explain to the ladies
21 and gentlemen the conclusion by your department about what
22 that photograph depicts and how that scene forensically
23 occurred?

24 A There was two items that were ignited in the
25 garage, specifically a couch and the clothing items that

1 were leading into the engine block of the vehicle. Those
2 were ignited and set afire.

3 Q And according to your investigation, did that
4 fire appear to be purposely set by Mr. Vanisi?

5 A Yes, sir, it was.

6 MR. STANTON: Your Honor, at this time, if I
7 could publish Exhibit 28 to the jury?

8 THE COURT: Yes.

9 (The exhibit was displayed to the jury.)

10 MR. STANTON: I have no further questions at
11 this time, Your Honor.

12 THE COURT: Cross-examination?

13 MR. GREGORY: Court's indulgence.

14 (There was a pause in the proceedings while
15 counsel and the defendant conferred.)

16 MR. GREGORY: No questions.

17 THE COURT: You may step down. You will be
18 excused.

19 (The witness was excused and left the
20 courtroom.)

21 THE COURT: Call your next witness.

22 MR. STANTON: The State would next call Officer
23 Craig Meyer.

24 (One witness sworn.)

25 THE CLERK: Thank you. Please be seated at the

1 witness stand.

2 CRAIG MEYER

3 called as a witness on behalf of the Plaintiff,

4 having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. STANTON:

8 Q Sir, could you state your full name and spell
9 your last name?

10 A Craig Meyer, M-e-y-e-r.

11 Q Sir, how are you currently employed?

12 A With the Salt Lake County Sheriff's office.

13 Q How long have you been in that form of
14 employment?

15 A I have been in law enforcement for 14 years and
16 with the sheriff's office for the past five.

17 Q Directing your attention back to January of
18 1998, specifically January 14 of that year, did you have an
19 occasion to through your normal police functions have an
20 additional assignment relative to a SWAT team?

21 A I did, with the Salt Lake County SWAT team.

22 Q Could you explain to the ladies and gentlemen
23 of this jury briefly what that duty assignment entails and
24 how you operate within that unit?

25 A We are a tactical unit assigned by the office

1 to respond, to deal with fairly serious situations that are
2 often beyond the scope of regular patrol officer
3 responsibility.

4 Q And as part of that, do you receive specialized
5 training and equipment to perform that function?

6 A We do, extensive.

7 Q Specifically I want to direct your attention to
8 once again January 14, 1998. Did you have occasion to be
9 dispatched pursuant to your assignment with the SWAT team to
10 an area within Salt Lake County, Salt Lake City?

11 A I did. Approximately 1800 hours or 6:00
12 o'clock p.m., I was dispatched via pager to the Riverview
13 Apartments on a barricaded suspect situation.

14 Q And were you further advised during the course
15 of your deployment or at the scene, more circumstances about
16 the suspect and what he was wanted for?

17 A I was. En route to those apartment complexes,
18 I was told by dispatch that the suspect was possibly wanted
19 out of Nevada for the homicide of a police officer and that
20 he was in possible possession of a handgun.

21 Q All those are important facts for you in
22 performance of your duties with SWAT?

23 A Yes, they are.

24 Q And do you have specialized or do you have
25 knowledge and experience with weapons?

1 A I do.

2 Q And what is the duty sidearm that you carry
3 with you on your day-to-day business as a peace officer with
4 Salt Lake County?

5 A A Glock 17, nine-millimeter handgun.

6 Q Upon your arrival at what ultimately is the
7 David Kinikini home, could you explain to this jury what the
8 tactical situation was upon your arrival?

9 A The situation upon my arrival was we had by
10 intelligence gathering one male inside a residence, possibly
11 armed, that was refusing to come out at that time.

12 Q What did you or your unit then do relative to
13 approaching that tactical situation?

14 A When I got there, myself and another SWAT
15 officer maintained a containment position near the front
16 door area of the suspect target residence.

17 Q And during that time period, did you ever see
18 the barricaded suspect?

19 A At that time, no, I did not personally.

20 Q During the course of you being in your
21 containment position, did you ever see the barricaded
22 suspect?

23 A Not from my containment position, no.

24 Q At one point or at some juncture, the tactical
25 situation changes; is that correct?

1 A That's correct.

2 Q What changed the tactical situation?

3 A The responsibility of myself and the other SWAT
4 officers at the front --

5 MR. GREGORY: I object as not being responsive
6 to the question.

7 MR. STANTON: I believe he was being precisely
8 responsive.

9 THE COURT: The question was: What changed the
10 tactical situation in terms of his responsibility?

11 MR. STANTON: I believe he's explaining it.
12 But I'll rephrase my question to you.

13 BY MR. STANTON:

14 Q Officer, was there a situation that changed
15 your tactical situation at the residence from one that
16 required a greater urgency?

17 A There was.

18 Q What was that?

19 A The garage was set afire, specifically.

20 Q And at that juncture, what tactically did the
21 SWAT directives from your superiors involve?

22 A At that point, we were given the order to enter
23 the residence, due to the building being on fire.

24 Q At the point, Officer, about entering the
25 residence, how was that accomplished in this case relative

1 to the team that you were on?

2 A That was accomplished by an emergency action
3 team, which was the original containment team. We changed
4 directive at that point due to the urgency of the situation,
5 i.e., being the fire, and placed ourselves at the front door
6 and prepared to enter the building.

7 Q And there is a trained and planned method of
8 entry; is that correct?

9 A That is correct.

10 Q Can you describe that and how that occurred in
11 this case?

12 A In this particular case, there were several
13 SWAT officers in what is called a stick or a line of
14 officers at the front door.

15 The man was to breach the front door with a ram
16 and the team at that point would enter the residence and
17 clear it as safely as possible and determine the whereabouts
18 of the suspect inside.

19 Q I'm going to show you a series of photographs.
20 First set of photographs are 34-A and B. I ask if you
21 recognize those photographs?

22 A I do.

23 Q And what do those photographs depict?

24 A They are photos of me the evening of that
25 situation.

1 Q Is that how you were dressed out as you made
2 entry into the Kinikini home?

3 A That is.

4 Q And they accurately depict your clothing and
5 how you appeared that night?

6 A They do.

7 MR. STANTON: Move for admission at this time,
8 Your Honor.

9 THE COURT: Counsel?

10 MR. GREGORY: We will submit it.

11 THE COURT: May I see them, please?

12 Okay, admitted.

13 (Plaintiff's Exhibit No. 34-A and 34-B
14 admitted.)

15 MR. STANTON: May I publish 34-A and B to the
16 jury?

17 THE COURT: You may.

18 (The exhibits were displayed to the jury.)

19 BY MR. STANTON:

20 Q Officer, if you could pick up your testimony
21 relative to your entry. Could you describe what happens
22 when you and fellow officers made entry into the Kinikini
23 home?

24 A Upon the door being breached with the ram,
25 myself and Deputy Bowman, who were the first two officers in

1 line, made entry across the threshold of the door and were
2 faced with a very narrow, long hallway in front of us and a
3 stairwell that led upstairs to the right.

4 Q Showing you 33-B, do you recognize that
5 photograph?

6 A I do.

7 Q And does that accurately depict the portion of
8 the Kinikini home that you just testified to?

9 A It does.

10 MR. STANTON: Move for its admission at this
11 time.

12 THE COURT: Counsel?

13 MR. GREGORY: We would submit it, Your Honor.

14 THE COURT: 33-B is admitted.

15 (Plaintiff's Exhibit No. 33-B admitted.)

16 BY MR. STANTON:

17 Q I hand that photograph to you like that. If
18 you could hold that photograph over your right shoulder for
19 the next portion of your testimony.

20 Could you explain to the ladies and gentlemen
21 of the jury based upon the testimony you just gave, where
22 you entered and where that stairway that you just mentioned
23 was?

24 A As I came through the open door, the front door
25 being here, the partial front door you can see, the stairway

1 is right here. You can see the bottom two steps. It off
2 led to the right to a short landing, to the upstairs portion
3 of the residence.

4 The hallway progressed straight in front of me
5 to the ground level remainder of the residence.

6 Q Could you pick up your testimony from that
7 juncture about what you and your other officers did once you
8 initially made entry past the threshold?

9 A Upon coming through the front door, I
10 noticed -- I was probably several steps inside the door -- I
11 noticed a partial figure of what appeared to be a man a
12 couple doors down on my right. He appeared to be taking a
13 position of cover.

14 Q When you say "a position of cover," what does
15 that mean to you as a police officer and also in your
16 situation that you were involved in at that instant?

17 A In my tactical experience, being able to only
18 see a slight portion, being the right side of his face and
19 his right shoulder and not being able to see his hands at
20 the time, this was of great concern to me.

21 Q What did you do at that juncture?

22 A At this point, Deputy Bowman, who was ahead of
23 me, was continuing down the hall. It became apparent to me
24 he possibly had not seen this partial figure of a man. We
25 were yelling, "Police, police," as we went down the hallway.

1 I in turn was yelling at him to direct his
2 attention towards that doorway.

3 Q What happened next?

4 A Deputy Bowman, it appeared at that point, saw
5 the partial figure and attempted to take a position of cover
6 in what was a bathroom, which was an open door immediately
7 to his right. At that point, I stepped to the left of him.
8 And as I did so, I saw the suspect bring an arm out from
9 that open doorway and raise it parallel up along the side of
10 the wall.

11 Q Was there anything that brought your attention
12 of concern relative to what that arm was doing and what it
13 had in its possession?

14 A Yes, it was holding a gun.

15 Q And did you, when you say a gun, a handgun or
16 rifle?

17 A It was a handgun, black handgun.

18 Q What did you do then, Officer?

19 A At that point I raised my weapon and watched as
20 the suspect pointed that gun and appeared to take aim at me.

21 Q How far were you away from this individual when
22 these events were occurring?

23 A Hmm, probably two to three yards.

24 Q And the individual that had that gun and was
25 raising it in your direction, pointing it at you, do you see

1 that individual in court today?

2 A I do.

3 Q Could you please describe where he is in the
4 courtroom and what he's wearing?

5 A He is sitting at the defense table wearing a
6 tan, cream-colored jacket, dark hair, kind of a rust-colored
7 tie.

8 MR. STANTON: May the record reflect the
9 identification of the defendant?

10 THE COURT: The record will so reflect.

11 BY MR. STANTON:

12 Q Officer, when you saw that weapon being pointed
13 at you, what did you do next?

14 A Myself and the suspect locked eye contact
15 momentarily. At that point there was no doubt in my mind
16 that he was going to shoot me. So I fired my duty weapon at
17 the only target I could see at the time, which was his right
18 hand and arm, and struck the suspect in the arm.

19 Q How many times did you fire your duty weapon at
20 that juncture?

21 A Four times, I believe.

22 Q What occurred next?

23 A At that point, I was unsure if the team members
24 behind me had seen the suspect in the doorway. And not
25 wanting to lead them further down that fatal funnel, I

1 proceeded to back up while firing the remainder of those
2 four shots; Pushing the team behind me out the open door and
3 up onto the stairwell to a position of cover.

4 Q Can you describe to this jury what occurred
5 generally after your unit had retreated within the dwelling?

6 A After all team members were accounted for and
7 we were all behind positions of cover, the SWAT sergeant
8 proceeded with dialogue with the suspect, who was still
9 inside the residence, in an attempt to get him to give
10 himself up and come outside.

11 Q Did there come a time period when indeed
12 Mr. Vanisi came out to the threshold area of the residence?

13 A He did, after quite some time. He came to the
14 threshold of the doorway.

15 Q How much time had elapsed between the shooting
16 incident you just described and the incident we are now at
17 when Mr. Vanisi comes out to the threshold?

18 A I would guess approximately ten to 15 minutes.

19 Q Could you describe what happens when Mr. Vanisi
20 comes to the threshold of the Kinikini home?

21 A He was given verbal commands by the SWAT
22 sergeant to show his hands, raise his hands, drop down to a
23 kneeling position. The suspect was very non-compliant at
24 that point.

25 And another officer utilized less-than-lethal

1 impact through a bean bag round to take him safely into
2 custody.

3 Q Can you describe how that bean bag round
4 appears and operates, and also how it specifically was
5 implemented against Mr. Vanisi?

6 A The exact method of operation I can't explain.
7 I'm not -- that's not my area of expertise. It is a bean
8 bag projectile that is fired from a 37-millimeter weapon.
9 It is less than lethal. It's an impact tool.

10 Q And were you aware of a cutting board that
11 Mr. Vanisi had on his person during the course of the SWAT
12 operation?

13 A I was.

14 Q Where did you know or see that cutting board to
15 be and how did that represent a concern to you based upon
16 your role in this operation?

17 A It was up underneath his jacket covering the
18 center of mass, vital organ area, such as a police officer's
19 ballistic vest would be.

20 Q And after the bean bag round was deployed,
21 Officer, did you place Mr. Vanisi formally in custody?

22 A Yes, he was taken into custody. I placed
23 handcuffs on the suspect at that time.

24 Q Showing you photographs 29-A and B, does that
25 clothing look familiar to you?

1 A It does.

2 Q Is that the clothing Mr. Vanisi was wearing at
3 the time you placed him into custody after the bean bag
4 incident?

5 A It was. I recognize the orange jacket.

6 MR. STANTON: No further questions.

7 THE COURT: Cross-examination?

8 MR. GREGORY: Court's indulgence.

9 (There was a pause in the proceedings while
10 counsel and the defendant conferred.)

11 MR. GREGORY: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. GREGORY:

14 Q Officer Meyer, Mr. Vanisi didn't fire any
15 rounds at you, did he?

16 A He did not.

17 MR. GREGORY: Nothing further.

18 THE COURT: Anything further?

19 MR. STANTON: No, Your Honor.

20 THE COURT: You may step down. You are
21 excused.

22 (The witness was excused and left the
23 courtroom.)

24 THE COURT: You may call your next witness.

25 MR. STANTON: The State would next call Vainga

1 Kinikini.

2 (One witness sworn.)

3 THE CLERK: Thank you. Please be seated at the
4 witness stand.

5 VAINGA IMOANA KINIKINI
6 called as a witness on behalf of the Plaintiff,
7 having been first duly sworn,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. STANTON:

11 Q Good morning, sir. Could you please state your
12 name and spell your first and last name?

13 A Vainga Imoana Kinikini.

14 Q If you could slide up as close as you can to
15 the microphone for me. Could you state once again your
16 name?

17 A Vainga Imoana Kinikini.

18 Q How do you spell your middle name?

19 A I-m-o-a-n-a

20 Q Could you spell Vainga for me?

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

22 Q Mr. Kinikini, how old are you, sir?

23 A Twenty-five.

24 Q What is your relationship to Mr. Vanisi?

25 A We are distant relatives.

1 THE COURT: I'm going to stop you. Can you
2 pull the microphone down a little? There. Now, push the
3 top part up a little bit.

4 Would you state your name again, please?

5 THE WITNESS: Vainga Imoana Kinikini.

6 THE COURT: Would you state your age again,
7 please?

8 THE WITNESS: I'm 25.

9 THE COURT: Thank you.

10 BY MR. STANTON:

11 Q What is your relationship to the defendant,
12 Siaosi Vanisi?

13 A We are distant relatives.

14 Q Distant relatives?

15 A Yes.

16 Q I want to direct your attention back to January
17 of 1998, Mr. Kinikini. At that time, sir, had you had any
18 previous felony convictions?

19 A Yes.

20 Q And what were those for?

21 A For two counts of aggravated assault with a
22 deadly weapon.

23 Q And you're a very soft-spoken person,
24 Mr. Kinikini. If you can lean your head closer to that
25 microphone. And once again I'll ask you, did you have any

1 felony convictions back in that time period?

2 A Yes.

3 Q What were they for?

4 A Two counts of aggravated assault with a deadly
5 weapon.

6 Q And where did those convictions occur?

7 A In Dallas, Ft. Worth, Texas.

8 Q Were you sentenced from those offenses?

9 A Yes.

10 Q And how much time did you receive?

11 A About four years.

12 Q And did you serve that time?

13 A Yes.

14 Q You are not under any sentence of imprisonment,
15 parole, or probation at this time?

16 A No.

17 Q I want to once again, January 1998, do you
18 remember where you were living during that time period?

19 A I was living with my brother. I don't recall
20 the address.

21 Q Okay. Would it be South Riverside Drive?

22 A Yes, Riverside Drive.

23 Q When you say your brother, what is his name?

24 A David Kinikini.

25 Q Why were you living with your brother, David,

1 at that time period?

2 A I had moved down to straighten up my life, get
3 some guidance, I guess.

4 Q What role was David to play in straightening
5 out your life?

6 A He was more like a role model, older brother.

7 Q Your brother, is he a role model when it comes
8 to living life clean?

9 A Yes.

10 Q Is he a devoutly religious man?

11 A Yes.

12 Q Was there an individual there by the name of
13 Jeremiah Talley?

14 A Yes.

15 Q Who is he?

16 A He is a youth -- he's a proctor kid under the
17 State's custody.

18 Q He was living with your brother, David?

19 A Yes.

20 Q I want to direct your attention, Mr. Kinikini,
21 to the 14th of January. Did you have occasion to see the
22 defendant, Siaosi Vanisi, on that day?

23 A The 14th?

24 Q Yes.

25 A Yeah.

1 Q It would have been a Wednesday?

2 A Okay, yeah.

3 Q And where was the first time that you saw

4 Siaosi Vanisi?

5 A He was at our house.

6 Q And where inside the house did you first see

7 him?

8 A I was in my room.

9 Q What were you doing when you first saw him?

10 A I was sleeping.

11 Q Did you expect to see the defendant at that

12 time?

13 A No.

14 Q Did you recognize him when you first saw him?

15 A No.

16 Q Why is it that he looked different to you when

17 you first woke up from sleep?

18 A He was a lot bigger and he had facial hair,

19 long hair.

20 Q And the last time you had seen him, he didn't

21 look like that?

22 A No.

23 Q How long before that day had it been since you

24 had seen him?

25 A Maybe five, ten years.

1 Q I show you Exhibit 24-C. You've seen that
2 picture before?

3 A Yes.

4 Q Is that how Mr. Vanisi appeared to you that
5 morning?

6 A Yes.

7 Q After you woke up, what did you do?

8 A I answered the door and he was there.

9 Q Okay. Where did you go after you answered the
10 door?

11 A We went into the living room and started
12 watching T.V., talking.

13 Q How did the defendant, Mr. Vanisi, appear to
14 you?

15 A Real excited or real hyper.

16 Q During that initial time period of seeing your
17 cousin, did there come a time where you went outside the
18 home to smoke a cigarette?

19 A Yes.

20 Q While you were outside, Mr. Kinikini, did
21 Mr. Vanisi show you anything?

22 A Just -- just some money.

23 Q And how did the money appear to you? Was it in
24 a billfold?

25 A It was just in a wad.

1 Q And what did the money look like to you, as far
2 as the denominations?

3 A Small bills, twos and fives, ones.

4 Q At the time he shows that to you outside the
5 residence, correct?

6 A Yes.

7 Q You go back into the residence to continue
8 watching television?

9 A Yes.

10 Q At this time, did Mr. Vanisi tell you that he
11 had been involved in some significant criminal activity in
12 Reno?

13 A Yes.

14 Q What did he tell you?

15 A He had committed a murder.

16 Q I'm sorry?

17 A He had committed a murder.

18 Q And when he told you that, did you believe him?

19 A No.

20 Q Did he tell you about right around the same
21 time period that 1998 was a year that he was --

22 MR. GREGORY: I object to the leading form of
23 the question.

24 THE COURT: Sustained.

25 / / /

1 BY MR. STANTON:

2 Q Did there come a time in this conversation when
3 he talked to you about what 1998 meant to him?

4 A That it would be a year to, to find his roots.

5 Q And did he explain that a little bit more?

6 A Just to hang out with the family more and, you
7 know, gather together.

8 Q And when you say gather together, was that
9 within the members of the Tongan community?

10 A That's the members of, yeah, of the Tongan
11 community and relatives.

12 Q Did he talk about something called fahi kesi,
13 f-a-h-i, k-e-s-i?

14 A Yes.

15 Q And sir, do you -- are those terms I just said
16 Tongan?

17 A Yes.

18 Q Do you speak Tongan fluently?

19 A Yes.

20 Q What does fahi kesi mean?

21 A It means to rob a store, a gas station.

22 Q What did Mr. Vanisi say about fahi kesi?

23 MR. GREGORY: Well, Your Honor, I withdraw it.

24 THE COURT: Okay.

25 BY MR. STANTON:

1 Q Do you remember what he said? What did
2 Mr. Vanisi tell you during this time period about that term,
3 that Tongan term?

4 A I don't get the question.

5 Q Okay. Did he tell you about anything else that
6 he had done in Reno besides the murder?

7 A Oh, yeah, the robberies.

8 Q Did he use that Tongan term?

9 A Fahi kesi, yes.

10 Q Now, what does fahi kesi literally mean?

11 MR. GREGORY: I believe that's asked and
12 answered. He just said.

13 MR. STANTON: Your Honor, I'm asking for the
14 literal interpretation, which I believe will be slightly
15 different from what he testified.

16 THE COURT: Based upon that representation,
17 I'll overrule the objection.

18 BY MR. STANTON:

19 Q What does literally fahi kesi mean?

20 A Fahi meaning to break into, or crack; and kesi
21 meaning gas, or gas station.

22 Q When he used that term, what did it mean to
23 you?

24 A Just meant robbery, or robbing anything with
25 gas.

1 Q Did it mean any type of establishment had been
2 robbed?

3 A Yes, a gas station.

4 Q Did there come a time where he showed you a
5 weapon?

6 A Yes.

7 Q Are you familiar with weapons, Mr. Kinikini?

8 A Yes, I am.

9 Q I would like to show you State's Exhibit 15-A.
10 I ask if you recognize this?

11 A Yes, I do.

12 Q Do you recognize that?

13 A Yes.

14 Q Is that the gun that Mr. Vanisi showed you?

15 A Yes.

16 Q What did he tell you when he showed you that
17 gun?

18 A Just said it was a cop's gun.

19 Q Did he tell you what he did to that cop?

20 A Not specifically. He just showed me the gun.
21 That was it.

22 Q Did he use a slang term about a cop?

23 A Po-po.

24 Q Could you say that a little louder?

25 A Po-po.

1 Q What does a po-po mean to you?

2 A It means a police officer.

3 Q At this point did you believe him?

4 A No.

5 Q Do you remember the caliber of the gun that he
6 showed you?

7 A It was -- my first thought it was a Glock .45.

8 Q You had seen .45 calibers before?

9 A Yes.

10 Q You had seen Glocks before?

11 A Yes.

12 Q Did there come a time where Mr. Vanisi talked
13 to you about an incident with a homeboy?

14 A He had one of his homeboys with him and they
15 went out one night and they were looking for somebody to
16 kill.

17 Q And when you -- what does the word "homeboy"
18 mean?

19 A It means a friend or a good partner.

20 Q And did he tell you in relationship to the
21 murder of the police officer when this incident with this
22 homeboy going out looking for somebody occurred?

23 A He said it was like on a Monday night.

24 Q And in relationship to the murder, was it the
25 same day or the day before? A week before? Do you

1 remember?

2 A I don't remember.

3 Q The time that he was talking to you,
4 Mr. Vanisi, did he tell you what type of people him and his
5 homeboy were looking for?

6 A White people.

7 Q And any particular type of white people?

8 A No.

9 Q Do you remember talking to Reno detectives in
10 Salt Lake City?

11 A Yes.

12 Q Would looking at a transcript of that interview
13 help you with your memory of what was said?

14 A Yeah.

15 MR. STANTON: Your Honor, may I approach the
16 witness with his January 23 transcript?

17 THE COURT: Yes, you may.

18 BY MR. STANTON:

19 Q Mr. Kinikini, in the lower right-hand corner is
20 a page number. Actually, sir, if you could turn to page six
21 of that transcript. In the left-hand column is a series of
22 numbers. If you could read line 14 through 24 to yourself
23 and tell me when you're finished reading.

24 Does that help you?

25 A Yes.

1 Q What did Mr. Vanisi tell you that he was
2 looking for that night with his homeboy?

3 A Police officer.

4 Q What kind of police officer?

5 A A white person.

6 Q A white police officer?

7 A Yes.

8 Q And specifically, at line 23 and 24, he wanted
9 to do something to a police officer when he found him. Do
10 you see that at line 24?

11 A He wanted to beat him, beat him up.

12 Q I'm sorry?

13 A He wanted to beat one up.

14 Q What did he say happened with this attempt to
15 find a white police officer when he was out with his friend?

16 A That the person he went with was scared and
17 didn't want to go further.

18 Q And so did anything happen that night,
19 according to Mr. Vanisi?

20 A The kid went home and I think he then went and
21 purchased the knife.

22 Q If you could say that a little louder?

23 A I think he went to the store.

24 Q Did Mr. Vanisi tell you why he went to the
25 store?

1 A I can't remember.

2 Q Okay. If you would turn to the next page, page
3 seven? And if you would read lines 16 through 32 to
4 yourself and then tell me when you're finished reading.

5 MR. GREGORY: Your Honor, may we approach?

6 THE COURT: Yes.

7 (Whereupon, a bench conference was held among
8 Court and counsel as follows:)

9 MR. GREGORY: I apologize to the Court. I need
10 a break. I'm sorry.

11 THE COURT: That's okay. We'll take a break.
12 Thank you.

13 (Whereupon, the following proceedings were held
14 in open court, in the presence of the jury.)

15 THE COURT: Ladies and gentlemen of the jury,
16 this is a good time to take a morning recess. During this
17 recess, remember to stay together in the jury room.
18 Remember also that you must follow the admonition that I've
19 given you at all the breaks.

20 You may not form or express any opinion about
21 the ultimate outcome of this case. You may not discuss this
22 case among yourselves or with anyone else. You may not
23 allow anyone to attempt to influence you in any manner with
24 regard to this case, and you are not to view, listen to or
25 read any news media accounts of this case should there be

1 any.

2 Mr. Kinikini, I may be mispronouncing that, I'm
3 sorry. You may go ahead and step down. We will call you
4 back to the stand. Just leave that there. You will be
5 called back in a few minutos.

6 Ladies and gentlemen of the jury, you may await
7 us in the jury room. The Court is in recess.

8 (A recess was taken at 10:40 a.m.)
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RENO, NEVADA, MONDAY, SEPTEMBER 27, 1999, 10:58 A.M.

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(Whereupon, the following proceedings were held in open court, outside the presence of the jury.)

THE COURT: Thank you. Please be seated.

I asked for the hearing outside the presence of the jury because I'm trying to logistically work around all your schedules. This is your last witness, isn't it?

MR. GAMMICK: As soon as we are complete with this witness, I will confer with the court clerk on exhibits. We intend to rest at that time.

THE COURT: Counsel for the defense, have you had an opportunity to talk to your client about the potential for testifying?

MR. GREGORY: We have, Your Honor.

THE COURT: Has your client made a decision?

MR. GREGORY: I believe the Court is going to have to canvass him. I'm not sure what his decision is at this point.

THE COURT: Mr. Vanisi? Do you understand that you have a right to testify?

THE DEFENDANT: Yes. I would just like a moment just to put some matter on the record. May I have

1 the Court's indulgence, please?

2 (The defendant conferred with Mr. Gregory.)

3 THE DEFENDANT: Yeah, I just want to make --

4 MR. GREGORY: This is a formal canvass of the
5 defendant; is that correct?

6 THE COURT: Yes, it is.

7 THE DEFENDANT: I want to make a record. Back
8 in June, I filed a motion to dismiss and appoint counsel and
9 argued that motion on June 23. You denied that motion.

10 August 5, I filed a motion to represent myself
11 and had argued and had a *Feretta* canvassing, which I passed
12 that motion, which I passed to represent myself. You denied
13 that motion.

14 On August 18, Gregory and my counsels, my
15 attorneys, they had filed a motion to withdraw from the
16 case. There was an in camera hearing. On August 26 you had
17 denied them from withdrawing the case.

18 At this point, they have done nothing for me.
19 All along I wanted to testify, but my counsel, they have
20 refused to do anything. At this point, I look at this trial
21 and I think, I say to you, Judge, this trial is a joke. I
22 wanted to testify, but it's come to a point where this has
23 gone beyond a point where I have to say, look at it
24 objectively and say this is ridiculous.

25 So that is the record that I want to make. And

1 may I have the Court's indulgence one more time, please?

2 THE COURT: Yes.

3 (The defendant conferred with Mr. Gregory.)

4 THE DEFENDANT: And I made my record. If you
5 have any questions, Your Honor, I will answer them as best I
6 can.

7 THE COURT: Okay. You understand that you have
8 an absolute right to testify?

9 THE DEFENDANT: Yes, I understand.

10 THE COURT: And is it your desire to testify in
11 this trial?

12 THE DEFENDANT: All along I wanted to testify.
13 This is a joke. I am not going to testify.

14 THE COURT: Do you understand, though, that if
15 you are wrong about what you are characterizing as a joke,
16 then your waiver of your right to testify will be permanent?

17 THE DEFENDANT: Whatever your semantics is, I'm
18 going to say to you one more time, I am not going to
19 testify.

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

21 Mr. Stanton, anything else with regard to the
22 canvass that you would request the Court to make?

23 MR. STANTON: Court's indulgence one moment.

24 (Counsel for the State conferred.)

25 MR. GREGORY: In light of his statement, Your

1 Honor, we are going to ask to go in camera right after the
2 State rests.

3 MR. STANTON: Your Honor, the only thing I
4 would ask in addition is that the Court inquire whether or
5 not Mr. Vanisi has discussed this case and the defense with
6 his counsel so that he can make the decision that he is
7 making now.

8 THE COURT: Well, I think Mr. Vanisi did
9 indicate that he's talked about it with his counsel and his
10 counsel is not doing what he wants them to do.

11 Mr. Vanisi, is that correct? Am I right in
12 what you said?

13 THE DEFENDANT: I don't know if you can make a
14 right out of this. They have refused to do anything for me.

15 THE COURT: You have been talking to them,
16 though?

17 THE DEFENDANT: They have refused, they have
18 refused. We have a communication. They have refused to do
19 what I asked them to do.

20 THE COURT: Did you get a chance to talk to
21 them about your right to testify?

22 THE DEFENDANT: All along I told them that I
23 wanted to testify. I come to this point where I make an
24 observation.

25 THE COURT: So in spite of the fact that you

1 told have them all along that you wanted to testify, when we
2 are at this stage of the proceeding and now it is your
3 chance to testify, you decided that you will not be
4 testifying; is that correct?

5 THE DEFENDANT: Yeah, at this point I make my
6 decision for you, Judge.

7 THE COURT: All right. Thank you. You may be
8 seated.

9 We will call the witness back in and the jury
10 back in. Counsel, while we are waiting on that, are you
11 going to be make making an opening statement?

12 MR. GREGORY: That's part of the subject area I
13 would like to inquire of the Court.

14 THE COURT: Okay.

15 (Vainga Kinikini resumes the witness stand.)

16 THE COURT: Go ahead and get back up on the
17 witness stand. You are still under oath.

18 (Whereupon, the following proceedings were held
19 in open court, in the presence of the jury.)

20 THE COURT: Will counsel stipulate to the
21 presence of the jury?

22 MR. STANTON: State will so stipulate.

23 MR. GREGORY: Defense will so stipulate.

24 THE COURT: You may proceed.

25 BY MR. STANTON:

1 Q Mr. Kinikini, I want to bring you back to where
2 we were just before the morning recess. I asked you to
3 review page seven of that transcript, lines 16 through 32.
4 Have you had an opportunity to review that?

5 A Yes.

6 Q If you could speak up as loud as you can into
7 that microphone?

8 THE COURT: I had turned the microphone off.

9 THE WITNESS: Yes.

10 BY MR. STANTON:

11 Q In talking with Mr. Vanisi in Salt Lake City
12 that morning on the 14th, did he mention to you after his
13 homeboy chickened out the night before, that he went and did
14 something?

15 A He went to a hardware store.

16 Q And what did he get, if anything, there?

17 A He purchased a hatchet.

18 Q If you could --

19 A He purchased a hatchet.

20 Q After he purchased the hatchet, what did he
21 tell you he did then?

22 A That they drove around and were looking for the
23 spot where they would find the white officers, police
24 officers.

25 Q And did Mr. Vanisi specifically say where he

1 was looking to find this officer after he had a hatchet?

2 A It was the university campus, I believe.

3 Q And you stated that he was looking for a
4 particular type of police officer?

5 A Yes.

6 Q What kind?

7 A White officer.

8 Q Mr. Kinikini, I want to now take you somewhat
9 in detail about what Mr. Vanisi tells you about the murder.
10 Did he describe the murder to you?

11 A Yes.

12 Q Did he describe it to you in detail?

13 A Yes.

14 Q What did he tell you about the officer that he
15 ultimately selected? What did he first see the officer
16 doing?

17 A The officer was in the -- he was in the middle
18 of a traffic detaining, he was pulling somebody over.

19 Q And what did he do during the time that the
20 officer had pulled this person over?

21 A He waited around.

22 Q And waited for what?

23 A For the officer.

24 Q To do what?

25 A To be done with his traffic routine.

1 Q Did he tell you how he approached the officer?

2 A He crept up on him.

3 Q And what did that mean to you?

4 A Meaning sneaking up on somebody.

5 Q If you can say that again?

6 A Meaning sneaking up on somebody.

7 Q Did he tell you about how long it was after the
8 stop that he crept up on this police officer?

9 A How long?

10 Q Yes, how much time had gone by from when he saw
11 the traffic stop until when he started creeping up on him?

12 A I can't remember.

13 Q If you turn to page eight of the transcript,
14 and line 14 through 16, if you could read that to yourself?

15 A Okay.

16 Q How much time according to Mr. Vanisi had
17 elapsed from the time when he saw the traffic stop until the
18 time he started creeping up on the police officer?

19 A About ten, 15 minutes.

20 Q And did he tell you what the police officer was
21 doing when he first came up from behind him?

22 A He had his light on. He appeared to be filling
23 out some paperwork.

24 Q And what did Mr. Vanisi tell you that he did
25 when he walked up to that police officer?

1 A He walked up and knocked on the window.

2 Q Of the patrol vehicle?

3 A Yes.

4 Q What did Mr. Vanisi say occurred then?

5 A The officer asked him if he can help him or
6 whatever.

7 Q I am -- just go back. What did the police
8 officer say to Mr. Vanisi?

9 A He said, "Can I help you?" I don't know the
10 exact words, but it was something like that.

11 Q Okay.

12 A And then he said, "What's up?" And he just, he
13 just -- he proceeded to what happened.

14 Q Okay. And what did he, what did Mr. Vanisi
15 tell you he did after saying "What's up?" to the police
16 officer?

17 A Can I read this?

18 Q Sure, if you would, on page eight. If you
19 could read lines 20 down to line 35 to yourself?

20 A Okay.

21 Q What did he say after he said "What's up?" to
22 the police officer occurred?

23 A He said, "Can I help you?"

24 Q And what happened next?

25 A Then he just started swinging.

1 Q If you can say it again?

2 A He just started swinging.

3 Q Who started swinging?

4 A George.

5 Q The defendant?

6 A Yes.

7 Q And was he demonstrating to you while he was

8 talking about this?

9 A Yes.

10 Q Could you show the ladies and gentlemen of the

11 jury what he said about how he was swinging?

12 A Show them in action?

13 Q Yes.

14 A Just overhand (indicating).

15 Q Like this (indicating)?

16 A Yes.

17 Q Are you left-handed or right-handed?

18 A I'm left-handed.

19 Q Did he tell you how many times he struck the

20 police officer?

21 A No.

22 Q Did he tell you what the police officer was

23 doing while he was being beaten?

24 A What he was doing? The police officer?

25 Q What was the police officer doing, according to

1 Mr. Vanisi?

2 A They were just wrestling.

3 Q And sometime during this time period, did
4 Mr. Vanisi tell you that he did something to the officer
5 besides beating him?

6 A I think he got a punch in.

7 Q The police officer did?

8 A Yes.

9 Q The police officer got one punch in on
10 Mr. Vanisi?

11 A Yes.

12 Q Did there come a time that Mr. Vanisi told you
13 he did something that indicated to you that the police
14 officer was then unconscious?

15 A He hit him with the hatchet.

16 Q And what did he say the police officer did
17 after he did that?

18 A He just fell down.

19 Q And specifically, do you remember the words
20 that Mr. Vanisi himself used to describe how this beating
21 took place? If you would turn to page 15 of that
22 transcript, line 12 through 13. Do you see that section?

23 A Yes.

24 Q Is that the words he used?

25 A "I was beating his ass."

1 Q That's what Mr. Vanisi told you?

2 A Yes.

3 Q After beating his ass, did he tell you that he
4 then did something besides hit him with a hatchet?

5 A He kicked him over and over.

6 Q And if you would, on page 15 of your
7 transcript, line 23 through 24, do you remember that portion
8 of the conversation?

9 A Yes.

10 Q And does that accurately state, as to lines 23
11 and 24, what Mr. Vanisi told you?

12 A Yes.

13 Q Would you please read lines 23 and 24 to the
14 jury?

15 A He said, "When I knocked him out, I just
16 started kicking him, stomping on his head. It was fun."

17 Q And then the detective asked you again, he
18 said, "He said," meaning Mr. Vanisi said, "it was fun?"
19 What was your response on line 28?

20 A Yeah. He said, "It was great, man."

21 Q Is that the words that Vanisi used?

22 A "It was great."

23 Q At the time that Mr. Vanisi was telling you
24 about the beating of Officer Sullivan and the stomping of
25 his head and the comments, "It was great," and, "It was

1 fun," what was Mr. Vanisi's demeanor? How was he acting?

2 A Real excited.

3 Q Did he show any remorse?

4 A Not at the moment, no.

5 Q At the end of page 15, lines 33 through 38,
6 Mr. Kinikini, there is a comment you state to the detectives
7 about Mr. Vanisi telling you something just before leaving
8 for the rec center. I ask you to read that to yourself.

9 What did Mr. Vanisi tell you a little later on
10 before he left for the rec center that day?

11 A He said, "It feels great, they are not even on
12 to me." He's free.

13 Q And he said something about his feelings about
14 this incident, whether he had any?

15 A He had no feeling at all.

16 Q He said, "I don't feel nothing, man"?

17 A "I don't feel nothing."

18 Q Did Mr. Vanisi indicate to you whether or not
19 he took anything from the officer?

20 A Yes.

21 Q What did he tell you he took?

22 A He took his belt and his gun.

23 Q And he used a particular term or phrase about
24 taking his belt. Do you remember what that was?

25 A He was sporting his belt on the way home.

1 Q "Sporting his belt on the way home"?

2 A Yeah.

3 Q What did that mean to you, "sporting his belt"?

4 A That means to wear it.

5 Q To wear it around his body?

6 A Yes.

7 Q You took "sporting his belt," you took that to
8 mean that after Mr. Vanisi took the gun and belt, he wore it
9 home?

10 A Yes.

11 Q Did there come a time when Mr. Vanisi indicated
12 that he had been wearing a disguise?

13 A Yes.

14 Q Did he describe that disguise to you?

15 A Yeah.

16 Q And what did he tell you the disguise was?

17 A It was a beanie with dreadlocks, fake
18 dreadlocks attached to it.

19 Q And it made him look like a particular
20 nationality?

21 A Yeah.

22 Q What was that?

23 A Jamaican.

24 Q Did he make a comment to you about whether or
25 not that disguise was working?