

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

SIAOSI VANISI,

Appellant,

vs.

WILLIAM GITTERE, WARDEN,
and
AARON FORD, ATTORNEY
GENERAL FOR THE
STATE OF NEVADA.

Respondents.

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Volume 1 of 38

APPELLANT'S APPENDIX

Appeal from Order Denying Petition for Writ of
Habeas Corpus (Post-Conviction)
Second Judicial District Court, Washoe County
The Honorable Connie J. Steinheimer

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<u>VOLUME</u>	<u>DOCUMENT</u>	<u>PAGE</u>
36	Addendum to Motion to Set Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 20, 2018.....	AA07685 – AA07688
EXHIBIT		
36	1. Handwritten note from Siao Si Vanisi to Jennifer Noble or Joe Plater August 13, 2018.....	AA07689 – AA07690
32	Answer to Petition for Writ of Habeas Corpus (Post-Conviction), July 15, 2011	AA06756 – AA06758
35	Application for Order to Produce Prisoner, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 20, 2018.....	AA07321 – AA07323
35	Application for Order to Produce Prisoner, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 11, 2018	AA07385 – AA07387
12	Application for Setting, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 11, 2001	AA02529
35	Application for Setting, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 20, 2018.....	AA07324

14	Application for Writ of Mandamus and/or Writ of Prohibition, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Court, Case No.45061 April 13, 2005.....	AA02818 – AA02832
14-15	Case Appeal Statement, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 28, 2007.....	AA02852 – AA03030
39	Case Appeal Statement, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 25, 2019	AA08295 – AA08301
35	Court Minutes of May 10, 2018 Conference Call Re: Motion for Reconsideration of the Order to Produce, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 17, 2018	AA07390
35	Court Minutes of May 30, 2018 Oral Arguments on Motion for Discovery and Issuance of Subpoenas/Waiver of Petitioner’s Appearance at Evidentiary Hearing and All Other Hearings, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 June 4, 2018	AA07447-AA07749
39	Court Minutes of September 25, 2018 Status Hearing on Petitioner’s Waiver of Evidentiary Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 28, 2018.....	AA08190 – AA08191

37	Court Ordered Evaluation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 (FILED UNDER SEAL) September 19, 2018.....	AA07791 – AA07829
3	Evaluation of Siao Si Vanisi by Frank Everts, Ph.D., June 10, 1999	AA00554 – AA00555
34	Findings of Fact, Conclusions of Law and Judgment Dismissing Petition for Writ of Habeas Corpus, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 April 10, 2014	AA07103 – AA07108
12	Judgment, Second Judicial District Court of Nevada, <i>State of Nevada v. Vanisi</i> , Case No. CR98-0516 November 22, 1999.....	AA02523 – AA02524
12	Motion for Appointment of Post-Conviction Counsel, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 18, 2002.....	AA02530 – AA02540
12	Motion for Extension of Time to File Supplemental Materials (Post-Conviction Petition for Writ of Habeas Corpus (Death Penalty Case), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 23, 2002.....	AA02556 – AA02559
38	Motion for Leave to File Supplement to Petition for Writ of Habeas Corpus, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 28, 2018.....	AA08083 – AA08090

EXHIBIT

- 38 1. Supplement to Petition for Writ of
 Habeas Corpus (Post Conviction)
 September 28, 2018..... AA08091 – AA08114
- 13 Motion for Order Appointing Co-Counsel, State of *Nevada*
 v. Vanisi, Second Judicial District Court of Nevada,
 Case No. CR98-0516
 October 30, 2003..... AA02588 – AA02590
- 35 Motion for Reconsideration, *State of Nevada v. Vanisi*,
 Second Judicial District Court of Nevada,
 Case No. CR98-0516
 April 2, 2018 AA07327 – AA07330

EXHIBITS

- 35 1. *State of Nevada v. Vanisi*, Case No.
 CR98-P0516, Petitioner’s Waiver of
 Appearance,
 January 24, 2012..... AA07332 – AA07336
- 35 2. *State of Nevada v. Vanisi*, Case No.
 CR98-P0516, Waiver of Petitioner’s
 Presence,
 November 15, 2013..... AA07337- AA07340
- 35 3. *State of Nevada v. Vanisi*, Case No.
 CR98-P0516, Order on Petitioner’s
 Presence,
 February 7, 2012 AA07341 – AA07342
- 35 4. *State of Nevada v. Vanisi*, Case No.
 CR98-P0516, Order, AA07343 – AA07346
 February 7, 2014

13	Motion for Stay of Post-Conviction Habeas Corpus Proceedings and for Transfer of Petitioner to Lakes Crossing for Psychological Evaluation and Treatment (Hearing Requested), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 9, 2004.....	AA02594 – AA02608
14	Motion to Continue Evidentiary Hearing, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 April 26, 2005.....	AA02835 – AA02847
32	Motion to Dismiss Petition for Writ of Habeas Corpus (Post-Conviction), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 15, 2011	AA06759 – AA06764
35	Motion to Disqualify the Washoe County District Attorney’s Office, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 June 29, 2018	AA07450 – AA07468

EXHIBITS

35	1. State Bar of Nevada, Standing Committee on Ethics and Professional Responsibility, Formal Opinion No. 41 June 24, 2009	AA07469 – AA07476
35	2. American Bar Association, Standing Committee on Ethics and Professional Responsibility, Formal Opinion 10-456,	

	Disclosure of Information to Prosecutor When Lawyer's Former Client Brings Ineffective Assistance of Counsel Claim July 14, 2010	AA07477 – AA07482
35-36	3. Response to Motion to Dismiss, or Alternatively, To Disqualify the Federal Public Defender, <i>Sheppard v. Gentry, et al.</i> , Second Judicial District Court of Nevada, Case No. CR03-502B December 22, 2016	AA07483 – AA07545
36	4. Transcript of Proceedings – Conference Call Re: Motions, <i>Sheppard v. Gentry, et al.</i> , Second Judicial District Court of Nevada, Case No. CR03-502B December 29, 2016	AA07546 – AA07568
36	5. Order (denying the State's Motion to Dismiss, or Alternatively, To Disqualify the Federal Public Defender), <i>Sheppard v. Gentry, et al.</i> , Second Judicial District Court of Nevada, Case No. CR03-502B January 5, 2017.....	AA07569 – AA07586
36	Motion to Set Hearing Regarding Vanisi's Request to Waive Evidentiary Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 25, 2018	AA07607 – AA07610
12	Motion to Withdraw as Counsel of Record, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 18, 2002	AA02564 – AA02567
36	Non-Opposition to Presence of Defendant, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 21, 2018.....	AA07691 – AA07694

12	Notice in Lieu of Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 34771 October 6, 1999.....	AA02413
14	Notice in Lieu of Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 45061 May 17, 2005	AA02848
12	Notice of Appeal, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, Nevada Supreme Court Case No. (35249) November 30, 1999.....	AA02525 – AA02526
14	Notice of Appeal, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Court, Case No. 50607 November 28, 2007.....	AA02849 – AA02851
34	Notice of Appeal, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Court, Case No. 65774 May 23, 2014	AA07117 – AA07293
38	Notice of Appeal, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, Nevada, Supreme Court Case No. (78209) February 25, 2019	AA08181 – AA08184
34	Notice of Entry of Order, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 April 25, 2014	AA07109 – AA07116
38	Notice of Entry of Order, (Order Denying Relief), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 6, 2019	AA08167 – AA08173

38	Notice of Entry of Order (Order Denying Motion for Leave to File Supplement), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 22, 2019	AA08174 – AA08180
34	Objections to Proposed Findings of Fact, Conclusions of Law and Judgment Dismissing Petition for Writ of Habeas Corpus, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 31, 2014.....	AA07097 – AA07102
36	Opinion (on ethical duties of capital post-conviction counsel), David M. Siegel, Professor of Law, August 23, 2018.....	AA07695 – AA07700
12	Opposition to Motion for Extension of Time to File Supplemental Materials (Post-Conviction Petition for Writ of Habeas Corpus) (Death Penalty Case), State of Nevada v. Vanisi, Second Judicial District Court of Nevada, Case No. CR98-0516 November 1, 2002.....	AA02560 – AA02563
32	Opposition to Motion to Dismiss, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 30, 2011.....	AA06765 – AA06840
38	Opposition to Motion for Leave to File Supplement to Petition for Writ of Habeas Corpus, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 8, 2018.....	AA08115 – AA08122

36	Opposition to Motion to Disqualify the Washoe County District Attorney's Office, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 9, 2018	AA07587 – AA07594
----	--	-------------------

EXHIBITS

36	1. State Bar of Nevada, Standing Committee on Ethics and Professional Responsibility, Formal Opinion No. 55	AA07595 – AA07602
36	2. E-mail from Margaret "Margy" Ford to Joanne Diamond, Randolph Fiedler, Scott Wisniewski, re Nevada-Ethics-Opinion-re-ABA-Formal-Opinion-55 July 6, 2018	AA07603 – AA07604
12	Opposition to Motion to Withdraw as Counsel of Record, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 23, 2002	AA02568 – AA02571
3	Order (directing additional examination of Defendant), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 June 3, 1999	AA00551 – AA00553
32	Order (to schedule a hearing on the motion to dismiss), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 21, 2012.....	AA06845 – AA06847
34-35	Order Affirming in Part, Reversing in Part and Remanding, <i>Vanisi v. State of Nevada</i> , Nevada Supreme Court, Case No. 65774 September 28, 2017.....	AA07294 – AA07318

38	Order Denying Motion for Leave to File Supplement, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 15, 2019	AA08176 – AA08180
37	Order Denying Motion to Disqualify, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 17, 2018.....	AA07785 – AA07790
14	Order Denying Petition, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 45061 April 19, 2005.....	AA02833 – AA02834
3	Order Denying Petition for Writ of Certiorari or Mandamus, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 34771 September 10, 1999.....	AA00620 – AA00621
38	Order Denying Relief, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 6, 2019	AA08169 – AA08173
37	Order for Expedited Psychiatric Evaluation, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 6, 2018.....	AA07782 – AA07784
13	Order (granting Motion to Appoint Co-Counsel), <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 23, 2003	AA02591 – AA02593
38	Order Granting Waiver of Evidentiary Hearing, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 6, 2019	AA08157– AA08166

35	Order to Produce Prisoner, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 23, 2018.....	AA07325 – AA07326
35	Order to Produce Prisoner, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 14, 2018	AA07388 – AA07389
12	Order (relieving counsel and appointing new counsel), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 11, 2002.....	AA2553 – AA02555
3	Original Petition for Writ of Certiorari or Mandamus And Request for Emergency Stay of Trial Pending Resolution of the Issues Presented Herein, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 34771 September 3, 1999.....	AA00556 – AA00619
15-16	Petition for Writ of Habeas Corpus (Post-Conviction), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 4, 2011	AA03033 – AA03269

EXHIBITS

16	1. Criminal Complaint, <i>State of Nevada v. Vanisi, et al.</i> , Justice Court of Reno Township No. 89.820, January 14, 1998.....	AA03270 – AA03274
16	2. Amended Complaint, <i>State of Nevada v. Vanisi, et al.</i> , Justice Court of Reno Township No. 89.820, February 3, 1998	AA03275 – AA3279

16	3.	Information, <i>State of Nevada v. Vanisi</i> , Second Judicial Circuit of Nevada, Case No. CR98-0516, February 26, 1998.....	AA03280 – AA03288
16	5.	Declaration of Mark J.S. Heath, M.D., (including attached exhibits), May 16, 2006	AA03289 – AA03414
16	6.	Birth Certificate of Siaosi Vanisi, District of Tongatapu, June 26, 1970.....	AA03415 – AA03416
16	7.	Immigrant Visa and Alien Registration of Siaosi Vanisi, May 1976.....	AA03417 – AA03418
16-17	11.	Juror Instructions, Trial Phase, <i>State of Nevada v.</i> <i>Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, September 27, 1999.....	AA03419 – AA03458
17	12.	Juror Instructions, Penalty Phase, <i>State of Nevada v.</i> <i>Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, October 6, 1999.....	AA03459 – AA03478
17	16.	Motion to Dismiss Counsel and Motion to Appoint Counsel. <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, June 16, 1999	AA03479 – AA03489
17	17.	Court Ordered Motion for Self Representation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 5, 1999	AA03490 – AA03493
17	18.	Ex-Parte Order for Medical Treatment, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 12, 1999	AA03494 – AA03496

17	19.	Order, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, August 11, 1999.....	AA03497 – AA03507
17	20.	<i>State of Nevada v. Vanisi</i> , Washoe County Second Judicial District Court Case No. CR98-0516, Transcript of Proceedings June 23, 1999	AA03508 – AA03551
17	21.	Transcript of Proceedings <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 3, 1999	AA03552 – AA03594
17-18	22.	Reporter's Transcript of Motion for Self Representation <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 10, 1999.....	AA03595 – AA03681
18	23.	In Camera Hearing on Ex Parte Motion to Withdraw <i>State of Nevada v. Vanisi</i> , Second Judicial District Court, Case No. CR98-0516 August 26, 1999.....	AA03682 – AA03707
18	24.	Amended Notice of Intent to Seek Death Penalty, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 18, 1999.....	AA03708 – AA03716
18	25.	Mental Health Diagnosis, Phillip A. Rich, M.D., October 27, 1998.....	AA03717 – AA03720
18	26.	Various News Coverage Articles ...	AA03721 – AA03815

18	29.	Verdict, Guilt Phase, <i>State of Nevada v. Vanisi, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 27, 1999.....	AA03816 – AA03821
18	30.	Verdict, Penalty Phase, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 6, 1999.....	AA03822 – AA03829
18	31.	Photographs of Siaoisi Vanisi from youth	AA3830 – AA03834
18	32.	Ex Parte Motion to Reconsider Self-Representation, <i>State of Nevada v. Vanisi</i> , Case No. CR98-0516, Second Judicial District Court of Nevada, August 12, 1999.....	AA03835 – AA03839
18-19	33.	Defense Counsel Post-Trial Memorandum in Accordance with Supreme Court Rule 250, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 15, 1999.....	AA03840 – AA03931
19	34.	Petition for Writ of Habeas Corpus (Post-Conviction) <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 January 18, 2002.....	AA03932 – AA03943
19	35.	Ex Parte Motion to Withdraw, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 August 18, 1999.....	AA03944 – AA03952

19-20	36.	Supplemental Points and Authorities to Petition for Writ of Habeas Corpus (Post-Conviction), <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 February 22, 2005 AA03953 – AA04146
20	37.	Reply to State’s Response to Motion for Protective Order, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516, March 16, 2005..... AA04147 – AA04153
20	39.	Transcript of Proceedings - Post-Conviction Hearing <i>Vanisi v. State of Nevada et al.</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 May 2, 2005 AA04154 – AA04255
20-21	40.	Transcript of Proceedings - Continued Post-Conviction Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 May 18, 2005 AA04256 – AA04349
21	41.	Transcript of Proceedings, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 April 2, 2007 AA04350 – AA04380
21	42.	Findings of Fact, Conclusions of Law and Judgment, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98P0516 November 8, 2007..... AA04381 – AA04396
21	43.	Appellant’s Opening Brief, Appeal from Denial of Post-Conviction Habeas Petition <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 50607, August 22, 2008..... AA04397 – AA04496

21-22	44.	Reply Brief, Appeal from Denial of Post-Conviction Habeas Petition, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Court, Case No. 50607 December 2, 2008.....	AA04497 – AA04554
22	45.	Order of Affirmance, Appeal from Denial of Post-Conviction Petition, <i>State of Nevada v. Vanisi</i> , Nevada Supreme Case No. 50607 April 20, 2010.....	AA04555 – AA04566
22	46.	Petition for Rehearing Appeal from Denial of Post-Conviction Petition, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 50607 May 10, 2010	AA04567 – AA04580
22	48.	Order for Competency Evaluation <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 27, 2004	AA04581 – AA04584
22	49.	Forensic Psychiatric Assessment, Thomas E. Bittker, M.D., January 14, 2005.....	AA04585 – AA04593
22	50.	Competency Evaluation, A.M. Amezaga, Jr., Ph.D., February 15, 2005	AA04594 – AA04609
22	56.	Order finding Petitioner Competent to Proceed, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court, Case No. CR98-0516 March 16, 2005.....	AA04610 – AA04614
22	59.	Sanity Evaluation, Thomas E. Bittker, M.D., June 9, 1999	AA04615 – AA4622
22-23	60.	Preliminary Examination, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 20, 1998	AA04623 – AA04856

- 23 61. Arraignment, *State of Nevada v. Vanisi*,
 Second Judicial District Court of Nevada, Case No.
 CR98-0516
 March 10, 1998..... AA04857 – AA04867
- 23 62. Status Hearing, *State of Nevada v. Vanisi*,
 Second Judicial District Court of Nevada,
 Case No. CR98-0516
 August 4, 1998 AA04868 – AA04906
- 23 63. Status Hearing *State of Nevada v. Vanisi*,
 Second Judicial District of Nevada,
 Case No. CR98-0516
 September 4, 1998..... AA04907 – AA04916
- 23 64. Status Hearing, *State of Nevada v. Vanisi*,
 Second Judicial District Court of Nevada, Case No.
 CR98-0516
 September 28, 1998..... AA4917 – AA04926
- 23 65. Report on Psychiatric Evaluations, *State of Nevada v.*
 Vanisi, Second Judicial District Court of Nevada,
 Case No. CR98-0516
 November 6, 1998..... AA04927 – AA04940
- 24 66. Hearing Regarding Counsel, *State of Nevada v.*
 Vanisi, Second Judicial District Court of Nevada,
 Case No. CR98-0516
 November 10, 1998..... AA04941 – AA04948
- 24 67. Pretrial Hearing, *State of Nevada v. Vanisi*,
 et al., Second Judicial District Court of Nevada,
 Case No. CR98-0516
 December 10, 1998 AA04949 – AA04965

24	69.	Hearing to Reset Trial Date, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court, Case No. CR98-0516 January 19, 1999.....	AA04966 – AA04992
24	70.	Transcript of Proceeding – Pretrial Motion Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 June 1, 1999	AA04993 – AA05009
24	71.	Motion Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 11, 1999.....	AA05010 – AA05051
24	72.	Decision to Motion to Relieve Counsel, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 August 30, 1999.....	AA05052 – AA05060
24	73.	In Chambers Review, <i>State of Nevada v. Vanisi, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 12, 1999	AA05061 – AA05080
24	81.	Transcript of Proceedings - Report on Psych Eval, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 6, 1998.....	AA5081 – AA05094
24	82.	Hearing Regarding Counsel, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 10, 1998.....	AA05095 – AA05102
24-25	89.	Transcript of Proceeding, Trial Volume 4, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516	

	January 14, 1999.....	AA05103 – AA05331
25	90. Order (granting Motion for Mistrial), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 15, 1999.....	AA05332 – AA05335
25	92. Declaration of Paulotu Palu January 24, 2011.....	AA05336 – AA05344
25	93. Declaration of Siaosi Vuki Mafileo February 28, 2011	AA05345 – AA05359
25-26	94. Declaration of Sioeli Tuita Heleta January 20, 2011.....	AA05360 – AA05373
26	95. Declaration of Tufui Tafuna January 22, 2011.....	AA05374 – AA05377
26	96. Declaration of Toeumu Tafuna April 7, 2011	AA05378 – AA05411
26	97. Declaration of Herbert Duzant’s Interview of Michael Finau April 18, 2011	AA05412 – AA05419
26	98. Declaration of Edgar DeBruce April 7, 2011	AA05420 – AA05422
26	99. Declaration of Herbert Duzant’s Interview of Bishop Nifai Tonga April 18, 2011	AA05423 – AA05428
26	100. Declaration of Lita Tafuna April 2011.....	AA05429 – AA05431
26	101. Declaration of Sitiveni Tafuna April 7, 2011	AA05432 – AA05541

26	102. Declaration of Interview with Alisi Peaua conducted by Michelle Blackwill April 18, 2011	AA05442 – AA05444
26	103. Declaration of Tevita Vimahi April 6, 2011	AA05445 – AA05469
26	104. Declaration of DeAnn Ogan April 11, 2011	AA05470 – AA05478
26	105. Declaration of Greg Garner April 10, 2011	AA05479 – AA05486
26	106. Declaration of Robert Kirts April 10, 2011	AA05487 – AA05492
26	107. Declaration of Manamoui Peaua April 5, 2011	AA05493 – AA05497
26	108. Declaration of Toa Vimahi April 6, 2011	AA05498 – AA05521
26-27	109. Reports regarding Siaosi Vanisi at Washoe County Jail, Nevada State Prison and Ely State Prison, Various dates	AA05522 – AA05699
27	110. Declaration of Olisi Lui April 7, 2011	AA05700 – AA05704
27	111. Declaration of Peter Finau April 5, 2011	AA05705 – AA05709
27	112. Declaration of David Kinikini April 5, 2011	AA05710 – AA05720
27	113. Declaration of Renee Peaua April 7, 2011	AA05721 – AA05726

27	114. Declaration of Heidi Bailey-Aloi April 7, 2011.....	AA05727 – AA05730
27	115. Declaration of Herbert Duzant’s Interview of Tony Tafuna April 18, 2011.....	AA05731- AA05735
27	116. Declaration of Terry Williams April 10, 2011.....	AA05736 – AA05741
27	117. Declaration of Tim Williams April 10, 2011.....	AA05742 – AA05745
27	118. Declaration of Mele Maveni Vakapuna April 5, 2011.....	AA05746 – AA05748
27	119. Declaration of Priscilla Endemann April 6, 2011.....	AA05749 – AA05752
27	120. Declaration of Mapa Puloka January 24, 2011.....	AA05753 – AA05757
27	121. Declaration of Limu Havea January 24, 2011.....	AA05758 – AA05767
27	122. Declaration of Sione Pohahau January 22, 2011.....	AA05768 – AA05770
27	123. Declaration of Tavake Peaua January 21, 2011.....	AA05771 – AA05776
27	124. Declaration of Totoa Pohahau January 23, 2011.....	AA05777 – AA05799
27-28	125. Declaration of Vuki Mafileo February 11, 2011	AA05800 – AA05814

28	127. Declaration of Crystal Calderon April 18, 2011.....	AA05815 – AA05820
28	128. Declaration of Laura Lui April 7, 2011.....	AA05821 – AA05824
28	129. Declaration of Le’o Kinkini-Tongi April 5, 2011.....	AA05825 – AA05828
28	130. Declaration of Sela Vanisi-DeBruce April 7, 2011.....	AA05829 – AA05844
28	131. Declaration of Vainga Kinikini April 12, 2011.....	AA05845 – AA05848
28	132. Declaration of David Hales April 10, 2011.....	AA05849 – AA05852
28	136. Correspondence to Stephen Gregory from Edward J. Lynn, M.D. July 8, 1999.....	AA05853 – AA05855
28	137. Memorandum to Vanisi File from MRS April 27, 1998.....	AA05856 – AA05858
28	143. Memorandum to Vanisi File From Mike Specchio July 31, 1998.....	AA05859 – AA05861
28	144. Correspondence to Michael R. Specchio from Michael Pescetta October 9, 1998.....	AA05862 – AA05863
28	145. Correspondence to Michael Pescetta from Michael R. Specchio October 9, 1998.....	AA05864 – AA05866

28	146. 3 DVD's containing video footage of Siaosi Vanisi in custody on various dates (MANUALLY FILED).....	AA05867
28	147. Various Memorandum to and from Michael R. Specchio 1998-1999	AA05868 – AA05937
28	148. Memorandum to Vanisi file Crystal-Laura from MRS April 20, 1998.....	AA05938 – AA05940
28	149. Declaration of Steven Kelly April 6, 2011	AA05941 – AA05943
28	150. Declaration of Scott Thomas April 6, 2011	AA05944 – AA05946
28	151. Declaration of Josh Iveson April 6, 2011	AA05947 – AA05949
28	152. Declaration of Luisa Finau April 7, 2011	AA05950 – AA05955
28	153. Declaration of Leanna Morris April 7, 2011	AA05956 – AA05960
28	155. Declaration of Maile (Miles) Kinikini April 7, 2011	AA05961 – AA05966
28	156. Declaration of Nancy Chiladez April 11, 2011	AA05967 – AA05969
28-29	159. Transcript of Proceedings, Trial Volume 1, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 11, 1999.....	AA05970 – AA06222

29-31	160. Transcript of Proceedings, Trial Volume 2, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 12, 1999.....	AA06223 – AA06498
31	163. Neuropsychological and Psychological Evaluation of Siasosi Vanisi, Dr. Jonathan Mack April 18, 2011.....	AA06499 – AA06569
31-32	164. Independent Medical Examination in the Field of Psychiatry, Dr. Siale ‘Alo Foliaki April 18, 2011.....	AA06570 – AA06694
32	172. Motion for Change of Venue, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 15, 1998.....	AA06695 – AA06700
32	173. Declaration of Herbert Duzant’s Interview with Tongan Solicitor General, ‘Aminiasi Kefu April 17, 2011.....	AA06701 – AA06704
32	175. Order Denying Rehearing, Appeal from Denial of Post-Conviction Petition, <i>Vanisi vs. State of Nevada</i> , Nevada Supreme Court, Case No. 50607 June 22, 2010.....	AA06705 – AA06706
32	178. Declaration of Thomas Qualls April 15, 2011.....	AA06707 – AA06708
32	179. Declaration of Walter Fey April 18, 2011.....	AA06709 – AA06711
32	180. Declaration of Stephen Gregory April 17, 2011.....	AA06712 – AA06714
32	181. Declaration of Jeremy Bosler April 17, 2011.....	AA06715 – AA06718

- 32 183. San Bruno Police Department Criminal
Report No. 89-0030
February 7, 1989 AA06719 – AA06722
- 32 184. Manhattan Beach Police Department Police
Report Dr. # 95-6108
November 4, 1995..... AA06723 – AA06727
- 32 185. Manhattan Beach Police Department
Crime Report
August 23, 1997..... AA06728 – AA06730
- 32 186. Notice of Intent to Seek Death Penalty,
State of Nevada v. Vanisi, Second Judicial
District Court of Nevada, Case No. CR98-0516
February 26, 1998 AA06731 – AA06737
- 32 187. Judgment, *State of Nevada v. Vanisi*,
Second Judicial District Court of Nevada,
Case No. CR98-0516
November 22, 1999..... AA06738 – AA06740
- 32 190. Correspondence to The Honorable Connie
Steinheimer from Richard W. Lewis, Ph.D.
October 10, 1998..... AA06741 – AA06743
- 32 195. Declaration of Herbert Duzant’s Interview of
Juror Richard Tower
April 18, 2011 AA06744 – AA06746
- 32 196. Declaration of Herbert Duzant’s Interview of
Juror Nettie Horner
April 18, 2011 AA06747 – AA06749
- 32 197. Declaration of Herbert Duzant’s Interview of
Juror Bonnie James
April 18, 2011 AA06750 – AA06752

32	198. Declaration of Herbert Duzant’s Interview of Juror Robert Buck April 18, 2011.....	AA06753 – AA06755
12	Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 35249 November 27, 2001.....	AA02527 – AA02528
15	Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 50607 July 19, 2010	AA03031 – AA03032
35	Remittitur, <i>Vanisi v. State of Nevada, et al.</i> , Nevada Supreme Court, Case No. 65774 January 5, 2018.....	AA07319 – AA07320
12	Reply in Support of Motion to Withdraw as Counsel of Record, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 27, 2002	AA02572 – AA02575
39	Reply to Opposition to Motion for Leave to File Supplement to Petition for Writ of Habeas Corpus, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 15, 2018.....	AA08232 – AA08244
36	Reply to Opposition to Motion to Disqualify the Washoe County District Attorney’s Office, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 July 27, 2018	AA07615 – AA07639

EXHIBITS

36	1. Response to Motion for a Protective Order, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court
----	---

	of Nevada, Case No. CR98-0516 March 9, 2005.....	AA07640 – AA07652
36	2. Letter from Scott W. Edwards to Steve Gregory re Vanisi post-conviction petition. March 19, 2002.....	AA07653 – AA07654
36	3. Supplemental Response to Motion for a Protective Order, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 16, 2005.....	AA07655 – AA07659
36	4. Appellant’s Appendix, Volume 1, Table of Contents, <i>Vanisi v. State of Nevada</i> , Nevada Supreme Court, Case No. 50607 August 22, 2008.....	AA07660 – AA07664
36	5. Facsimile from Scott W. Edwards to Jeremy Bosler April 5, 2002.....	AA07665 – AA07666
35	Reply to Opposition to Motion for Reconsideration and Objection to Petitioner’s Waiver of Attendance at Evidentiary Hearing, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 April 16, 2018.....	AA07356 – AA07365

EXHIBIT

35	1. Petitioner’s Waiver of Appearance (and attached Declaration of Siaosi Vanisi), April 9, 2018.....	AA07366 – AA07371
13	Reply to Response to Motion for Stay of Post-Conviction Habeas Corpus Proceedings and for Transfer of Petitioner to Lakes Crossing for Psychological Evaluation and treatment (Hearing Requested), <i>State of Nevada v.</i> <i>Vanisi</i> , Second Judicial District Court of Nevada,	

Case No. CR98-0516
November 17, 2004..... AA02609 – AA02613

36 Reply to State’s Response to Petitioner’s Suggestion
of Incompetence and Motion for Evaluation, *Vanisi*
v. State of Nevada, et al., Second Judicial District
Court of Nevada, Case No. CR98-0516
August 6, 2018..... AA07671 – AA07681

EXHIBIT

36 1. Declaration of Randolph M. Fiedler
August 6, 2018 AA07682 – AA07684

36 Request from Defendant, *State of Nevada v.*
Vanisi, Second Judicial District Court of Nevada,
Case No. CR98-0516
July 24, 2018 AA07605 – AA07606

32 Response to Opposition to Motion to Dismiss
Petition for Writ of Habeas Corpus
(Post-Conviction), *State of Nevada v. Vanisi*,
Second Judicial District Court of Nevada,
Case No. CR98-0516
October 7, 2011..... AA06841 – AA06844

36 Response to Vanisi’s Suggestion of Incompetency
and Motion for Evaluation, *State of Nevada v.*
Vanisi, Second Judicial District Court of Nevada,
Case No. CR98-0516
July 30, 2018 AA07667 – AA07670

35 State’s Opposition to Motion for Reconsideration
and Objection to Petitioner’s Waiver of Attendance at
Evidentiary Hearing, *State of Nevada v. Vanisi*, Second
Judicial District Court of Nevada,
Case No. CR98-0516
April 11, 2018..... AA07347 – AA07352

EXHIBIT

1. Declaration of Donald Southworth, *Vanisi v. State of Nevada, et al.*, Second Judicial District Court of Nevada, Case No. CR98-0516
April 11, 2018..... AA07353 – AA07355
- 36 State’s Sur-Reply to Vanisi’s Motion to Disqualify the Washoe County District Attorney’s Office, *Vanisi v. State of Nevada, et al.*, Second Judicial District Court of Nevada, Case No. CR98-0516
August 31, 2018..... AA07701 – AA07710

EXHIBIT

- 36 1. Transcript of Proceedings – Status Hearing, *Vanisi v. State of Nevada*, Second Judicial District Court of Nevada, Case No. CR98-0516
July 1, 2002 AA07711 – AA07724
- 36 Suggestion of Incompetency and Motion for Evaluation, *State of Nevada v. Vanisi*, Second Judicial District Court of Nevada, Case No. CR98-0516
July 25, 2018 AA07611 – AA07614
- 37 Transcript of Proceedings – Competency for Petitioner to Waive Evidentiary Hearing, *State of Nevada v. Vanisi*, Second Judicial District Court of Nevada, Case No. CR98-0516
September 24, 2018..... AA07830 – AA07924
- 37-38 Transcript of Proceedings – Report on Psychiatric Evaluation, *State of Nevada v. Vanisi*, Second Judicial District Court of Nevada, Case No. CR98-0516
September 24, 2018..... AA07925 – AA08033

13	Transcript of Proceedings – Conference Call – In Chambers, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 5, 2003	AA02583 – AA02587
35	Transcript of Proceedings – Conference Call, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 10, 2018	AA07372 – AA07384
34	Transcript of Proceedings – Decision (Telephonic), <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 March 4, 2014.....	AA07089 – AA07096
12	Transcript of Proceedings – In Chambers Hearing & Hearing Setting Execution Date, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District of Nevada, Case No. CR98-0516 January 18, 2002.....	AA02541 – AA02552
13	Transcript of Proceedings – In Chambers Hearing, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District of Nevada, Case No. CR98-0516 January 19, 2005.....	AA02645 – AA02654
13	Transcript of Proceedings – In Chambers Hearing, <i>Vanisi v. State of Nevada, et al.</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 24, 2005.....	AA02655 – AA02679
35	Transcript of Proceedings – Oral Arguments, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 30, 2018	AA07391 – AA07446

38	Transcript of Proceedings – Oral Arguments, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 25, 2019.....	AA08136 – AA08156
32-33	Transcript of Proceedings - Petition for Post-Conviction (Day One), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 5, 2013	AA06848 – AA06966

EXHIBITS

Admitted December 5, 2013

33	199. Letter from Aminiask Kefu November 15, 2011.....	AA06967 – AA06969
33	201. Billing Records-Thomas Qualls, Esq. Various Dates.....	AA06970 – AA06992
33	214. Memorandum to File from MP March 22, 2002.....	AA06993 – AA07002
33	Transcript of Proceedings - Petition for Post-Conviction (Day Two), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 6, 2013	AA07003 – AA07083

EXHIBITS

Admitted December 6, 2013

33	200. Declaration of Scott Edwards, Esq. November 8, 2013.....	AA07084 – AA07086
33	224. Letter to Scott Edwards, Esq. from Michael Pescetta, Esq. January 30, 2003.....	AA07087 – AA07088

12-13	Transcript of Proceedings – Post-Conviction, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 28, 2003.....	AA02576 – AA02582
13	Transcript of Proceedings – Post-Conviction, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 22, 2004.....	AA02614 – AA02644
1	Transcript of Proceedings – Pre-Trial Motions, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 24, 1998.....	AA00001 – AA00127
13	Transcript of Proceedings – Report on Psychiatric Evaluation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 27, 2005.....	AA02680 – AA02716
37-38	Transcript of Proceedings – Report on Psychiatric Evaluation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 24, 2018.....	AA07925 – AA08033
13-14	Transcript of Proceedings – Report on Psychiatric Evaluation <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 February 18, 2005	AA02717 – AA02817
38	Transcript of Proceedings – Report on Psychiatric Evaluation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 25, 2018.....	AA08034 – AA08080

36-37	Transcript of Proceedings – Status Conference, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 5, 2018.....	AA07725 – AA07781
3-5	Transcript of Proceedings – Trial Volume 1, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 20, 1999.....	AA00622 – AA00864
5-6	Transcript of Proceedings – Trial Volume 2, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 21, 1999.....	AA00865 – AA01112
1-2	Transcript of Proceedings – Trial Volume 3, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 13, 1999.....	AA00128 – AA00295
6-7	Transcript of Proceedings – Trial Volume 3, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 22, 1999.....	AA01113 – AA01299
2-3	Transcript of Proceedings – Trial Volume 4, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 14, 1999.....	AA00296 – AA00523
7	Transcript of Proceedings – Trial Volume 4, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 23, 1999.....	AA01300 – AA01433

3	Transcript of Proceedings, Trial Volume 5, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 15, 1999.....	AA00524 – AA0550
7-8	Transcript of Proceedings, Trial Volume 5, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 24, 1999.....	AA01434 – AA01545
8	Transcript of Proceedings – Trial Volume 6, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 27, 1999.....	AA01546 – AA01690
8-9	Transcript of Proceedings – Trial Volume 7, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 28, 1999.....	AA01691 – AA01706
9	Transcript of Proceedings – Trial Volume 8, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 30, 1999.....	AA01707 – AA01753
9-10	Transcript of Proceedings – Trial Volume 9, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 1, 1999.....	AA01754 – AA01984
10-11	Transcript of Proceedings – Trial Volume 10, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 4, 1999.....	AA01985 – AA02267

11-12	Transcript of Proceedings – Trial Volume 11, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 5, 1999.....	AA02268 – AA02412
12	Transcript of Proceedings – Trial Volume 12, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 6, 1999.....	AA2414 – AA02522

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 26th day of September, 2019.

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16

FILED

Case No. CR98-0516

Dept. No. 4

98 DEC -4 P1:24

BETTY J. NEWIS, CLERK

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
DEPUTY

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT COURT JUDGE

-o0o-

STATE OF NEVADA,

PRE-TRIAL MOTIONS

Plaintiff,

-vs-

November 24, 1998

SIAOSI VANISI,

Reno, Nevada

Defendant.

APPEARANCES:

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SIAOSI VANISI

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I N D E X

WITNESSES ON BEHALF OF THE STATE:

PAGE:

JEFFREY RIOLO

Direct Examination by Mr. Stanton	21
Cross-Examination by Mr. Specchio	32
Redirect Examination by Mr. Stanton	37

ELLEN CLARK

Direct Examination by Mr. Stanton	45
Cross-Examination by Mr. Specchio	54

EXHIBITS:

ID: AD:

1	CV of Jeffrey Riolo	22	22
2	National Research Council Publication Re: Scientific Testing	22	22
3	Excerpts from "Evaluation of Forensic DNA Evidence"	22	22
4-A through J	Photographs	45	--
5	Axe	53	--

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

-oOo-

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

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

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

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

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

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

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

THE COURT: That's my record also.

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

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

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

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

20 THE COURT: He said seven.

21 MR. SPECCHIO: I have eight.

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

25 I have a Motion in Limine Regarding Reference

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

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

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

23 Do you have any other motions that you
24 think --

25 MR. SPECCHIO: Judge, I think the gruesome

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

4 THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

12 Mr. Gammick?

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

25 I also seriously question, now that we've had

1 a chance to look at these expanded jury questionnaires,
2 some 29 pages worth of material, the time that it takes to
3 put those together, the time it takes to distribute those,
4 the time it takes that we're taking away from the jurors.
5 We inconvenience jurors tremendously by bringing them in
6 here, making them sit through a trial. In this case we
7 may be a couple of weeks that we're going to take out of
8 their lives, then we send them a 30-page or 29-page or
9 28-page, whichever version it happens to be,
10 questionnaire, for them to sit down and take however many
11 hours it takes to fill that out. I really question the
12 value of the time that's not only put in by the
13 prospective jurors, but by our office and the PD's Office
14 and the Court and everybody else in going through this
15 much material to try to phantom out what magazines they
16 read, a lot of other information in there that may be
17 nice-to-know information sometime down the road but
18 doesn't really get to the issues that we're here for what
19 the United States Supreme Court has said and what the
20 Nevada Supreme Court has said are the issues in picking a
21 jury. They're very collateral to that. They scatter
22 around the neighborhood, but they don't ever get right to
23 those points. A tremendous amount of time effort and
24 energy is put into those to complete them, to analyze
25 them, to go through them.

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

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

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

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

1 challenges in literally hundreds of cases.

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

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

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

25 Does the Court have any questions on anything

1 I've had to say?

2 THE COURT: No.

3 Mr. Specchio.

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

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

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

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

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

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

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

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

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

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

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

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

16 THE COURT: You may.

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

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

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

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

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

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

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

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

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

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

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

17 THE CLERK: December 3rd at 10:30.

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

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

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

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

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

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

9 THE COURT: We still don't have Dr. Clark?
10 Let's talk about the Motion to Preclude
11 Photographs and Television in the Courtroom. The State
12 has no position on this, as I understand it.

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

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

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

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

15 Does anyone have any position on that?

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

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

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

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

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

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

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

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

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

25 MR. STANTON: I think one of the things that

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

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

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

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

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

12 Okay. Do we have Dr. Clark?

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

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

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

22 THE COURT: Please face the court clerk.

23 (Witness sworn.)

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

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

3 MR. STANTON: Pardon me?

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

6 MR. STANTON: No.

7 THE COURT: Okay.

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

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

15
16 JEFFREY RIOLO
17 called as a witness on behalf of the State
18 herein, being first duly sworn,
19 was examined and testified as follows:

20
21 DIRECT EXAMINATION

22 BY MR. STANTON:

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

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

1 Q How are you currently employed?

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

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

7 A Yes, I have.

8 THE CLERK: Exhibits 1, 2 and 3 marked.

9 (Exhibits 1, 2 and 3 marked.)

10 MR. SPECCHIO: No objection.

11 BY MR. STANTON:

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

14 THE COURT: Well, I'll admit them.

15 MR. SPECCHIO: I had no objection.

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

18 (Exhibits 1, 2 and 3 were admitted.)

19 BY MR. STANTON:

20 Q Is Exhibit 1 your CV?

21 A Correct.

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

24 A Correct.

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

1 Research Council's publication regarding scientific
2 testing?
3 A Yes, the cover sheets.
4 Q The cover, not the actual document?
5 A Yes.
6 Q Now, Mr. Riolo, directing your attention to
7 State's Exhibit 2, there is apparently something entitled
8 "1994 DNA Identification Act" that is supposed to be a
9 series of guidelines that have been set up for people who
10 are involved in the scientific testing of DNA, correct?
11 A Correct.
12 Q And is that the guidelines there, Exhibit 2?
13 A Yes, the quality assurance standards for
14 forensic DNA testing laboratories.
15 Q If you could, sir, turn to page 8 of State's
16 Exhibit 2, under section 5.3.
17 A Yes.
18 Q Says "Examiner/Analyst"?
19 A Yes.
20 Q Is that indeed your function regarding DNA at
21 the Washoe County crime lab?
22 A That's correct.
23 Q Relative to the criteria that this federal
24 statute has enunciated, do you qualify pursuant to the
25 standards set forth under 5.3?

1 A Yes, I do.

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

4 A Yes, I do.

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

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

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

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

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

25 A That's correct. The individuals that

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

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

9 A That's correct.

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

12 A Yes, I am familiar with it.

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

18 A Correct.

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

22 A Yes, profiles were determined for both.

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

1 A Correct.

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

5 A Some items came from Sergeant Sullivan.

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

12 A Yes, consistent with.

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

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

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

23 A Correct.

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

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

4 A That's correct.

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

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

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

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

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

20 A I'd have to refer to the report.

21 Q If you would.

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

24 MR. STANTON: Yes, Your Honor.

25 THE COURT: Could you get them for the Court,

1 please.

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

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

6 THE COURT: That's fine.

7 BY MR. STANTON:

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

11 A If we just look at the profiles that were
12 obtained from George Sullivan, the frequency that we're
13 looking at in the Caucasian population -- now there's
14 three different population numbers. In the Caucasian
15 population, there would be approximately one in 177,000.
16 In the black population, it would be one in 4,180,000.
17 And in the Hispanic population, it would be one in
18 344,000.

19 In the DNA profile from Siaosi Vanisi, in the
20 Caucasian population, the approximate frequency is one in
21 2,450,000. In the black population, one in 3,410,000. In
22 the Hispanic population, one in 885,000.

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

1 testing?

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

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

15 Q Where do you get those figures from?

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

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

1 A Yes, I am.

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

12 A Yes.

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

19 A Yes.

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

1 A Correct.

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

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

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

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

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

3 A That's correct.

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

11 A That's correct.

12 MR. STANTON: No further questions of this
13 witness.

14

15

CROSS-EXAMINATION

16 BY MR. SPECCHIO:

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

19 A I'm a scientist, molecular biologist.

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

21 A No, I'm not.

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

1 A Yeah.

2 Q What do you call it?

3 A We prefer to call it a DNA typing result.

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

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

8 Q No, not that number. You would have like a
9 1.1 or a comma 2?

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

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

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

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

20 A A result.

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

24 A Sure.

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

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

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

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

9 A That's correct.

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

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

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

18 A In simple terms, yes.

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

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

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

1 bases that are available.

2 Q Let everybody make their choice from there,
3 right?

4 A That's correct.

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

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

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

14 A The number is an approximate number.

15 Q Approximate.

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

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

21 A In what aspect?

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

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

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

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

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

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

22 A That's correct.

23 MR. SPECCHIO: I have nothing further.

24 THE COURT: Redirect.

25

REDIRECT EXAMINATION

BY MR. STANTON:

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

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

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

A It has no effect on that at all.

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

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

Q In RFP you have something called an autowrap?

A That's correct.

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

A That's correct. We call them bands.

1 Q What are they called in PCR testing?

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

6 Q What was done in this case?

7 A Both. Both PCR tests, not RFLP.

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

10 A That's correct.

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

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

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

25 A Correct.

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

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

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

13 A No, not at all.

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

19 A That's correct.

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

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

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

5 A That's correct.

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

11 A That's correct.

12 MR. STANTON: No further questions.

13 THE COURT: Mr. Specchio?

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

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

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

22 THE COURT: The people in the data base.

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

1 don't --

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

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

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

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

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

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

1 data base that will be available to the forensic
2 community.

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

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

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

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

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

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

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

10 THE WITNESS: Exactly, correct.

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

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

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

20 THE WITNESS: That's correct.

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

1 THE WITNESS: That's correct. What happened
2 was in the first book, the red book, they gave these
3 really high -- they said, well, just in case, we'll just
4 give all the frequencies, say, 10 percent or .1. In the
5 newer version of the yellow book what they did was say,
6 listen, we have a better understanding of the population
7 substructure and we can actually use the correct
8 frequencies for the profile that's being obtained. So
9 they said if you use this formula, you take into account
10 the inbreeding or the subpopulation, substructure, you can
11 use the frequencies from the data base and everything will
12 be fine.

13 THE COURT: So it's your belief that the
14 statisticians took, for instance, how many people in this
15 country are of an ethnic subgroup that are found in a
16 certain ethnic population group when they determined the
17 statistical percentages that you would utilize?

18 THE WITNESS: Yes.

19 THE COURT: When determining frequencies?

20 THE WITNESS: They looked at various
21 population data bases and they said, well, listen, is this
22 good if we take this one person and put them in this
23 group, are we able to obtain the correct number.

24 THE COURT: That's all my questions.

25 Do my questions cause any additional

1 questions from either counsel?

2 MR. STANTON: No, your Honor.

3 THE COURT: Mr. Specchio?

4 MR. SPECCHIO: Nothing further, Your Honor.

5 THE COURT: Thank you. You may step down.

6 MR. STANTON: That's all the evidence
7 relative to that motion. I believe we have Dr. Clark here
8 now. Can we go to the taking of that evidence or --

9 THE COURT: Do you have any problem deferring
10 your argument with regard to the DNA testing until after
11 Dr. Clark's testimony?

12 MR. SPECCHIO: No.

13 THE COURT: Then we'll proceed with Dr.
14 Clark.

15 Dr. Clark, please come forward.

16 (Witness sworn.)

17 THE CLERK: Exhibits 4-A through 4-J marked.
18 (Exhibits 4-A through 4-J marked.)

19
20 ELLEN CLARK

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

24
25 DIRECT EXAMINATION

1 BY MR. STANTON:

2 Q Please state your name for the record.

3 A Ellen Clark, C-l-a-r-k.

4 Q And Dr. Clark, have you been certified -- are

5 you a licensed forensic pathologist and a licensed

6 physician in the state of Nevada?

7 A Yes.

8 Q Have you been qualified before in the Second

9 Judicial District as well as other judicial district

10 courts as an expert in the field of forensic pathology?

11 A Yes.

12 Q Dr. Clark, did you perform the autopsy on

13 George Sullivan?

14 A Yes.

15 Q And in this case prior to the hearing today

16 did you have occasion to review all of the photographs

17 that were taken at the autopsy of Sergeant Sullivan?

18 A Yes.

19 Q And at the State's request did you go through

20 those photographs to determine and select certain

21 photographs that would answer specific questions, two

22 questions in particular: One is the cause of death of

23 Sergeant Sullivan and the other is to describe and to

24 document the wounds to Sergeant Sullivan?

25 A Yes, I did.

1 Q And as a result of that I have before you
2 Exhibits 4-B through 4-J. Are those the photographs that
3 you selected pursuant to those parameters?

4 A Yes, they are.

5 Q How many photographs in total did you review
6 to select these?

7 A I don't know exactly. I'd estimate between
8 100 and 150.

9 Q Dr. Clark, while Mr. Specchio is reviewing
10 those photographs, I'm going to go through each photograph
11 and put it up on this system here so you can look at them.

12 THE COURT: He's looking at 4-A through 4-J,
13 he's not looking at the 100 or 150?

14 MR. STANTON: Correct.

15 BY MR. STANTON:

16 Q Dr. Clark, I'd like to begin with 4-B.

17 THE COURT: So 4-A is not marked?

18 MR. STANTON: 4-A is marked but it's not a
19 photograph.

20 THE COURT: Go ahead and give it to the
21 clerk; she'll withdraw it.

22 MR. STANTON: It's a three-by-five card.

23 BY MR. STANTON:

24 Q Dr. Clark, you have with you a laser pointer.
25 I'm going to ask you, can you see 4-B?

1 A Yes.

2 THE COURT: Do you want it sideways like
3 that?

4 THE WITNESS: Could you turn it?

5 BY MR. STANTON:

6 Q Is that clear enough for you, Dr. Clark, so
7 you can see that?

8 A Are you able to turn down the lights so
9 there's not so much white out?

10 I can see it. It's not as it appears to look
11 directly at it. It's a representation. That's fine.

12 BY MR. STANTON:

13 Q Dr. Clark, relative to that photograph, could
14 you please describe the necessity of that photograph
15 regarding the questions that I've previously posed to you,
16 speaking of cause of death, the nature of the wounds and
17 specifically the forensic identification of the wounds
18 ultimately with an implement that was provided to you?

19 A This photograph is an identification
20 photograph. It shows a portion of Sergeant Sullivan's
21 upper torso and it also shows his face from a frontal
22 view. In the photograph you can identify many injuries.
23 In all, within this view, based upon my examination, there
24 is representation of at least ten separate impact sites to
25 the face and/or head extending into the frontal hairline.

1 The photograph shows that there's wide
2 distribution of injuries. It shows variation in
3 patterning of injuries and it shows externally damage
4 which was created by the multiple injuries or separate
5 impacts ultimately leading to death.

6 Q 4-C.

7 A Exhibit 4-C shows Sergeant Sullivan's left
8 hand at the time of autopsy. It shows extensive bruising
9 to the backs of all the fingers of the left hand. It also
10 shows evidence of sharp force injury in the form of very
11 deep lacerations which were associated with bone fractures
12 and caused near detachment of the tips of the fingers.
13 This represents combined blunt and sharp force injury to a
14 separate portion of the body in a distribution that's
15 characteristic of a defensive injury.

16 Q 4-D.

17 A Exhibit 4-D shows the top of the decedent's
18 head and demonstrates in detail an injury which was barely
19 visible in Exhibit 4-B. And that is the laceration which
20 has distinctive patterning at the top of the center of the
21 forehead in the scalp line. It shows one of the many
22 varieties of patterned injuries that were present in this
23 case, in particular that is a wedge-shaped wound that has
24 features of both sharp force injury and blunt trauma.

25 Q 4-E.

1 A 4-E shows the right side of Sergeant
2 Sullivan's face. It shows two separate injury types and,
3 in particular, patterning which is different from that
4 previously shown in detail in the other autopsy
5 photographs. In particular, there is abrasion or skin
6 break injury representing blunt trauma on the left side of
7 the chin, extending on to the left facial cheek. There
8 also are injuries which again have features of sharp and
9 blunt trauma but have a more unique finding, and that is a
10 curved edge directly adjacent to a rectangular or
11 square-shaped edge which further speak to the design or
12 shape of the weapon used to create the injuries.

13 Q 4-F.

14 A Exhibit 4-F shows the top of the decedent's
15 head, in particular the scalp having been shaved. It
16 shows additional combined blunt and sharp force injuries,
17 again having patterning different than those that we have
18 already seen. The injury which is identified as No. 2
19 consists of a long or elliptical laceration that has
20 intersecting bar-shaped lacerations speaking to a
21 dimension and surface of a weapon.

22 No. 3 has a much broader but still partially
23 rectangular, partially sharp and blunt pattern which
24 speaks to a different size and shape corresponding to an
25 instrument or weapon surface.

1 Q Throughout the 4 series of photographs that
2 you have reviewed, have the black Magic Marker notations,
3 numerical notations, distinguished separate and distinct
4 wounds, Dr. Clark?

5 A Yes, they have. Those are placed for
6 reference and identification in enumerating injuries and
7 are for that purpose only. They identify separate
8 injuries.

9 Q 4-G.

10 A 4-G again shows the top of the scalp at the
11 very top of the center of the head. It shows a pattern
12 injury again having features of both sharp and blunt force
13 trauma. And it shows an intersecting area where there is
14 a physical lop or a curved edge which aligns with the
15 straight edge and then a repeat of this pattern along the
16 other margin, again with dimensions and shapes that are
17 different than those previously shown.

18 Q 4-H.

19 A 4-H, which does not project well here, shows
20 a different view of the top of Sergeant Sullivan's head at
21 the outset of the autopsy and it, in particular, shows the
22 multiplicity of injuries, at least seven separate impact
23 sites to the top of the head and the scalp within the
24 hairline. It shows some of the injuries which have been
25 shown in detail but it shows their wide separation or

1 distribution, again in the center top of the head
 2 extending towards the back, towards the left side of the
 3 scalp in the midline towards the left on the lateral edge
 4 or outer edge of the head on the left in the frontal
 5 region on the right, and then there were injuries also
 6 towards the back of the head on the left occipital region
 7 and wrapping down. This shows an overall view again of a
 8 wide distribution of injuries and multiple separate impact
 9 sites.

10 Q 4-I.

11 A Exhibit 4-I shows again the decedent's face.
 12 This shows partial reflection of the lips and exposure of
 13 the oral cavity to show very massive trauma to the teeth
 14 and also to the jaw and the facial bones indicating injury
 15 in excess of that which is externally visible or on the
 16 outer surfaces of the face in earlier photos.

17 Q Finally, 4-J.

18 A 4-J is similar to the immediately previous
 19 photograph in that it shows some injuries which have
 20 previously been shown but shows exposure of portions of
 21 the left eyelid to show deep trauma to the eye surfaces,
 22 in addition to bruising on the outer surfaces of the face.
 23 It also shows injuries in some detail on the left facial
 24 cheek and towards the left side of the forehead and on the
 25 nose which are not well represented in other exhibits.

1 THE CLERK: Exhibit 5 marked as
2 demonstrative.

3 (Exhibit 5 was marked.)

4 BY MR. STANTON:

5 Q Dr. Clark, Exhibit 5 is the item --

6 THE COURT: Are you through with the
7 projector for now? It's a little dark to be -- I can't
8 see that.

9 MR. STANTON: I'm through with showing the
10 photographs. I don't know if Mr. --

11 THE COURT: Turn the light on. Proceed.

12 BY MR. STANTON:

13 Q Dr. Clark, Exhibit 5 was provided to you at
14 autopsy to conduct an examination as to whether or not the
15 surfaces of that implement were consistent in both the
16 size and shape with some, if not all, of the injuries that
17 you observed on Sergeant Sullivan; is that correct?

18 A That's correct.

19 Q And the photographs, the 4 series we have
20 just gone through, are they necessary for you to properly
21 describe the nature of your examination and the results
22 both as to cause of death, as well as the forensic aspect
23 of the nature of the wounds, the force used and the
24 location on Sergeant Sullivan's body that the implement
25 struck?

1 A Yes.

2 MR. STANTON: Thank you. I have no further
3 questions.

4 THE COURT: Cross. Do you want to see the
5 photographs projected again?

6 MR. SPECCHIO: I'll make reference to them.
7 Maybe she'll remember them.

8 THE COURT: Why don't we just approach the
9 witness with the exhibits.

10 MR. SPECCHIO: That's fine.

11 THE COURT: I have written notes on each of
12 them.

13

14 CROSS-EXAMINATION

15 BY MR. SPECCHIO:

16 Q Dr. Clark, this is 4-C. How does this assist
17 you in discussing the cause of death of Sergeant Sullivan?

18 A This assists me in describing the
19 distribution of the injuries and, in particular, in making
20 reference to what we term in forensic pathology as
21 defensive wounds. It shows the magnitude of force which
22 was used, and it also shows the positioning and
23 distribution of the injuries on the hand.

24 Q What was the magnitude of the force in this
25 case?

1 A The force was sufficient to nearly tip off
2 the ends of two fingers and break the bones beneath those.
3 The force was also of a magnitude that it caused diffused
4 and continuous bleeding underneath the skin surface from
5 the tips of the fingers to the back of the hand.

6 Q How much force is that?

7 A A lot.

8 Q Pounds?

9 A I can't tell you in terms of pounds per
10 square inch.

11 Q Do you have to drop the axe from ten feet or
12 can you drop it from three inches?

13 A I would say that that does not imply that
14 anything was dropped. Something was wielded with great
15 force to create --

16 Q Wielded from a height of ten feet or ten
17 inches?

18 A I can't tell you.

19 Q This really doesn't help you to do anything
20 other than to point out a gory defensive wound?

21 A In my opinion it helps show the distribution
22 of the wounds and, in particular, make reference to
23 defensive wounds.

24 Q Doesn't show anything about the cause of
25 death; he didn't die from these cut-off fingers, did he?

1 A His more immediately life-threatening
2 injuries were those to the face and the head.

3 Q I never went to law school (sic) and I can
4 tell you by looking at these photographs that this guy
5 probably died by an axe wound to the head.

6 MR. STANTON: I think counsel is referring to
7 he may not have gone to medical school. I know he went to
8 law school.

9 THE WITNESS: Please repeat your question.

10 BY MR. SPECCHIO:

11 Q Most people would be able to look at that and
12 say he probably died by an axe to the head?

13 A I disagree.

14 Q This weapon, this Exhibit 5, you're not
15 trying to tell the Court that you think this weapon caused
16 all of these injuries?

17 A I would say no, that weapon didn't
18 specifically cause every one of those injuries.

19 Q It's consistent with a lot of them, though,
20 isn't it?

21 A That's correct.

22 MR. SPECCHIO: Judge, let me ask you a
23 question here, does the State intend to blow up these gory
24 eight-by-tens into three-feet-by-three-feet gory
25 photographs at trial?

1 MR. STANTON: Yes, your Honor.

2 MR. SPECCHIO: We're going to object to that,
3 Your Honor. We think it's highly inflammable. We would
4 object to these. And I will give this back to the clerk.
5 And, Your Honor, that Exhibit 5 I think they're going to
6 use, and we're going to stipulate that that is a
7 reasonable facsimile to the alleged murder weapon. Is
8 that a fair statement?

9 MR. STANTON: Pretty close, I think, yes.

10 THE COURT: We'll hold onto it.

11 MR. STANTON: I have no further questions on
12 redirect for Dr. Clark.

13 THE COURT: You may step down.

14 MR. STANTON: That would be the evidence that
15 the State would present relative to the motion in limine
16 regarding gruesome photographs.

17 THE COURT: Mr. Stanton, do you intend to
18 utilize the projector system that you've utilized in lieu
19 of publishing to the jury during the course of the trial?

20 MR. STANTON: Your Honor, the State's
21 intent -- for the record, this is what's called the Doar
22 system, spelled D-o-a-r. The State would be requesting of
23 the Court and it plans to use this system for purposes of
24 Dr. Clark's testimony to the jury in its entirety as she
25 did virtually before the Court this morning. The State

1 would then actually offer the photographs prior to
2 displaying them into evidence and then ultimately the
3 photographs would be available for the jury for their
4 review, the actual photographs themselves.

5 The difficulty the State has is that the size
6 of the photographs, which are eight-by-ten, to have Dr.
7 Clark demonstrate with the implement to all the jurors at
8 the same time is somewhat difficult. Granted the size is
9 increased in the use of the Doar system; however, the
10 projector, at least as we're set up here, is several feet
11 away from the jury box, and I think it's the only way
12 other than blowing up the photographs to 16-by-20 size so
13 that Dr. Clark's testimony can be received by all 13 or 14
14 jurors in this case contemporaneously, especially the
15 detail that Dr. Clark didn't get into today but will at
16 trial, and that is taking Exhibit 5, the hatchet, and
17 going through each wound to show that it, indeed how she
18 comes to the conclusion from the wound itself that that
19 implement and the surfaces of that implement are
20 consistent with that wound. I think that's very difficult
21 to do with an eight-by-ten so that all 14 jurors can see
22 it.

23 THE COURT: Mr. Specchio, do you have any
24 further argument?

25 MR. SPECCHIO: We're going to object. I

1 mean, those photographs are gruesome enough without
2 plastering them on a board at three or four feet by three
3 or four feet and then allowing them to relook at the
4 photographs. We would object to that procedure.

5 That's all I have to say.

6 THE COURT: The Court is very familiar with
7 systems like the Doar system. I've utilized them in other
8 trials. In looking at the exhibits, I'm going to first
9 find that they are necessary for the testimony of the
10 expert pathologist. So I am going to allow them to be
11 admitted based upon the presentation here today.

12 Further, I'm going to find at this time that
13 it is not more gruesome to have them actually projected.
14 I've had an opportunity to review the photographs
15 personally, as well as observe them projected. The
16 distance from the front rail of the jury box to where the
17 projection screen is 17 and a half feet. We just recently
18 had the courtroom measured. So that distance is
19 considerable.

20 MR. SPECCHIO: How big is the screen?

21 THE COURT: The screen that they are
22 utilizing right now I think is approximately five-by-four.
23 And not the whole screen was filled with the pictures.

24 What I believe is that the jury holding these
25 photographs in their hands, the eight-by-ten glossies, is

1 more gruesome and more graphic than what we observed on
 2 the screen. I think the observation on the screen seemed
 3 less gruesome and less direct to the members of the jury.
 4 It certainly feels that way to the Court when I look at
 5 the pictures. Therefore, I don't think it's more
 6 prejudicial to have utilization of the projection than if
 7 I allow the publication, which would be the other
 8 procedure, of the jury handling them, touching them.

9 MR. SPECCHIO: They're not going to see them?

10 THE COURT: They'll receive them in the jury
 11 room during deliberations, as with all other evidence that
 12 is admitted. But they will not be getting them during the
 13 course of the trial. We don't need to publish them to the
 14 jury a second time. They're published once while the
 15 testimony proceeds, and if you want to use them during
 16 cross-examination, you may. If you don't, you may just
 17 use the photographs with the witness.

18 So for those reasons I'm going to deny the
 19 motion to exclude the utilization of the Doar system.

20 MR. SPECCHIO: And our continuing objection
 21 would be noted for the record, Judge, so we don't have to
 22 keep saying it here in the trial?

23 THE COURT: Absolutely. It is noted. And
 24 we'll certainly preserve the record for the appellate
 25 review.

1 Anything further with regard to the
2 photographs?

3 MR. STANTON: No, your Honor.

4 THE COURT: The photographs have been
5 admitted for the purposes of this hearing. The foundation
6 has been laid, I think, for purposes of the trial also.
7 But they won't be admitted until you move for admission at
8 trial in front of the jury. The clerk is going to hold
9 onto all the exhibits that have been marked.

10 MR. STANTON: The State is going to make a
11 motion with the Court that Exhibit 4 series and 5 be
12 released back to the State pending the trial. We have
13 pretrials with other witnesses that we need to conduct
14 between now and then. I don't believe there's going to be
15 an objection, certainly, to the 4 series, the foundation
16 of them, because that could be laid at any time. And once
17 again with Exhibit 5, that is a demonstrative piece of
18 evidence that there will be a stipulation that it is the
19 same weight, size, consistency and make and model of the
20 implement that ultimately was taken in this case. So I
21 don't believe there's any chain of custody issues.

22 THE COURT: I don't have a problem with 5.
23 Don't you have another set of photographs so that we can
24 keep the record clear, the ones that were testified to
25 today with regard to the Court admitting or the Court

1 saying were not too gruesome were the same set of
2 photographs at trial?

3 MR. STANTON: They're marked. Obviously they
4 will remain marked. I'll represent as an officer of the
5 court, we're not going to change the markings on them. In
6 addition, if I can have them for a brief period of time I
7 can get those specific photographs duplicated through the
8 negatives for our purposes and even Mr. Specchio, if he
9 wants a set of them, so that we can do that. But I will
10 need the actual photographs to go to the crime lab
11 personnel to ensure, since there's several hundred
12 photographs at the autopsy, there are slight differences
13 between, say, 4-B and probably three other photographs.
14 To ensure that indeed the same one is used, I'll need to
15 match them up with a person from the photography division
16 of the crime lab to make sure we have a precise duplicate
17 set.

18 MR. SPECCHIO: Are these the only photographs
19 we're going to be introducing?

20 MR. STANTON: From the autopsy of Sergeant
21 Sullivan, that's correct.

22 MR. SPECCHIO: Death and autopsy?

23 MR. STANTON: Yes.

24 MR. SPECCHIO: I have no objection. If he
25 wants to release them, copy them and provide the Court and

1 myself with a copy, that would be all right.

2 THE COURT: The clerk, though, prior to
3 release will make a Xerox copy at least of these so we'll
4 have some record that the clerk can compare. Not that
5 there would be any purposeful exchange, but we want to
6 make sure everyone is protected.

7 It was my understanding when I made my ruling
8 these were all the photographs of Sergeant Sullivan or of
9 the death of the sergeant that would be moved for
10 admission. And that is true, right?

11 MR. STANTON: Relative to the autopsy and the
12 issues of cause of death and the nature of wounds, that's
13 correct. There probably is one, possibly two photographs
14 of the generalized scene as it was first observed and
15 documented, which would include Sergeant Sullivan's
16 clothed body.

17 MR. SPECCHIO: That's all right, Judge. I
18 don't have any problem with that.

19 THE COURT: You've seen that and have no
20 problem with that?

21 MR. SPECCHIO: No problem.

22 THE COURT: Okay. Do you want to argue with
23 regard to the utilization of Mr. Riolo as a DNA expert?

24 MR. STANTON: Jeff Riolo, yes, Your Honor, if
25 I may.

1 Relative to that testimony in the motion,
2 Your Honor, I just have a couple of things I'd like to
3 argue briefly to the Court. Number one is that the sum
4 and substance of Jeff Riolo's testimony, Your Honor, I
5 think can be boiled down to a very popularized analogy
6 that I think everybody at least in the criminal context
7 can understand, and that is the use of fingerprint
8 technology.

9 At some point when that testimony was being
10 first utilized in criminal forensic settings, someone had
11 to be making the determination that a fingerprint was
12 indeed a unique anatomical design. At some point things
13 progressed within the scientific community that everybody
14 understood and agreed that, generally speaking, a
15 fingerprint is unique. I believe that's where we are on
16 the cusp of DNA science and the statistics behind that
17 science according to Jeff Riolo's testimony.

18 The motion as I read it specifically attacks
19 or suggests to the Court a prohibition of Mr. Riolo
20 testifying both to the scientific results that he did with
21 his testing and more specifically a cap, if you will, on
22 his testimony only to the science and not to the attendant
23 genetics.

24 I believe Mr. Riolo has testified and the
25 Court opinions have confirmed that indeed the science and

1 the statistics of DNA are one in the same now; that
2 State's Exhibit 3, the National Research Council, within
3 the scientific community is the generally accepted
4 standards. And as Mr. Riolo has stated, that the
5 scientific community has accepted both the science of DNA
6 and the statistics of DNA through the use of various
7 different formulas.

8 The issue of ethnic subgrouping in this case
9 is somewhat of a misleading aspect of the case, and that
10 is, the DNA material in this case, unlike most of the
11 published opinions that you review regarding DNA evidence
12 is DNA evidence tied to the defendant, either through
13 hair, through blood or through some other secretion of DNA
14 material, in this case the evidence that the State will
15 present is that there are certain items of evidence,
16 clothing worn by the defendant and property that will be
17 identified as being Sergeant Sullivan's that all comes
18 back with genetic material matching his, specifically the
19 genetic material is blood.

20 So we're not talking in this case about
21 genetic material being typed to then the ethnic subgroup
22 of the defendant who is indeed, or what the State has been
23 informed, a Tongan male. So even putting aside the issue
24 of ethnic subgrouping just for a moment, I believe that is
25 somewhat of a red herring in this case because it's not at

1 issue.

2 Now certainly in Mr. Riolo's testing of this
3 matter he used a controlled known sample of Mr. Vanisi's
4 for purposes of excluding him as the donor source of that
5 material. And I believe the statistics that he cited in
6 the reports that have been provided to the defense some
7 several months ago in this case indeed confirm that the
8 DNA profiles in this case show that there is a statistical
9 value or statistical likelihood that that material is
10 consistent with Sergeant Sullivan. There's going to be no
11 testimony in this case that it is a match. The statistics
12 in this case don't reach that level, merely that the DNA
13 material is consistent with being that of Sergeant
14 Sullivan within a certain population group.

15 When you then add what the science has
16 addressed with ethnic subgroups, according to Mr. Riolo
17 the formulas used in PCR testing, is indeed adopted by the
18 scientific community to include population geneticists to
19 account for any ethnic subgrouping if indeed that has any
20 effect any more on DNA testing. And I believe what Mr.
21 Riolo says, and confirmed in Exhibit 3, what's referred to
22 as the yellow book, that in RFLP testing now, the full
23 blown DNA testing where you get very large DNA statistics,
24 that indeed ethnic subgrouping is no longer even a viable
25 argument against DNA testing and the statistics derived.

1 therefrom.

2 I think the reason, Your Honor, as I
3 understand the science, to summarize what Mr. Riolo and
4 Exhibit 3 articulates, is this: They have looked at
5 ethnic subgrouping across the broad spectrum of the three
6 groups that Mr. Riolo has testified to and smaller ethnic
7 subgroups and they have concluded that the genetic markers
8 that are derived in this testing do not -- are not
9 determined by one's ethnicity; that indeed they are unique
10 genetic codes regardless of what ethnic group you're from.

11 By analogy, once again, borrowing from
12 fingerprints, that if the argument went within a subgroup
13 such as a Tongan subgroup, breeding primarily within
14 Tongan males and Tongan females, thus Tongan offspring,
15 that somehow you would get fingerprints that may not be
16 unique. That's indeed the same argument with DNA
17 genetics, that if you bred within a certain group over a
18 certain period of time, your genetic markers may not
19 distinguish them from one another, certainly not to the
20 statistical level that they were getting in other type
21 cases.

22 Indeed, the National Research Council has
23 concluded that is not true. DNA genetic markers are DNA
24 genetic markers and that the ethnicity of them play no
25 relevant role whatsoever in the statistics.

1 I would agree with Mr. Specchio, and I
2 believe Mr. Riolo's assessment is that statistics indeed
3 is an estimation, that there is no concrete assessment
4 because there's no testing, obviously, of each child born
5 and each person that dies into that pool to confirm one in
6 whatever, but it is an approximation. But that
7 approximation is indeed still statistically precise, and
8 that it doesn't make a difference whether people are
9 entering a population data base or exiting.

10 Further, it doesn't make a difference the
11 number of people in that data base, save and except for a
12 minimal level that the experts have evaluated that says we
13 have now a proper amount of people to do a comparative DNA
14 sample and thus we are properly able to derive statistics
15 therefrom. And I think that's precisely what Mr. Riolo
16 has stated in his testimony today, and that the exclusion
17 of his testimony to the statistics indeed is not necessary
18 nor supported by the weight of the scientific community.
19 What is generally accepted within the scientific community
20 as reflected in Exhibit 3, the National Research Council
21 yellow book, embraces both the science of DNA and the
22 statistics that's derived therefrom.

23 I have found four appellate cases since we
24 filed the motion in this case that have addressed
25 precisely that issue or pretty close to precisely that

1 issue, and that is, is the science of DNA separate and
 2 apart from the statistics of DNA requiring, A, a separate
 3 witness, to wit, a population geneticist, or indeed is the
 4 science of DNA joined at the hips so that they are, for
 5 practical purposes, one item? I think that's obviously
 6 the State's position, and those four cases that I've found
 7 I think support that. I've provided to defense counsel
 8 the other two. I've checked periodically at our library.
 9 They are available on Westlaw, and I can provide them. I
 10 would ask, since they weren't enclosed in our opposition,
 11 I found these cases after the briefing of this matter, to
 12 request, if the Court is interested, leave of the Court to
 13 provide those cases to the Court in the consideration of
 14 this issue.

15 Like I said, I have two that I've pulled off
 16 in one form from the Internet that I can provide hard
 17 copies for the Court, and I'd say approximately within
 18 seven days I can have the remaining two. So I'd at least
 19 offer that as an opportunity to the Court to review some
 20 other appellate courts that have embraced what appears to
 21 be the same thing, and that is whether or not there is a
 22 distinction between the science and the statistics.

23 THE COURT: Yes, I would like those.

24 Mr. Specchio, you certainly have an
 25 opportunity.

1 MR. SPECCHIO: I have no objection, Your
2 Honor. This is one of the motions that we submitted, in
3 any event.

4 THE COURT: Right.

5 MR. SPECCHIO: And I have no problem if the
6 Court wants to review those cases before deciding that
7 motion.

8 THE COURT: Would you afford the Court's law
9 clerk those cites and/or the copies that you have that are
10 unmarked?

11 MR. STANTON: I'll provide the actual copies
12 because the sites I don't think will do much good. I've
13 looked for the past four months, three months, to try and
14 get them. They're from regional reporters and gone
15 through the advanced sheets. They're relatively new, and
16 so I can get the hard copy and provide them to your law
17 clerk.

18 THE COURT: Okay. I think that we have a few
19 minutes this morning, but I'm not sure we can get too far.
20 We still have the motion in limine with regard to the
21 circumstances surrounding the defendant's arrest in Salt
22 Lake City.

23 MR. SPECCHIO: We might have that one
24 resolved, too, Your Honor, if I might.

25 THE COURT: You may.

1 MR. SPECCHIO: Mr. Stanton and Mr. Gammick
2 have provided me with kind of a synopsis of the testimony
3 or what would be the testimony of Deputies Craig Meyer,
4 Blake Schroeder, Keith Stephens and B. Adamson. If they
5 would like to submit a written stipulation in accordance
6 with what's on this paper that they provided me, I think
7 we can -- I'd be prepared to stipulate as to those facts
8 regarding the arrest, if that's what we're talking about.

9 MR. STANTON: Your Honor, I provided counsel
10 with an outline of four witnesses from the state of Utah
11 police officers that the State would offer testimony.
12 And, once again, it is a summary fashion of their
13 testimony and their role.

14 THE COURT: Do you have a copy for the Court?

15 MR. STANTON: I do, Your Honor.

16 The purpose of me providing it to defense
17 counsel, Your Honor, is we had previously discussed what
18 issues can we agree on or disagree. In addition, we still
19 have the pending motion regarding the limitation of that
20 evidence. If counsel I think is referring to based upon
21 that representation he is -- I don't know if the correct
22 word is withdrawing his motion, if there is no issue now
23 before the Court relative to that motion, I think that
24 kind of resolves it. As far as the actual trial goes, I
25 think that would be something that we, the State and Mr.

1 Specchio, needs to discuss down the road. To some extent
2 I think we can probably stipulate to some of that evidence
3 and whittle those witnesses down from four to two, but I
4 think, in essence, there's going to need to be at least
5 two witnesses from the state of Utah to add some colorable
6 context to the evidence in this case and to those facts,
7 specifically I believe it's witness one and three, which
8 would be Detective Keith Stephens and Deputy Meyer.

9 MR. SPECCHIO: Judge, my position is this:
10 If all they're going to talk about, all the Utah people
11 are going to talk about are issues or facts contained on
12 this sheet of paper, I'm prepared to stipulate to it.
13 They don't have to bring anybody if they don't want to.
14 They can bring them all if they'd like.

15 THE COURT: The only issue really is the
16 description of Vanisi's behavior in the residence. What
17 is that?

18 MR. STANTON: Deputy Meyer, I believe, would
19 testify consistent with the reports that I have and
20 defense counsel has --

21 MR. SPECCHIO: I have no problem with that.

22 MR. STANTON: That he enters the residence
23 pursuant to what ultimately becomes a SWAT tactical
24 assessment to enter the home because the home is now, at
25 least a portion of it, on fire. And they want to have Mr.

1 Vanisi taken into custody. He's on the first floor of the
 2 two-floor structure. Deputy Meyers enters the building
 3 second after the door is battered down by the use of a
 4 battering ram with SWAT personnel. He enters the home and
 5 initially sees Mr. Vanisi at the end of a hallway. Deputy
 6 Meyer describes that he sees his right eye, his right ear,
 7 all being Mr. Vanisi's, and his right arm with a
 8 semi-automatic handgun consistent with the size and shape
 9 of a Glock .45, which he has experience in that weaponry.
 10 The weaponry comes up. He makes brief eye contact with
 11 Mr. Vanisi. He believes Mr. Vanisi is going to fire at
 12 him. He fires three to four rounds of his duty weapon at
 13 Mr. Vanisi, striking him apparently at least one time in
 14 his arm. He's then removed from the building at that time
 15 by other officers because he lost his balance and fell.
 16 Other officers thought he had been shot, and they
 17 tactically removed him from the residence.

18 THE COURT: No statements?

19 MR. STANTON: The only statements that Mr.
 20 Vanisi, that the State will seek to elicit are the
 21 generalized ones about what Mr. Vanisi's behavior and
 22 demeanor was during what I gather is at least a two-hour
 23 time period from the initial we have a standoff situation
 24 when Mr. Vanisi sees police outside, runs back into the
 25 house and when he's ultimately taken out of the home by

1 use of a beanbag gun. In a generalized sense, Mr. Vanisi
 2 had walked around, talked to several different officers
 3 through several different windows of this home saying that
 4 he wanted to talk to relatives, that he wasn't going to
 5 give up. His demeanor and behavior of shifting gears
 6 frequently, saying that there was children in the home and
 7 that he had to feed them and clothe them -- there weren't
 8 any children in the home at this time period -- the police
 9 officers felt that that was a delaying tactic for Mr.
 10 Vanisi. Obviously someone else can argue that that
 11 statement means something else.

12 So those are the generalized bits of
 13 information that Detective Keith Stephens was both a
 14 percipient witness to and as the case detective in Salt
 15 Lake City could attest to if Mr. Specchio doesn't object
 16 along those lines. If so, we would bring in some of the
 17 other witnesses but they wouldn't be very significant as
 18 the extent and nature of their testimony.

19 THE COURT: Some of these witnesses or
 20 witnesses still further?

21 MR. STANTON: Those witnesses I believe could
 22 testify to those aspects. There may be one or two others
 23 if there's a particular comment that the State feels is
 24 germane. It's not contained in the reports, but obviously
 25 at some juncture we have to pretrial with the Utah

1 authorities to find out if there's something, as there
2 typically is, not included in their police reports. Right
3 now I'm only operating with what I have in police report
4 form in front of me and provided to defense counsel.

5 THE COURT: Do we have a day set aside prior
6 to the jury being selected for any hearings?

7 MR. STANTON: Yes. I think we have just
8 before, the week before the trial begins.

9 THE COURT: You will have your pretrial with
10 the Utah authorities before that time?

11 MR. STANTON: I certainly would hope so.

12 THE COURT: My concern is that if there are
13 some statements that come out of your pretrial, that we
14 don't have any delay in the case, that you are able to
15 disclose that through your discovery with Mr. Specchio and
16 we can have a hearing if we have to.

17 MR. STANTON: I think that would be certainly
18 possible and I think would fit well. I plan on having the
19 pretrial with the folks well before the hearings that we
20 have scheduled in this case.

21 I would ask, and maybe a question is, if we
22 can go the other way, is there something of concern that
23 Mr. Specchio's looking for that he doesn't want coming in
24 from Utah? Aside from the fact of what I just mentioned
25 and outlined, we're also dealing with a chain of custody

1 of certain items: Sergeant Sullivan's clothing, that was
 2 specifically his weapon, certain items from his person
 3 that the State alleges were taken by the defendant from
 4 Sergeant Sullivan's person on the night of his murder, as
 5 well as the stolen vehicle that is the subject of Count V
 6 of the charging document that was recovered at that
 7 location and obviously a nexus of how the defendant got
 8 from Reno to Salt Lake City. But if there's a specific
 9 concern of the defense as to something that they don't
 10 want to come in relative to what happened in Salt Lake
 11 City, we can maybe address it that way as well.

12 THE COURT: I'm going to have the clerk just
 13 mark as Exhibit A the Utah witness checklist that was
 14 provided to the defense just so the record is clear what
 15 you were reviewing, Mr. Specchio. Is there anything in
 16 particular that you know of that you are concerned about
 17 now that hasn't been addressed?

18 MR. SPECCHIO: With regard to Salt Lake City?

19 THE COURT: Yes.

20 MR. SPECCHIO: No, your Honor.

21 THE COURT: With regard to the discovery of
 22 information that will come out of the pretrial, I don't
 23 know your position, Mr. Stanton, on oral statements of the
 24 defendant. I just recently had something develop with the
 25 District Attorney's Office, so I want to make it clear.

1 If you determine through your pretrial with the Utah
2 authorities that Mr. Vanisi made a statement against
3 interest that is not written down in a police report, do
4 you agree with the Court that you will have a hearing
5 outside the presence of the jury and be sure Mr. Specchio
6 knows about it before it's presented to the jury?

7 MR. STANTON: Well, if that's the Court's
8 ruling on it, I'll certainly comply with the Court's
9 ruling. I don't necessarily agree that that is indeed the
10 status of the law regarding -- I can guarantee the Court
11 right now that there's probably dozens of statements that
12 the defendant made to various different law enforcement
13 officers that are statements against interest or certainly
14 could be viewed in that light, depending on which side
15 you're on, that are not documented in any report.
16 Guaranteed.

17 This was a standoff situation in excess of
18 two hours. He had contact with family members on the
19 telephone. He had contact with at least one hostage
20 negotiator with the police department, as I've indicated,
21 several police officers as he's walking around and
22 sticking his head out of various different windows and
23 doors throughout this interaction. And these are reports
24 from Salt Lake City that are probably, the longest one is
25 three to four pages in length, very few of it focusing on

1 what the person said. Understanding Salt Lake City knew,
2 at the time that they were authoring these reports, that
3 they didn't have a case anymore that they were going to
4 prosecute in Salt Lake City. This was a turnkey operation
5 for them, take him into custody, extradite him to Nevada
6 on their warrant. I don't know what their habit and
7 custom is as far as documenting in their reports, but
8 certainly with that in mind you get what you basically get
9 with police officers, documenting what they did and really
10 no idea of what the focus was when it comes to litigating.

11 THE COURT: For the purposes of this trial,
12 if in your pretrial you determine there are statements
13 that Mr. Vanisi has made that have not been disclosed to
14 the defense that you want to utilize in your case in chief
15 as determinations of guilt or innocence of the defendant,
16 I'm going to order that you disclose those to Mr.
17 Specchio, because he's filed a motion in limine. Either
18 we get a stipulation that he doesn't need a hearing or we
19 have a hearing with regard to their admissibility prior to
20 presenting them to the jury.

21 Now, if the timing is such that we have to do
22 it in the middle of the trial, we do it in the middle of
23 the trial. If we do it in the middle of the witness'
24 testimony, we do it. But I want to have that
25 determination outside the presence of the jury before we

1 present it to the jury. And then we're clear that we
2 aren't creating an error.

3 MR. STANTON: Yes, your Honor.

4 THE COURT: And I think that based on what
5 you've told me today, Mr. Specchio, it will fulfill your
6 concerns?

7 MR. SPECCHIO: I think so, Your Honor. I
8 would assume that their statements will be consistent with
9 their police reports. So I don't have any problem with
10 that. But if all of a sudden I'm stipulating to all of
11 these facts and one of these jamolts (phonetic) wants to
12 come in and start talking about confessions and admissions
13 that I'm not aware of, I'm going to have a real problem.
14 And we'll have to do this trial over again down the road.
15 I don't want to get in that situation.

16 THE COURT: Mr. Stanton is going to tell you
17 if he's got something like that before we ever start our
18 jury trial. We'll have those hearings before we swear the
19 jury panel. If you have to have a continuance based on
20 some information that came out, we'll deal with that as it
21 happens.

22 MR. STANTON: If I got a nice piece of
23 smoking gun type statement that goes right to intent or
24 whatever, Mr. Specchio is going to hear about it before
25 the jury does and before this Court does.

1 MR. SPECCHIO: It will make my day. It will
2 make my day.

3 THE COURT: I'm sure Mr. Stanton will do
4 that.

5 And Mr. Gammick.

6 MR. GAMMICK: Understood, Your Honor.

7 THE COURT: So here we are with -- all we
8 have is criminal history. It's noon. I think we better
9 deal with that this afternoon.

10 MR. STANTON: Your Honor, actually I think
11 we're pretty close to concluding. I think we could do it
12 within 15 to 20 minutes.

13 THE COURT: Well, I know we have to take a
14 break for the court reporter. We have to take some break.
15 We've been at it a couple of hours.

16 We might as well keep on -- did you have
17 someplace you had to be this afternoon?

18 MR. STANTON: No. I was just figuring that
19 we've got a lot of people tied up here and we could finish
20 it up in 15 or 20 minutes, then everybody could go about
21 their business.

22 MR. SPECCHIO: I've already missed my morning
23 nap.

24 THE COURT: Mr. Specchio, we all know you're
25 teasing us about that. You've looked very alert

1 throughout the hearing.

2 MR. SPECCHIO: Judge, I really would like to,
3 when we're done, go over my list and make sure --

4 THE COURT: I think we'll just take a recess.
5 We can come back at 1:30, because Mr. Specchio wants to go
6 through this list anyway and make sure we've touched
7 everything. There's no reason to rush through. We've got
8 lots of time set aside.

9 MR. GAMMICK: Is the courtroom going to be
10 secured during the lunch hour, Your Honor? I'm inquiring
11 if we can leave the cart here.

12 THE COURT: Yes.

13 MR. GAMMICK: We'll be the only ones coming
14 back at 1:30?

15 THE COURT: You're the only ones. We have no
16 hearings before you, and the bailiff will lock it up.

17 MR. SPECCHIO: Judge, I would think we could
18 probably conclude everything in half an hour or 45 minutes
19 at the most.

20 THE COURT: I anticipate that. Thank you,
21 counsel. Court's in recess.

22 (Recess taken at 12:00 p.m.)
23
24
25

1 RENO, NEVADA, TUESDAY, NOVEMBER 24, 1998, 1:40 P.M.

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4 THE COURT: We are back on the record in
5 continued hearings for State versus Siasosi Vanisi, Case
6 No. CR98-0516.

7 I have had an opportunity to review all the
8 motions that have been filed and so we can go through that
9 list. But the only ones I have yet to hear is there's a
10 defense motion that was filed regarding prior bad acts
11 that there was a discussion about it being moot. There's
12 a motion with regard to criminal history of defendant.
13 And those are the only two things other than what has been
14 submitted, and I'll go through and I'll tell you what
15 you'll receive written orders on.

16 MR. STANTON: We should have the gang
17 affiliation motion.

18 THE COURT: And gang affiliation. Thank you.
19 I'm missing it on my checklist here. Those are the only
20 three things that I think are still pending.

21 MR. STANTON: That checks with my list.

22 THE COURT: We'll go through it completely,
23 Mr. Specchio, but let's get to the hearing.

24 Do we have prior bad act evidence that the
25 State wants to offer or do we have prior criminal history

1 evidence you want to offer?

2 MR. STANTON: If I could go through the
3 motions in order, specifically I'd like to start off with
4 the prior bad acts motion.

5 THE COURT: Okay.

6 MR. STANTON: Out of an abundance of caution
7 what I have done is try to assess anything that could be
8 potentially perceived as prior bad acts. And I'm going to
9 recite to the Court the preliminary hearing transcript, if
10 you have that available.

11 THE COURT: Yes.

12 MR. STANTON: Your Honor, when I read the
13 motion -- let me just start off as a fundamental thing to
14 address what I think is at least a larger portion of
15 defense's motion. First of all, the State is aware of no
16 particular evidence that would normally be considered
17 48.045 evidence, as a separate act that the defendant
18 committed that we are going to bring in either police
19 officers or another victim to say that they did that and
20 we're going to offer it from one of the recognized
21 statutory exceptions. So there is no, I guess,
22 traditional 48.045 evidence. But I'm not certain what
23 would be potentially considered along those lines. So I'd
24 like to cite to three instances that the State seeks to
25 admit as potentially uncharged misconduct. And all of

1 this was presented at the preliminary hearing.

2 The first one I'd like to start with is page
3 64 of the preliminary hearing transcript. The witness
4 that this came in at the preliminary hearing is the same
5 fashion as the State's going to elicit at trial. And that
6 is, the witness testifying on page 64 is a relative of the
7 defendant's. His name is Vainga Kini Kini. Mr. Kini Kini
8 was the individual the defendant met upon his arrival at
9 the Kini Kini home in Salt Lake City. He actually met
10 with some other relatives initially, but he does arrive at
11 the Kini Kini home. The Kini Kini home is the one
12 ultimately that is burnt and where he's taken into
13 custody.

14 On the top of page 64 is when he begins to
15 talk to Vainga Kini Kini, who is a convicted felon, a gang
16 member who has kind of changed his ways during this time
17 period. He had come back to the Kini Kini home to his
18 brother David Kini Kini, who is a very religious man, and
19 to get his life together. And David Kini Kini was there
20 to assist him in straightening out his life. He tells
21 Vainga about an incident in Inglewood, California talking
22 to TCGs, which stands for Tongan Crypt Gang.

23 And Mr. Kini Kini, Vainga states, "Yes."

24 And then it says, "What did he say occurred
25 that he did in Inglewood, what I would refer to as

1 the Inglewood incident?"

2 The answer by Mr. Kini Kini, starting at line
3 seven: "He said he went up to a dance." This is the
4 defendant speaking to him in Salt Lake City. "That he
5 went to a dance in Inglewood. I guess it was a church
6 dance. And all the TCG's gang members in Inglewood were
7 outside in the parking lot. He said he went up to them
8 and asked them if they wanted to join him. And he said,
9 'Do you want to join me and go kill people?' And they
10 said 'No.'"

11 So that's what I call the Inglewood incident.
12 Now, just since we're staying in the same course, I'm
13 going to try, unfortunately, blend this between this and
14 the gang motion because the evidence is somewhat the same.
15 Obviously in that context there's another act that occurs
16 in Inglewood and it does deal with gangs. The State has
17 no evidence that the defendant is a member of a gang or
18 that any of his crimes that were committed or alleged to
19 have been committed in this case were motivated for gang
20 reasons. We haven't charged it, alleged it; there's no
21 evidence to suggest that. So the State's not offering it
22 for that matter. But there is reference to him contacting
23 gang members to commit murders.

24 On that same page, once again with Vainga
25 testifying, he said that he observes a vehicle that was

1 underneath a tarp in Salt Lake City. Your Honor, this is
2 the vehicle that was stolen and how the defendant got to
3 Salt Lake City. "And he says that the defendant used a
4 particular term to describe that vehicle to you?" That's
5 the question that I posed to Mr. Kini Kini, lines 13
6 through 17. The witness answers, "Yes, he described it
7 as," once again using the defendant's words to him, "a G
8 ride."

9 And I repeat that. He says, "Yes."

10 "What does a G ride mean to you?"

11 Now remember, Vainga has been a member of the
12 Tongan Crypt Gang, is familiar with it, familiar with the
13 gang nomenclature.

14 "ANSWER: G meaning gang. Gang meaning
15 stolen."

16 So he tells the defendant -- the defendant
17 tells Vainga that it's a G ride, and to Vainga that means
18 it's a stolen automobile. And I guess the relevance for...
19 this proceeding is somewhat self-evident.

20 On the next page, page 65, is the second
21 incident. I'll call this one the Mormon elders incident.
22 On page 65, Mr. Kini Kini, Vainga Kini Kini, is discussing
23 a series of statements and behaviors that he observes the
24 defendant make inside the Kini Kini home prior to the
25 whole hostage situation coming to the forefront.

1 Beginning at line four, there's a question
2 posed, "The photograph in front of you is a series of
3 pictures that hangs on your brother's wall." This is a
4 photograph in this case, of the interior of the Kini Kini
5 home. On that photograph there's a picture of three white
6 gentlemen. They are elders of the Mormon church. And he
7 answers that in the next question:

8 "They're prophets of the Mormon church.

9 "They're elders?

10 "Yes.

11 "Did there come a time when the defendant
12 made some direct reference to those photographs?

13 "Yes.

14 "What did he do?

15 Beginning at line 19:

16 "He pointed -- he pointed the pistol at the
17 pictures saying 'Fuck that white man. I'll kill that
18 white man.'"

19 So that's a second incident that may be
20 described or viewed by some as being a 48.045. -- I don't
21 think necessarily it is, but out of an abundance of
22 caution I'm just laying my cards on the table so everybody
23 knows where we're going.

24 And then on page 68 of this transcript, once
25 again, same witness, at the bottom of page 68, beginning

1 at line 22, there's a question posed to Vainga Kini Kini:

2 "Did there come a time when he," meaning the
3 defendant, "was talking about being a Tongan Robinhood?"

4 "Yes, there was."

5 And then the question goes, "What was he
6 telling you about?" And now this is the final incident
7 that I categorize underneath prior bad acts, potentially,
8 and also this relates to the gang motion.

9 He says, "He meant that in helping our people
10 out by getting us together and robbing and giving it back
11 to our people.

12 "QUESTION: Did he ask you whether or not
13 there were any TCGs in Salt Lake City?

14 "ANSWER: Yes.

15 "QUESTION: What did you tell him?

16 "ANSWER: I told him there were quite a few.

17 "Is there quite a few?

18 "Yes, there is.

19 "Did he ask you whether or not they're still
20 involved in criminal activity?

21 "ANSWER: Yes.

22 "QUESTION: What did he tell you about the
23 TCGs?

24 "I told him they were heavily involved in
25 crime.

1 "What did he say right after you told him
2 that?

3 "To hook up -- why don't we go hook up with
4 them.

5 "And do what?

6 "Get together and do crime.

7 "Was there specifically people he wanted to
8 commit crimes against?

9 "ANSWER: White people."

10 Those are, once again, references to a gang
11 but not the defendant's affiliation in, but an incident
12 where he asked to solicit the assistance of the Tongan
13 Crypt Gang in Salt Lake City.

14 Now Mr. Kini Kini, when I and Mr. Gammick
15 talked with him prior to his testimony at the preliminary
16 hearing, was a little bit more graphic in his description
17 about what the defendant said to him in this regard. At
18 the preliminary hearing we didn't get into all of the
19 attendant details other than just the core aspect of the
20 discussion the defendant had with him. He uses terms that
21 are within the vernacular, for example, when he -- I
22 specifically asked him about the contact the defendant had
23 with him about TCGs in Salt Lake City. He said -- he told
24 the defendant that, "Yeah, they're dirty. They do dirt,"
25 which in his vernacular means that they do crime and they

1 do significant heavy duty criminal activity within the
2 Salt Lake City area. And he described in some detail the
3 conversation he had with the defendant about what type of
4 criminal activity that they were involved in.

5 So it's kind of -- in the transcript of the
6 preliminary hearing it's a bear bones rendition of it.
7 I'm not sure to what extent Mr. Kini Kini now will
8 recollect those events. Obviously we're going to show his
9 previous statements or interviews with police to refresh
10 his recollection. But that, in substance, Your Honor, is
11 the areas both what could be considered 48.045, whether it
12 is or isn't I don't really know and don't know how
13 relevant it really is to this motion, and also the only
14 evidence that the State has in any way, shape or form that
15 affiliates the defendant with gangs.

16 THE COURT: Okay. Any objection to that
17 evidence, Mr. Specchio?

18 MR. SPECCHIO: Yes, your Honor. I think it's
19 highly prejudicial. I'm not so sure what the probative
20 value is other than to try to put another nail in the
21 coffin. And I think we're on real thin ground here. The
22 State admits they have no evidence that the defendant is a
23 member of a gang. If they did, I probably wouldn't be
24 here arguing this point. But to create little smoke
25 screens about gangs here and there without being able to

1 prove that he in fact is a member of any gang I think is
2 highly prejudicial. It far exceeds any probative value,
3 and I think they should be all excluded. I assume, Your
4 Honor, we're talking about both the gang affiliation
5 motion and the PBAs. If that's the PBAs they're talking
6 about, I guess we can discuss these as one discussion for
7 both motions. I think without any indication or any
8 evidence that Mr. Vanisi is in fact a member of the TCG or
9 in fact committed illegal acts with them, I think it is
10 highly prejudicial against this defendant and I see no
11 basis for the admission of any of those references.

12 THE COURT: Mr. Stanton.

13 MR. STANTON: The relevance, I think, is --
14 let me just address it two-fold. First of all, the
15 relevance of the conduct is to speak to two several
16 different items. Number one is the intent of the
17 defendant to do the acts he's alleged in this case. The
18 State's theory in this case is that the defendant
19 specifically picked out the victim in this case for
20 several different reasons. By the defendant's own
21 admission, he wanted to kill a police officer. He wanted
22 to kill a white police officer. And he took specific
23 items from his person as either trophies or part of an
24 express opinion to steal from what he perceived to be an
25 impressive ethnic group and to give back this Tongan

1 Robinhood theory that he espoused after the murder. There
2 are probably no less than ten witnesses that the State
3 could call in this case of the defendant prior to the
4 murder of George Sullivan telling them he wanted to kill a
5 police officer.

6 THE COURT: So you're not going to call any
7 of those witnesses?

8 MR. STANTON: No, I'm just saying that the
9 evidence to suggest that there is a plan of the
10 defendant's to kill a police officer, especially a motive
11 in this case of why George Sullivan was killed, and that
12 is, the State has alleged in this case that it is a
13 premeditated murder. He has pled not guilty to that. In
14 addition, the State has alleged this murder was committed
15 by lying in wait. Kind of a unique theory of murder
16 that's frequently not brought because that evidence is
17 relatively rare to obtain.

18 In this case the State submits that there's a
19 significant amount of evidence that the defendant in this
20 case watched George Sullivan at an automobile stop for
21 several minutes, then pursued him for several minutes and
22 then crept up on him while he was performing a ministerial
23 function inside his motor vehicle for the sole purpose
24 that he knew he was white and because he was a uniformed
25 police officer that he wanted to kill. So towards that

1 end the defendant's conduct soon in time of the murder of
2 Sergeant Sullivan is directly relevant of his motive to
3 want to kill white people and a white police officer, to
4 rob from him and to give back, as he at least expresses
5 it, to his people. And the incident of Inglewood.

6 THE COURT: But the issue at Inglewood, is it
7 necessary to discuss that he was asking Tongan Crypt Gang
8 members whether or not they wanted to go kill someone? Do
9 you have evidence that he's made statements that he wanted
10 to kill a white police officer, which is much more
11 specific and does not involve any allegation of gang
12 affiliation?

13 MR. STANTON: I think what we could do in
14 this case, Your Honor, as I was hearing Mr. Specchio's
15 objection, specific objection to these acts, is I don't
16 think it affects the integrity of the evidence or would
17 mislead the jury in this case if we were to redact and for
18 the State to discuss with that one witness, Mr. Kini Kini,
19 to make no reference in either of those two instances,
20 either the Salt Lake City incident or the Inglewood
21 incident to the fact they were TCGs, merely that he
22 approached people and made those requests. And at that
23 point I think the State gets what it believes to be
24 probative evidence to his intent and his motive, desire
25 and the pains that he went to go about committing this

1 act, and we redact out any reference, spill-over effect,
2 if you will, that the defendant is somehow associated with
3 a criminal gang.

4 THE COURT: That would certainly make me more
5 comfortable.

6 MR. STANTON: I think that's doable. Mr.
7 Kini Kini is -- I think Mr. Specchio saw him in court.
8 From my experience, Your Honor, I think if Mr. Kini Kini
9 is advised of that, he will -- we deal with certain
10 witnesses with varying different levels of sophistication
11 about what we as attorneys and the law indicate about
12 don't discuss this. I think Mr. Kini Kini is pretty savvy
13 and he'll understand that, and I don't think there will be
14 any problem. We'll certainly instruct him on the front
15 end along those lines, and maybe to even be more certain
16 prior to his testimony we just take a few minutes with him
17 and reinform him. I know we will do it when we meet with
18 him. Our investigative staff will talk to him prior to
19 him coming to court. And I think just to make sure we do
20 it one more time coming from Your Honor, I think that will
21 make a difference with Mr. Kini Kini. He's not
22 uncooperative. He's obviously a relative of the
23 defendant, still likes the defendant very much, so I don't
24 think he'd do anything malicious or otherwise intentional
25 in this case.

1 THE COURT: Okay. So if you limit your
2 inquiry of him as to statements that the defendant told
3 him he made to someone about wanting to go kill -- these
4 are statements the defendant told him about, right?

5 MR. STANTON: Yes, your Honor. And we would
6 just redact in the Salt Lake City incident, as well as the
7 Inglewood incident, any reference to the identification of
8 a group of people that he was specifically attempting to
9 solicit to do those criminal acts.

10 THE COURT: In the Salt Lake incident, as I
11 understand it, he first talks about a G ride, your witness
12 does. Then he indicates to you that Mr. Vanisi admitted
13 that he had stolen the vehicle. So the reference to a G
14 ride or gang terminology is really not necessary, is it;
15 your witness can just say the part that he admitted?

16 MR. STANTON: Yeah, I guess that's true. Mr.
17 Kini Kini knows it because he himself was a member of a
18 gang. I think at least some connotation it was some
19 admission that Mr. Kini Kini was admitting that he was a
20 member of a gang which he's willing to admit, I think
21 that's another thing. If Mr. Specchio would object to
22 that potential nexus to his client, I think we could at
23 least redact it to the portion that he knew it to be a
24 gang term. I think in some context I think it to be fair
25 he would have to say, well, he told me it was a G ride and

1 I took that to mean -- I know that term to mean that it is
2 stolen. He doesn't have to say it comes from the world of
3 street criminal gangs, but certainly I think to some
4 extent -- what I don't want to have happen is some sort of
5 examination of Vainga Kini Kini saying that he read too
6 much into that statement, that he's inferring something
7 that didn't exist.

8 THE COURT: Certainly if the
9 cross-examination goes down that road, then I will
10 certainly let you explain how he knew what it meant. I
11 don't think Mr. Specchio would go down that road. Of
12 course his co-counsel isn't present. I'm sure Mr.
13 Specchio will give him a heads up.

14 MR. STANTON: I'm throwing out now all the
15 potentials I see. I don't think there's any problem with
16 the redaction of Mr. Kini Kini, relating to him that he
17 knows that G ride to be a gang term. I think it's fair to
18 say that G ride, he could testify to that, that it means a
19 term that he knows to mean a stolen vehicle.

20 MR. SPECCHIO: Why does he even have to say G
21 ride if he says that he said he stole the car? What
22 difference does it make? Isn't there some potential
23 prejudicial problem with presenting that? If you say we
24 can't talk about gangs, which we shouldn't be able to do
25 in this case, but we can talk about gang lingo, I think

1 we're treading on --

2 THE COURT: I would prefer we just, if you
3 just ask him if he admitted that he stole the vehicle.
4 But Mr. Specchio, what this precludes you from doing is
5 cross-examining the witness down the line that, well, you
6 mean you just assumed that the -- you just assumed he
7 stole the vehicle, he didn't really say I stole the
8 vehicle. That would preclude you from that kind of an
9 inquiry on your cross-examination, because if you go down
10 that road, I'm going to let Mr. Stanton come in behind you
11 in redirect and say, wait a second, exactly what did he
12 say and how do you know what that means.

13 MR. SPECCHIO: I understand.

14 MR. STANTON: That's precisely the point,
15 Your Honor, because I don't think when talking to Vainga
16 Kini Kini, the conversation he had with the defendant was
17 not like you just said. The defendant didn't tell him "I
18 stole the car." They're talking in the vernacular that
19 both he and Mr. Kini Kini understood, and that is when he
20 told him it was a G ride, that's all he needed to tell
21 him, and he knew from that term that the defendant had
22 stolen the motor vehicle. So to that degree, Mr. Kini
23 Kini, I don't believe, is going to be able to understand
24 the dynamics of this case. He's going to say what the
25 defendant told him and what that meant to him.

1 MR. SPECCHIO: Based on your conversation
2 with Mr. Vanisi, did you assume that he stole that
3 vehicle? What's wrong with that question.
4 MR. STANTON: I don't want him to assume
5 anything.
6 MR. SPECCHIO: Did you gather from his
7 statement that he stole that vehicle?
8 THE COURT: I'm sure Mr. Stanton would like
9 it if you would stipulate that he could ask, based on your
10 conversation with Mr. Vanisi, did he admit to you he stole
11 the vehicle?
12 MR. SPECCHIO: Then, go ahead and say that,
13 that's fine. But we also have the stipulation that the
14 words gang, TCG, Tongan Crypt Gang and G ride are not
15 going to come in at this trial.
16 MR. STANTON: If counsel will not object to
17 me, A, leading Vainga Kini Kini in the fashion he just
18 said, and I think to some extent I'm going to need to lead
19 him so that we don't accidentally fall into that area, and
20 that there is going to be no other inference that can be
21 drawn, save and except a flat out omission from the
22 defendant that indeed he stole the vehicle, then I'd
23 agree. And absent some door being opened by examination
24 or inference by some question on cross-examination with
25 this witness or any other witness, I'd agree.

1 THE COURT: Is there really any question
2 about the motor vehicle being stolen? I mean I don't know
3 if that's an issue that's going to be litigated or not.

4 MR. SPECCHIO: Well, based on my knowledge of
5 the case, Your Honor, I think it's not a major issue. I
6 mean I don't want to state on the record here and start
7 admitting things.

8 THE COURT: I didn't mean to ask you for
9 that. I mean it's not going to be a hotly contested
10 issue, is it?

11 MR. SPECCHIO: Not from me.

12 THE COURT: Well, let's see. We have a
13 stipulation that you can lead. We have a stipulation that
14 you can use the word "admit." If it goes someplace after
15 that in cross-examination, approach the bench and I'll let
16 you know where we can go.

17 MR. STANTON: I think that resolves the issue
18 as to the gang affiliation. Other than that, I'm aware of
19 no information that the State will produce in its case in
20 chief or even in penalty, if we reach that stage in this
21 case, about the defendant's affiliation with a gang.

22 THE COURT: Okay.

23 MR. STANTON: The only other thing is that
24 the references I've made I think need a separate and
25 distinct ruling of both the Inglewood, Salt Lake City and

1 the Mormon elders situation.

2 THE COURT: Depending on who is on our jury,
3 the reference to killing a white man, and I don't know
4 from the transcript how your witness is going to describe
5 that, if that's a threat to kill Jesus Christ, is that a
6 threat to kill a particular Mormon elder, is it a threat
7 to kill all Mormon elders -- how is that perceived by your
8 witness? You said he was more forthcoming and more
9 complete in his discussion with you that you didn't go
10 into. How is that going to come out?

11 MR. STANTON: I'm not really going to elicit
12 any testimony from Mr. Kini Kini, Vainga Kini Kini, about
13 what he perceived it to mean. The only thing I'm going to
14 elicit is through the use of a photograph, it's a
15 photograph of a wall of another photograph. There are
16 three members of the Mormon church. I recognized two out
17 of the three. I'm not a member of the Mormon church, but
18 just out of my knowledge of that religion I know two out
19 of the three to be top ranking elders of the Mormon
20 church. The State is simply going to elicit what the
21 defendant did regarding that photograph, pointing a gun at
22 the photograph, and the statements he made.

23 THE COURT: Are they current elders or are
24 they past? Are we talking about Brigham Young?

25 MR. STANTON: Well, they're current. I

1 believe one of them is deceased. But I can't be
2 absolutely positive. But if he is deceased, it is recent
3 vintage, within the past year to two, if my knowledge of
4 Mormon religion is very accurate.

5 THE COURT: Okay. And Mr. Specchio, are you
6 objecting to this evidence?

7 MR. SPECCHIO: Not if we can put 12 Jews in
8 the box over there, I'm not going to.

9 THE COURT: I don't know if our population
10 will allow, statistically allow for that.

11 MR. SPECCHIO: I'm going to have a problem if
12 number seven is a Jack Mormon that knows all -- I can
13 guarantee you I won't know who these people are in this
14 photograph. So I'm at a disadvantage here.

15 THE COURT: Well, the testimony, though, even
16 describes who they are.

17 MR. SPECCHIO: That depends upon who you talk
18 to. My understanding is that that is not exactly
19 accurate. But like I said, I don't know. My problem is
20 if we have one of those people over there that is going to
21 be highly inflamed by such a statement. That's my
22 problem.

23 THE COURT: What is the relevance of this --
24 why is this the only testimony or the most probative
25 testimony you have to get across the threats to -- and I

1 assume you aren't offering this to show that he threatened
2 a Mormon elder, you're offering it based on your argument
3 to show that he threatened white people, to show motive
4 for killing Sergeant Sullivan.

5 MR. STANTON: Well, actually it's a little
6 bit more complex than that, Your Honor. And it goes to
7 all of what the defendant has told to friends, associates,
8 people within the Tongan community, about his thoughts on
9 religion, his life, why he is so angry and potentially the
10 basis of why he did what he did relative to Sergeant
11 Sullivan's murder.

12 For example, the defendant has made mention
13 to other individuals, and there is some thread throughout
14 this trial about the Mormon religion; it comes from the
15 defendant, no other source other than the defendant, of
16 the talking to people that he believes he's a Lamanite
17 warrior.

18 I'm not an expert on the Mormon religion. I
19 think one person that maybe everybody or the two parties
20 would agree would know more about the Mormon religion is
21 David Kini Kini; he's a very devoutly religious person.
22 He's the person we used as someone to explain what we had
23 heard the defendant's thought processes were about
24 religion, life, minorities, Mormon church. But more
25 directly relevant why he did what he did in this case, his

1 hatred towards white people, which the State believes is a
 2 direct motivating factor for why he killed George
 3 Sullivan. And he has taken, as David Kini Kini informs
 4 us, and other people that we have bounced this off of here
 5 in the local Mormon community, a historical fact or at
 6 least claimed factor in the Mormon church about Lamanite
 7 warriors and what the Mormon church believes occurred in
 8 that. He's now kind of twisted that, because no one else
 9 in the Mormon church believes apparently what the
 10 defendant believes regarding what a Lamanite warrior is
 11 and what a modern day version of what a Lamanite warrior
 12 would be.

13 He's also, along with that, expressed a
 14 hatred for coming to the United States, specifically a
 15 hatred towards a parent figure, I think it's specifically
 16 his mother, that she should have never brought them to the
 17 United States; that he wanted to remain in Tonga.

18 The transcript talks about statements to
 19 Vainga Kini Kini made upon his arrival in Salt Lake City
 20 where he expressed a desire that that year was the year he
 21 was going to return to his roots, his Tongan roots. And
 22 so I think it all comes together and at least makes sense
 23 from where he's formulating this opinion, it's obviously a
 24 very grossly distorted view of Mormon religion, the
 25 historical basis of the Lamanite warriors, and obviously

1 of coming to the United States. So in and of itself that
2 incident does directly, I guess, address the fact of his
3 hatred towards white people, but it has a much broader
4 context because it puts a lot of other statements that
5 he's made in the same light.

6 The defendant is a very intelligent man.
7 He's a very talkative person. He spoke at length to a lot
8 of people, friends and associates, about his beliefs,
9 religious and otherwise. And I think that is one aspect
10 that puts his other statements that will come in I believe
11 in this trial also into context, to include his version
12 that he's indeed a Lamanite warrior, a Tongan Robinhood or
13 several other somewhat distorted viewpoints.

14 MR. SPECCHIO: I don't know if he really
15 answered the question. There was a lot of different
16 directions he was going in. But I still don't understand
17 how we're going to not inflame a potential Mormon juror by
18 bringing in that statement.

19 THE COURT: Well, the issue for the Court
20 isn't whether or not -- there's a potential for anybody to
21 become somewhat incensed by any piece of evidence that is
22 presented in any trial.

23 MR. SPECCHIO: What's the probative value?

24 THE COURT: That's the Court's consideration.
25 Is there no other evidence that establishes the point that

1 you need to establish that is less prejudicial or less
2 inflammatory than what you want to offer?

3 MR. STANTON: That's what I was trying to lay
4 out to the Court was kind of a context of the probative
5 value. It's not only the probative value of the statement
6 that they happened to be three white people, it's also the
7 fact that the three white people within the Mormon church
8 are well known, both to the individuals and to the
9 defendant.

10 THE COURT: How do you get that -- I'm sorry,
11 I know you probably want to be kind of circumspect about
12 the theory of your case, but I still don't get how, even
13 if he hated Mormon elders, blamed the Mormon church for
14 everything, how you extrapolate that to the murder of
15 George Sullivan? Is there some proof that he is of the
16 Mormon faith and that that had any connection?

17 MR. STANTON: No. The connection, Your
18 Honor, is part of the defendant's dissatisfaction of, A,
19 being in the United States; B, his dissatisfaction with
20 the Mormon religion in the Mormon religion, and the
21 history of the Lamanite warriors. And maybe going into
22 that may shed some light on it.

23 Is the Court familiar at all with that term
24 and that historical basis?

25 THE COURT: No.

1 MR. STANTON: As I understand it, Lamanite
 2 warriors were individuals of color. They were minority
 3 individuals who were oppressed by a Caucasian conquering
 4 group of people in that they ultimately coalesced and
 5 revolted to protect primarily their land and their way of
 6 life. And they were called Lamanite warriors,
 7 specifically a term referring to people of color or a
 8 minority in this conflict that they had in the uprising
 9 that they were involved in. They are a people within the
 10 Mormon church that -- and I'm not sure if it's correct to
 11 say that that's part of the Mormon church's history or is
 12 it just something that the Mormon church discusses as a
 13 part of history and their religion's involvement in it.
 14 It's my understanding that the people involved, and I
 15 don't even know if they were Mormon or Mormon was even a
 16 recognized religion at that time, but as I understand it,
 17 that after the revolt, they protected their way of life
 18 and their land and that was the extent of where the
 19 Lamanite warriors historically were involved as a warrior
 20 and as a term Lamanite.

21 The defendant has taken that, according to
 22 family members who he's talked to, and said, well, they
 23 didn't go far enough. They needed to go and get back what
 24 they have had taken away from them by whites since that
 25 uprising and, thus, the kind of a Robinhood scenario and

1 his displeasure within the Mormon church to include the
2 elders of the Mormon church which happen to be white, part
3 of the oppression of him as a minority within the church
4 or against white people in general.

5 Your Honor, as I indicated to you before,
6 there are not statements before this Court that the
7 defendant has made relative to his hatred towards white
8 people in general, his being distinctly upset about his
9 parents bringing him over from his native land into a
10 white culture, predominantly white culture.

11 THE COURT: What does the statement add to
12 what you've already presented? What does his statement at
13 the time of his location in Utah add that he's pointing
14 the pistol at the picture and --

15 MR. STANTON: I think it directly puts into
16 context his state of mind, both prior to the murder and
17 immediately after the murder. It is consistent with
18 his -- it's a piece of the puzzle as to what's going on in
19 his mind that establishes his intent and his motive, why
20 did he murder, and why did he murder in the fashion that
21 he did and who he did. For example, he has stated to
22 individuals that he perceives police officers to be a
23 particular role in society of oppressing minorities and,
24 thus, his anger and resentment directed towards not only
25 whites but police officers being one of several different

1 occupations that he finds more abhorrent than others.

2 THE COURT: Is there some evidence in this
3 case of the defendant's, that you intend to introduce that
4 the defendant believes that the Mormon church, he
5 believes, is oppressive?

6 MR. STANTON: Yes. His statements to --
7 statements made prior to the murder of George Sullivan, as
8 well as statements made after the murder of George
9 Sullivan. He believes as part of that oppression, the
10 Mormon church being a cause of some of the problems, to
11 include minority members within the Mormon church, of
12 which Tongans, the Kini Kini family, David Kini Kini told
13 us is a family of approximately 500 people that live in
14 Salt Lake City. All of them have a significant nexus or
15 direct affiliation with the Mormon church. And I think at
16 least I know for a fact that the Mormon church is very
17 active in the Pacific Island nations of which Tonga is one
18 of several, Samoa, and the islands.

19 THE COURT: At this point I'm not going to
20 rule on the admissibility of this particular statement in
21 the guilt phase of this case. I want to see how the rest
22 of the trial progresses and who our jury is. I'm going to
23 allow Mr. Specchio to renew the motion prior to the
24 witnesses testifying, if it appears that it's cumulative
25 or would inflame the particular jury that we have, and

1 then we'll have some more argument on it when I know what
2 the evidence is and I can truly decide it in its complete
3 context.

4 Is there any other criminal history evidence
5 that you want to put on?

6 MR. STANTON: Not in our case in chief, Your
7 Honor.

8 THE COURT: That's all the arguments, and I
9 can go through my list of motions that were filed by the
10 defense. And if there's something I leave out, Mr.
11 Specchio, please let me know.

12 You filed a Motion for Production of Samples,
13 Procedures and Report of all DNA Testing for Analysis. It
14 was ruled on in the August 4th, '98 order.

15 MR. SPECCHIO: Judge, let me just check these
16 off.

17 THE COURT: Motion in Limine Regarding
18 Prosecutorial Misconduct was ruled in the 8-4 order.
19 Motion for Discovery was ruled upon in an August 4th
20 order. Motion in Limine Regarding Courtroom Security was
21 ruled upon previously in the August 4th order.

22 MR. GAMMICK: I think my notes, Your Honor,
23 show the Court reserved that until trial time to actually
24 make a decision.

25 THE COURT: What I said was I thought we

1 would be fine and if there wasn't any problems we'd just
2 follow the usual procedure.

3 MR. GAMMICK: Okay.

4 THE COURT: But certainly the defense -- what
5 I did was I left it open for the defense to renew its
6 motion if there was some specific problem.

7 Motion in Limine Regarding Custody Status of
8 the Defendant. We did the same thing in that on the
9 August 4th order.

10 Motion in Limine Regarding Prior Bad Acts
11 we've just dealt with. The prior bad act, the only thing
12 that we haven't resolved either by stipulation today is
13 the issue with regard to the pointing the pistol and
14 offering to kill one of the white people depicted in the
15 picture. In your description, I'm assuming that there
16 were four white people and that you're describing Jesus
17 Christ as a depiction of a white person.

18 MR. STANTON: No, I don't know. The Court's
19 mentioned that twice now about Jesus Christ.

20 THE COURT: That's in the transcript.

21 MR. STANTON: No, there's three people in the
22 picture. Jesus Christ is not the fourth.

23 THE COURT: It's not a composite of some
24 kind?

25 MR. STANTON: He didn't reference killing one

1 particular, he said he was going to kill all three. At
2 least that was what Mr. Kini Kini said he observed by his
3 behavior and the actual statements he made.

4 THE COURT: Okay. So that particular issue
5 we're going to wait and hear what the rest of the evidence
6 is.

7 MR. STANTON: The confusion may be, Your
8 Honor, there's another picture on the same wall, separate
9 distinct picture of Jesus Christ; but the reference of his
10 behavior and his comments were not directed, at least as
11 far as I know, towards Jesus Christ.

12 THE COURT: Okay. That was a concern to the
13 Court because we weren't dealing with just incensing --

14 MR. STANTON: As far as I know, Jesus Christ
15 has nothing to do with this case.

16 THE COURT: Okay. Okay. We have Motion in
17 Limine Regarding Gruesome Photographs. I've given you my
18 ruling, but I'm also going to codify it in a ruling, in an
19 order that you'll receive tomorrow.

20 Motion for Hearing to Determine Competency of
21 Witnesses Under the Age of 14 Years. That was ruled upon
22 on August 4th.

23 Motion for Proper Number of Jury Veniremen.
24 That came out of August 4th. It was decided then.

25 Motion for Additional Peremptory Challenges.

1 That was denied August 4th.

2 Motion to Expand Jury Admonition. It's in
3 the August 4th order.

4 Motion to Sever. It was decided on August
5 4th.

6 Motion in Limine Regarding Reference to Gang
7 Affiliation. We've dealt with that by stipulation today.

8 Motion to Avoid Death Prone Jury. I'm going
9 to give my ruling in a written order tomorrow. That was
10 submitted previously.

11 Motion to Preclude Photographs and Television
12 Coverage in the Courtroom. I've orally entered an order
13 today on it. And you'll receive a written order tomorrow.

14 Motion for Invocation of Rule of Exclusion
15 was granted on August 4th.

16 Motion for Early Jury List was granted in
17 part on August 4th.

18 Motion for Individual Voir Dire we're going
19 to get. Basically I denied that today but we're going to
20 have a written order out of the December 10th hearing
21 after I've talked to the jury consultant and we have our
22 hearing, then I'll give you a written order on the
23 procedure we're going to utilize for all of the voir dire.

24 Motion for all Background Information on
25 Prospective Jurors was ruled on on August 4th.

1 Motion for Exchange of Expert Witnesses was
2 ruled upon on August 4th.

3 MR. SPECCHIO: What was that last one?

4 THE COURT: Motion for Order to Exchange
5 Expert Witnesses. It was filed June 9th.

6 MR. STANTON: Your Honor, relative to that,
7 I'll talk with Mr. Specchio when this is over, but Mr.
8 Specchio knows at this juncture whatever experts, like,
9 for example, Ellen Clark, at this point there's nothing
10 really to hide as far as who is a potential witness. But
11 depending on how the evidence comes out regarding the
12 religion and the motive in this case, there may be
13 technically somebody that's an expert witness relative to
14 the Mormon religion that may be called in this case. But
15 I'll talk to Mr. Specchio about that, about who we would
16 be calling in that regard.

17 THE COURT: Would you be calling them in your
18 case in chief or in rebuttal?

19 MR. STANTON: It really would depend upon how
20 the case develops and goes. If the State believes that
21 there is some need to explain that the defendant's version
22 of, for example, the Lamanite warriors or whatever is
23 something that needs further explanation, for example,
24 that it's not accepted within the Tongan community, it's
25 rejected, no one believes in it and certainly the degree

1 of beliefs held by the defendant would be considered even
 2 within that community to be extreme, that would be
 3 something. And we may not, relative to the Court's ruling
 4 on that -- I know that there was several days in advance
 5 that we must exchange that. I hope the Court will give us
 6 some latitude along the lines of certainly subject matter
 7 that all the parties knows are going to be potentially
 8 involved here, who it may be, because we're obviously at
 9 the point of talking to individuals. Who is available,
 10 who is comfortable with doing it, number one, within the
 11 local community here, is something that we may not need to
 12 be massaging inside that Court's order.

13 THE COURT: Now, do you anticipate that that
 14 evidence would be presented in the guilt phase or in the
 15 penalty phase?

16 MR. STANTON: Your Honor, as far as I'm
 17 concerned -- it potentially could be in the guilt phase
 18 for the reasons I just mentioned, if for some reason the
 19 introduction of the evidence would need further
 20 explanation. Frankly, David Kini Kini, I think, might be
 21 the guy that could put this whole thing to rest about what
 22 it means and the history of the Mormon religion. He's a
 23 very articulate man. So there may not be any further need
 24 to go beyond his testimony.

25 As far as the penalty phase goes, certainly

1 not in the State's position, because his beliefs relative
 2 to the Mormon religion and the Lamanite warriors and
 3 Tongan Robinhood, other than to give some context to the
 4 jury that he did it with some motive as opposed to a
 5 purely random act, the State does not plan to introduce
 6 any evidence regarding the Mormon religion and his state
 7 of mind. I anticipate that the defense might do that. So
 8 for purposes of a rebuttal witness during the penalty
 9 phase to say the things I just said, that it was extreme,
 10 not widely accepted or held within the Mormon community,
 11 that's, I think, probably where it's most likely coming
 12 from the State.

13 THE COURT: Well, certainly Mr. Specchio is
 14 on notice at this time that there's a potential for
 15 calling an expert witness with regard to particular tenets
 16 of the Mormon religion. As soon as you know who that
 17 witness will be, I'd ask you let Mr. Specchio know.

18 MR. STANTON: We will, Your Honor.

19 MR. SPECCHIO: That's assuming the Court's
 20 going to allow this testimony at all.

21 THE COURT: That's right. That's just for
 22 purposes of discovery and notice.

23 Now, we have the Motion in Limine Regarding
 24 the Arrest of the Defendant. As I understood this
 25 morning, the defense withdrew that pursuant to the outline

1 that was marked as Exhibit A and the Court's order with
2 regard to disclosure to the defense of additional
3 statements made by the defendant prior to its being
4 admitted before the jury; is that correct?

5 MR. STANTON: That's my understanding, Your
6 Honor.

7 THE COURT: Mr. Specchio?

8 MR. SPECCHIO: I'm prepared to stipulate to
9 the contents of that exhibit. I think we had made -- so
10 long as we understand that one of these guys isn't going
11 to come in and start talking about admissions of any type
12 that haven't been presented to us.

13 THE COURT: Okay.

14 MR. STANTON: We won't have any jamolt
15 testimony.

16 MR. SPECCHIO: That's right. You never know
17 if they're a jamolt or not until after they testify, but
18 we don't want them coming in here and doing that kind of
19 stuff.

20 THE COURT: Based upon the representation,
21 the motion will not be ruled upon by the Court at this
22 stage because of the stipulation.

23 Motion in Limine Regarding Criminal History
24 of the Defendant. We don't have any criminal history of
25 the defendant that the State intends to utilize?

1 MR. STANTON: Not in the guilt phase, not in
2 the case in chief. And the record that he has I can't
3 even see being relevant even as rebuttal evidence in the
4 case in chief. It may have even marginal relevance under
5 a penalty phase. Defense has been provided with whatever
6 we have in that regard.

7 THE COURT: So the Court's ruling is today
8 that there's nothing to -- it's moot. There's no evidence
9 being offered.

10 MR. STANTON: Unless the defense is going to
11 provide us with something.

12 MR. SPECCHIO: No. We're going to hide that,
13 Judge.

14 (Laughter)

15 THE COURT: Okay. Motion for Jury
16 Questionnaire. That will be decided in totality at the
17 December 10th hearing. Motion in Limine Regarding the DNA
18 expert. I have required the supplemental information to
19 be provided to the Court. We'll do a separate written
20 order on that.

21 Motion to Compel State to Designate Trial
22 Witnesses was ruled upon on August 4th.

23 MR. SPECCHIO: In that regard, Your Honor, I
24 think we have an agreement that we're going to swap those
25 anyway in the next week or two.

1 THE COURT: Try to expedite the process?

2 MR. SPECCHIO: Yes. Exactly the word I was
3 looking for.

4 THE COURT: Motion to Disqualify Certain
5 Potential Jurors was ruled upon on August 4th.

6 MR. SPECCHIO: When was that one filed,
7 Judge?

8 THE COURT: June 18th.

9 MR. SPECCHIO: Thank you.

10 THE COURT: Motion to Allow Jury Consultants
11 and Consultants at Counsel Table. That was ruled upon on
12 August 4th.

13 Motion to Declare Nevada's Death Penalties
14 Unconstitutional will be in the order you'll receive
15 tomorrow.

16 Motion in Limine Regarding racially mixed
17 Jury will be in the order you'll receive tomorrow.

18 Motion in Limine Regarding Undisclosed
19 Informants will be in the written order tomorrow.

20 Motion in limine Regarding Undisclosed
21 Informants will be ruled upon in the order tomorrow.

22 Motion to Exercise Right of Allocution will
23 be in the written order tomorrow.

24 Motion to have 48 Hours Between Guilt and
25 Penalty Phase, if we get to a penalty phase, will be ruled

1 upon in the order tomorrow.

2 Motion for Change of Venue is moot until
3 after the voir dire. So I'll rule upon it at the
4 conclusion of the voir dire.

5 MR. SPECCHIO: It's just reserved at this
6 point?

7 THE COURT: Reserved.

8 Motion Regarding Hearsay Evidence at the
9 Penalty Hearing. You'll receive your written order on
10 that. That was filed July 15th.

11 MR. SPECCHIO: That was hearsay evidence at
12 penalty phase?

13 THE COURT: Right.

14 Motion to Limit Victim Impact Statements.
15 That will be in tomorrow's order.

16 Motion Regarding Future Dangerousness of the
17 Defendant will also be in tomorrow's order.

18 Motion to Exclude Inadmissible and
19 Prejudicial Evidence at Penalty Hearing will be in
20 tomorrow's order.

21 Motion for Production of all Aggravating
22 Factors and Character Evidence that the State intends to
23 produce at the penalty hearing. Also tomorrow.

24 Motion for Consideration of all Mitigating
25 Factors. That will be in the written order. It will be

1 something that will have to be revisited at the penalty
2 phase/jury instruction discussion.

3 MR. SPECCHIO: Your Honor, in that regard,
4 too, I think the record should reflect that on July 16th
5 we filed our notice of the mitigating factors.

6 THE COURT: I do have that notice filed on
7 that date.

8 Motion for Bifurcated Penalty Hearing.
9 You'll receive my order tomorrow on that in writing.

10 And Motion to Strike Aggravating
11 Circumstances, you'll receive a written order with regard
12 to that. But to let you know, that's going to be held in
13 abeyance until the conclusion of the State's case and the
14 penalty phase.

15 MR. SPECCHIO: I'm sorry, which one?

16 THE COURT: That's your Motion to Strike the
17 Aggravating Factors. I'm not going to rule on that until
18 the conclusion of the State's case.

19 MR. SPECCHIO: Okay. Thank you.

20 THE COURT: Now, that's all I have for
21 motions filed by the defense. Do you have any additional
22 motions that you have filed and I haven't ruled on?

23 MR. SPECCHIO: Your Honor, we have four
24 motions that we've withdrawn. I'm sorry. No, they
25 haven't been filed. And I think that covers them all,

1 then. Thank you, Your Honor.

2 THE COURT: It's 41 motions?

3 MR. SPECCHIO: Yes.

4 THE COURT: That matches your count?

5 MR. SPECCHIO: Yes. What we had was three
6 that were withdrawn and four that we didn't file, but we
7 didn't even file the withdrawn ones, so there was eight.

8 THE COURT: Now, do you anticipate any
9 additional motions in this case?

10 MR. SPECCHIO: I don't think so. If there
11 are, they'll be minimal procedural motions. I don't
12 anticipate any more.

13 THE COURT: If we have the hearing set for
14 two weeks from now, almost three weeks from now, so I
15 would want to be able to consider every last motion that
16 you can think of.

17 MR. SPECCHIO: I don't really anticipate
18 there will be any, Judge.

19 THE COURT: But we do have that hearing time
20 set aside, although I don't think it will take very long
21 to decide the jury.

22 Mr. Gammick, do you have any additional
23 motions for the State? Any motions at all?

24 MR. GAMMICK: No, your Honor.

25 THE COURT: Then we'll proceed with our

1 current status. We have a next hearing date set for
2 December 10th. Although we have a specific order of
3 business at the December 10th hearing, something that
4 comes up between now and then, please be sure to raise it,
5 even though it's outside the jury voir dire issues.

6 We also still have the hearings scheduled
7 within three days of trial. So those will be set.

8 I want to let you know that it looks like we
9 will probably be doing realtime for the trial. If you'd
10 like to find out about realtime or utilize your own laptop
11 to use realtime while I'm using it, talk to the court
12 reporting service. I'd like to know early, not late, so
13 we can get electricity to your tables. But that will
14 probably be utilized. You will definitely have your
15 dailies, but we will probably be doing realtime in this
16 trial also.

17 MR. STANTON: We'd be interested, Your Honor.

18 MR. SPECCHIO: Sure. Sign me up.

19 THE COURT: Do you have a laptop, Mr.
20 Specchio?

21 MR. SPECCHIO: No, but we can buy one. The
22 county has a lot of money.

23 THE COURT: You can rent one, maybe. Sierra
24 Nevada Reporters are my court reporter. In fact, the
25 court reporter who is present is a certified realtime

1 reporter and she'll be reporting, her or Eric Nelson,
2 throughout the trial.

3 At the conclusion of today's hearing, if you
4 feel comfortable, ask her about what you need if you've
5 never done it. Set up a time and she'll be glad to walk
6 you through it and train you minimally on realtime before
7 you're ready to go.

8 MR. STANTON: I have one final oral motion;
9 that is, to return Exhibits 4, the series 4 and 5 to the
10 State.

11 THE COURT: Okay. And the clerk has made
12 copies; is that correct?

13 THE CLERK: Correct.

14 THE COURT: The copies will be retained by
15 the Court. Mr. Specchio, you have no objection to
16 returning the originals to Mr. Stanton for trial
17 preparation?

18 MR. SPECCHIO: No. He's going to provide
19 originals or copies to both the clerk and myself; is that
20 right?

21 THE COURT: Actually, he's going to give you
22 a copy, I guess, and himself a copy, and he's going to
23 give us back the originals. In the interim we will keep a
24 Xerox copy of the originals.

25 MR. SPECCHIO: That's fine.

1 THE COURT: Thank you. The Court's in
2 recess.

3 (Recess taken at 2:35 p.m.)
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Case No. CR98-0516

Dept. No. 4

FILED

JAN 14 1999

AMY HARVEY
By: *m. Stone*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,)	
)	
Plaintiff,)	TRIAL
)	VOLUME 3
vs.)	January 13, 1999
)	
SIAOSI VANISI,)	Reno, Nevada
)	
Defendant.)	

APPEARANCES:

For the Plaintiff: RICHARD A. GAMMICK
District Attorney
DAVID L. STANTON
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The Defendant: SIAOSI VANISI

ORIGINAL

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

SIERRA NEVADA REPORTERS (702) 329-6560

I N D E X

STATE'S OPENING STATEMENT.....	539
DEFENSE'S OPENING STATEMENT.....	547

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
BRENDA MARTINEZ	553			
CARL H. SMITH	563	591	608	610
ANDREW GUY CIOCCA	617	625		
WILLIAM STEVENSON	627	641	648	
MELE MAVENI	650	671	681	683

<u>EXHIBITS:</u>	<u>Marked for Identification</u>	<u>Admitted into Evidence</u>
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(Exhibits 1 - 37 previously marked or identification)

38	532	
37		533
6		562
9		565
12		573
13		573
17-A		578
15-A		580
16-A	580	
16-B	580	
18		584
14-A		590
14-B		590
24-A		610
24-B		610
17-B		622
17-C		622
19		636
17-D	639	640

RENO, NEVADA, WEDNESDAY, JANUARY 13, 1999, 11:14 A.M.

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(Exhibits 1 through 37 previously marked off the record.)

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

THE COURT: Counsel, your motion.

MR. BOSLER: Thank you, Your Honor. We previously made a motion for change of venue. That was denied by the Court.

I think I'd just like the record to reflect if you take into consideration the two days of voir dire that we have gone through, that motion should have been granted. Instead, at this point we're faced -- we're forced to make a motion for a mistrial. I think if you look at the jury composition today, it also includes people who have admittedly formed opinions about the case, people who have admittedly expressed they can't be fair to Mr. Vanisi as he sits here.

We have, based upon the Court's denial of our opportunity to have additional peremptory challenges, we have been forced to use our peremptory challenges to excuse people that need to be excused and leave those people on that should have been excused for cause. So we're still left at this point with a jury panel that includes people

1 who have expressed that they formed opinions and cannot be
2 fair to Mr. Vanisi.

3 Going forward with the trial at this point is
4 going to be kind of a farce. We move for mistrial, Your
5 Honor.

6 THE COURT: Mr. Stanton.

7 MR. STANTON: Yes. Your Honor, first of all,
8 counsel cites back to their motion for change of venue
9 apparently as authority today. No authority cited in their
10 motion speaks to the proposition that they are asking this
11 Court to claim a mistrial, or I'm assuming although
12 Mr. Bosler didn't reinvigorate the motion for change of
13 venue, but the relief they requested is not supported by any
14 legal authorities in the written motion for change of venue.
15 Nor does Mr. Bosler cite any new authority today.

16 Mr. Bosler says there are two bases for which
17 the jurors that I guess that they wanted to exclude but had
18 insufficient peremptory challenges. One is that the people
19 have already formed an opinion. That is not a legal basis
20 to exclude a juror for cause. Not in any of the authority
21 they previously cited; obviously they didn't cite any
22 authority this morning.

23 Counsel then cites the fact that there are some
24 jurors on this panel that have expressed an opinion that
25 they cannot be fair to Mr. Vanisi. I don't believe the

1 record reflects that. It is inaccurate summation of the
2 jurors' minds that are on this panel.

3 I don't believe there is a basis either to
4 declare a mistrial on that, for those reasons[, and if they
5 are, and I'm not sure they are, but if they are making a
6 motion for a change of venue, they haven't satisfied the
7 requirements of the legal authorities that they cited in
8 their opinions, in their motion and authorities for change
9 of venue. That is that a fair -- even assuming their
10 argument relative to the panel as it is currently comprised,
11 they fail to establish that the remaining members of this
12 jury somehow prevented them from getting a fair and
13 impartial trial save and except for the Court's rulings
14 previously. That's the basis to get a change of venue.

15 So it is two different motions that they are
16 making. One is that there is a motion based upon perceived
17 defects in the panel, and the exercise of the denial of the
18 motion for challenge for cause. Then there is a secondary
19 issue of whether or not they have met the requirements for
20 change of venue.

21 And Mr. Bosler hasn't made any argument
22 relative to the basis of the change of venue. I would
23 request that the original juror questionnaire and the
24 supplemental juror questionnaire be made a permanent part of
25 this record relative to the jurors that were called in this

1 case, to include obviously the members that are currently
2 comprised of the panel and the alternates.

3 In addition, Your Honor, I'd request that the
4 defense lay out on the record now or at sometime during the
5 pendency of this proceeding what jurors that are sitting on
6 this panel now, in original form or alternate form, that
7 they feel are imperfect based upon their previous motions
8 for challenges for cause.

9 Unless the Court had any other specific
10 questions of the State, that would be my response; and if
11 Mr. Bosler wants to develop the record any further relative
12 to if indeed he is making and renewing a motion for change
13 of venue, that I have an opportunity to respond specifically
14 to that argument.

15 THE COURT: Anything further, Mr. Bosler?

16 MR. BOSLER: We'll submit the matter, Your
17 Honor.

18 THE COURT: The motion for change of venue was
19 taken under submission and deferred until completion of jury
20 selection. Based upon the original motion for change of
21 venue and the Court's analysis of the circumstance at the
22 conclusion of the jury selection, I deny that motion.

23 With regard to your motion for mistrial, the
24 Court finds no legal basis to grant such a motion. I do not
25 agree with the factual representations. The record of

1 course will reflect the factual basis or lack thereof for
2 your motion. But I don't perceive it to be valid at this
3 time. So your motion is denied.

4 MR. BOSLER: Your Honor, in that regard we
5 don't object to the Court making part of the record the
6 questionnaires from people who are now sitting in the jury
7 pool and as alternates. This is the special questionnaire.

8 THE COURT: I thought we talked about that.
9 The clerk has marked those as an exhibit to the jury
10 selection, and they are filed under seal subject to being
11 opened at any time that someone might want to review it for
12 appellate purposes.

13 MR. BOSLER: Thank you, Your Honor.

14 MR. GAMMICK: Your Honor, I have one objection
15 to make this morning. Mr. Bosler did show me some
16 transparencies that he intends to use in his opening. They
17 do have some writing on them.

18 They are photographs of the defendant I believe
19 at younger times. They do have some writings on them that I
20 object to at this time. I don't see the relevancy with
21 respect to particularly the writing on the photographs.

22 THE COURT: Mr. Bosler?

23 MR. BOSLER: Your Honor, may I approach?

24 THE COURT: Yes.

25 MR. BOSLER: The record should reflect I'm

2 THE COURT: Can I see it on the transparency?

13 THE COURT: That is going to come in in the
14 quilt phase?

15 MR. BOSLER: Yes, Your Honor, the trial.

20 MR. BOSLER: Your Honor, certainly character is
21 a relevant trait for a trial. The fact that they may think
22 these people have not seen Mr. Vanisi in enough time to
23 present strong evidence goes to the weight, not to the
24 admissibility. I certainly expect them to bring that up in
25 their cross-examination. But the statute doesn't have any

1 time limitations for character evidence.

2 THE COURT: But you can't put in evidence of
3 good character until he puts in evidence of bad character.

4 MR. BOSLER: I disagree, Your Honor. Character
5 evidence in itself can be a defense to a crime. The fact
6 that he is charged obviously means that they are saying he
7 is a bad character.

8 MR. GAMMICK: Your Honor, also I have some
9 concerns with how does the language show he is peaceful.
10 "Most gullible" on one photograph and "biggest mooch" on
11 another photograph.

12 THE COURT: Do you want to address that?

13 MR. BOSLER: Your Honor, I believe that would
14 be part of the foundation for the witness's ultimate
15 expression as to Mr. Vanisi's character for peacefulness,
16 including he has other traits that are consistent with that
17 peacefulness. That's part of that foundation.

18 MR. GAMMICK: Your Honor, we have no objection
19 to character evidence as long as it comports to the statute
20 as to specific instances of good character. But I do have
21 objection to the wording that is on those photographs.

22 THE COURT: So the specific character trait is
23 peacefulness?

24 MR. BOSLER: Yes, Your Honor.

25 THE COURT: You are offering that in this

1 trial?

2 MR. BOSLER: Yes, Your Honor.

3 THE COURT: I'm going to then at this time find
4 that "biggest mooch" has no relevancy to character for
5 peacefulness, and neither does "most gullible." I don't
6 know about the pictures with the women in them, that that's
7 necessary. You say that is necessary to establish?

8 MR. BOSLER: Those two photographs that say
9 "biggest mooch," "most gullible," those are things that are
10 character traits for -- of a peaceful person. Those would
11 be the foundation that ultimately helps this witness who is
12 going to be called lay a character defense because you can't
13 talk about specific instances in character. It has to be
14 reputation opinion evidence. In order to have a reputation,
15 you have to have a foundation. That's part of the
16 foundation.

17 THE COURT: Okay. I'll let -- I guess I'll let
18 the witnesses testify if they are going to testify as to his
19 reputation for peacefulness. But the "most gullible" and
20 the "biggest mooch" will be deleted. You can do that
21 probably just with a sticker or something so it doesn't show
22 up on your transparency.

23 What is the necessity for the photograph from
24 high school?

25 MR. BOSLER: The witness that is going to be

1 called knows him from high school.

2 THE COURT: She needs it for identification
3 purposes?

4 MR. BOSLER: Yes.

5 THE COURT: We better mark this exhibit.

6 MR. BOSLER: Thank you, Your Honor.

7 THE COURT: Had you planned on marking it?

8 MR. BOSLER: I guess I'd move to have it
9 introduced at this point.

10 THE COURT: We'll have it marked.

11 (Exhibit No. 38 marked.)

12 MR. GAMMICK: Your Honor, does the Court just
13 mark consecutive numbers for all evidence?

14 THE COURT: Yes.

15 THE CLERK: Exhibit 38 marked. Exhibits 1
16 through 37 previously marked.

17 THE COURT: Exhibit 38 has been marked.

18 Based upon the objection of the State and the
19 Court finding no relevance of being a mooch or gullible
20 necessarily for the purpose of opening statement and finding
21 the best evidence is in fact the witness's testimony and not
22 captions on photographs, and with the representation that
23 the defense will in fact be able to authenticate these
24 pictures and move forward with witnesses, based upon that I
25 will allow it to be used in opening statement.

1 MR. BOSLER: Thank you, Your Honor.

2 THE COURT: They are still subject to
3 authenticity and foundation through the witnesses before it
4 goes to the jury, in the jury room.

5 MR. GAMMICK: Your Honor, I had one other quick
6 matter. As we had marked Exhibit 37 this morning, which is
7 times of the various events that occurred on January 13th,
8 and I believe Mr. Specchio will stipulate to that being
9 admitted.

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

11 THE COURT: Exhibit 37 is admitted.

12 (Exhibit No. 37 admitted.)

13 THE COURT: The bailiff approach, please.

14 MR. GAMMICK: Your Honor, if I may, Mr. Bosler
15 has shown me the transparencies with that particular
16 language either marked over or taped over. I have no
17 objection to that for the opening, and I would reserve the
18 right to object to it later on in the trial should we find a
19 basis.

20 THE COURT: That's fine. It's admitted subject
21 to the foundation being laid.

22 Are you ready, Mr. Bosler?

23 MR. BOSLER: Yes, Your Honor.

24 THE COURT: Anything further from counsel?

25 MR. GAMMICK: No.

1 THE COURT: Counsel, I have notified the jury
2 that we're going to go straight through opening statements.
3 It is my understanding opening statements will take
4 approximately an hour, maybe a little bit more than an hour.
5 Is that my understanding?

6 MR. SPECCHIO: An hour?

7 THE COURT: Between both of them. If it takes
8 that long. We're going to go straight through. Don't
9 expect to get your break at noon. We're going to go
10 straight through opening statements.

11 MR. GAMMICK: Very well, Your Honor.

12 THE COURT: Bring the jury in, please.

13 Audience please be seated.

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

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

18 MR. GAMMICK: Yes, Your Honor.

19 MR. SPECCHIO: Yes, Your Honor.

20 MR. BOSLER: Yes, Your Honor.

21 THE COURT: Thank you. Good morning, ladies
22 and gentlemen of the jury. Appreciate you all being here on
23 time. I know you were. At 11:00 you were all here. The
24 bailiff told me.

25 We have been here and working. I don't want

1 you to think we left you in there because we were ignoring
2 you. Hopefully our guesstimates will be better in the
3 future.

4 As the bailiff has instructed you, we will go
5 and hear opening statements today before you take your lunch
6 hour.

7 The first thing we will do, however, before we
8 hear opening statements, is the clerk will read the
9 Information and state the plea entered by the defendant.

10 THE CLERK: "Case No. CR98-0516, Department No.
11 4. In the Second Judicial District Court of the State of
12 Nevada, in and for the County of Washoe, The State of
13 Nevada, Plaintiff, versus Siasos Vanisi, also known as Pe,
14 also known as George, defendant.

15 "Information: Richard A. Gammick, District
16 Attorney, within and for the County of Washoe, State of
17 Nevada, in the name and by the authority of the State of
18 Nevada, informs the above entitled Court that Siasos Vanisi,
19 also known as Pe, also known as George, the defendant above
20 named, has committed the crimes of:

21 "Count I, murder in the first degree, a
22 violation of NRS 200.010 and NRS 200.030, and NRS 193.165, a
23 felony, in the manner following:

24 "That the said defendant, on the 13th day of
25 January, A.D., 1998 or thereabout and before the filing of

1 this Information, at and within the county of Washoe, state
2 of Nevada, did willfully, unlawfully, and with malice
3 aforethought, deliberation, and premeditation, kill and
4 murder Sergeant George Sullivan, a human being, by means of
5 repeated blows to the head and face with a hatchet, and/or
6 other implements, and or other blunt force trauma inflicted
7 to the head and upper torso thereby inflicting mortal
8 injuries upon the said Sergeant George Sullivan from which
9 he died on January 13, 1998; or

10 "That the said defendant during the course of,
11 and in furtherance of an armed robbery, did willfully and
12 unlawfully murder Sergeant George Sullivan in that the said
13 defendant on or about January 13, 1998, did kill and murder
14 Sergeant George Sullivan, a human being, in the perpetration
15 and/or the furtherance of an armed robbery at the University
16 of Nevada, Reno, at or near the information kiosk with the
17 use of a deadly weapon, to wit: a hatchet, and/or other
18 implements; or

19 "That the said defendant on or about January
20 13, 1998, did kill and murder Sergeant George Sullivan, a
21 human being, by lying in wait, in that the said defendant
22 did watch, wait and conceal himself from Sergeant George
23 Sullivan, with the intention of killing Sergeant George
24 Sullivan, in that he hid and waited until Sergeant George
25 Sullivan completed a traffic stop, then observed and

1 followed Sergeant George Sullivan to a location where he was
2 alone and then ambushed Sergeant George Sullivan, inflicting
3 mortal injuries to his person from which he died on
4 January 13, 1998.

5 "Count II, robbery with the use of a deadly
6 weapon, a violation of NRS 200.380 and NRS 193.165, a
7 felony, in the manner following:

8 "That the said defendant on the 13th day of
9 January A.D., 1998 or thereabout and before the filing of
10 this Information, at and within the county of Washoe, state
11 of Nevada, did willfully and unlawfully take personal
12 property, to wit: a Glock .45 caliber handgun; Glock
13 'magazines'; a flashlight; and handcuffs from the person of
14 Sergeant George Sullivan, at or near the information kiosk
15 located at the University of Nevada, Reno campus, Washoe
16 County, Nevada, against his will, and by means of force or
17 violence to his person and with the use of a hatchet, and/or
18 other implements, which the said defendant used to strike
19 Sergeant George Sullivan repeatedly in the head and face,
20 and/or other blunt force trauma inflicted to the head and
21 upper torso.

22 "Count III, robbery with the use of a firearm,
23 a violation of NRS 200.380 and NRS 193.165, a felony, in the
24 manner following:

25 "That the said defendant on the 13th day of

1 January A.D., 1998 or thereabout and before the filing of
 2 this Information, at and within the county of Washoe, state
 3 of Nevada, did willfully and unlawfully take personal
 4 property, to wit: U.S. currency from the person of Patricia
 5 Misito, the clerk at the 7-11 store located at 710 Baring
 6 Boulevard, Washoe County, Nevada, against her will, and by
 7 means of force or violence or fear of immediate or future
 8 injury to her person and with the use of a large caliber
 9 handgun which the said defendant displayed to the victim and
 10 demanded money.

11 "Count IV, robbery with the use of a firearm, a
 12 violation of NRS 200.380 and NRS 193.165, a felony, in the
 13 manner following:

14 "That the said defendant on the 13th day of
 15 January A.D., 1998 or thereabout and before the filing of
 16 this Information, at and within the county of Washoe, state
 17 of Nevada, did willfully and unlawfully take personal
 18 property, to wit: U.S. currency from Diana Lynn Shouse, the
 19 clerk at said establishment, at the Jackson Food Mart
 20 located at 2595 Clearacre Lane, Washoe County, Nevada,
 21 against her will, and by means of force or violence or fear
 22 of immediate or future injury to her person and with the use
 23 of a large caliber handgun which the said defendant
 24 displayed to the victim and demanded money.

25 "Count V, grand larceny, a violation of NRS

1 205.220, a felony, in the manner following:

2 "That the said defendant on the 13th day of
3 January A.D., 1998, or thereabout, and before the filing of
4 this Information, at and within the county of Washoe, state
5 of Nevada, did willfully and unlawfully steal, take and
6 drive away the personal property of Louis D. Hill, to wit:
7 a certain black, four door, 1993, Toyota Camry bearing
8 Nevada license plate 029 HPY, with the intent then and there
9 to permanently deprive the owner thereof.

10 "All of which is contrary to the form of the
11 statute in such case made and provided, and against the
12 peace and dignity of the State of Nevada."

13 Richard A. Gammick, District Attorney, Washoe
14 County, Nevada.

15 David L. Stanton, Chief Deputy District
16 Attorney.

17 To which the defendant has entered pleas of not
18 guilty.

19 THE COURT: We have now come to the stage in
20 the proceedings when you may hear opening statements of
21 counsel. The law allows the State to go first.

22 Mr. Gammick.

23 MR. GAMMICK: If it please the Court, counsel,
24 ladies and gentlemen of the jury:

25 During the course of this trial we will prove

1 to you that Siaoisi Vanisi, this man sitting right here,
2 murdered Sergeant George Sullivan of the University of
3 Nevada, Reno, Police Department on January 13th, 1998, one
4 year ago today. We will also prove to you that Siaoisi
5 Vanisi robbed Sergeant Sullivan and Siaoisi Vanisi robbed the
6 7-11 in Sparks that night, still on the 13th; that that
7 night he also robbed another store in north Reno and that he
8 stole a car and fled this jurisdiction to go to Utah.

9 Let's talk about some of the things you will
10 see during this trial. First of all, let's set the scene.
11 This is an overhead photograph of the university campus.
12 You will hear evidence that Sergeant George Sullivan, on
13 Monday night, January 12th, 1998, reported for duty as he
14 had for 19 years as a police officer. He started his shift
15 at 11:00 p.m. that night, which you may see in some reports
16 as 2300. Law enforcement does use military time.

17 He started his shift that night with Officer
18 Carl Smith, also of the University of Nevada, Reno, Police
19 Department.

20 Quiet night. Not much going on. The campus on
21 winter break.

22 Sometime about 0017, which would be 17 minutes
23 after midnight, Sergeant Sullivan called in that he was
24 stopping to talk to some people in this area of Ninth and
25 Center just south of the university campus. Officer Smith

1 covered him.

2 While Officer Smith was going to that location,
3 he made a turn right here at Ninth and Center. At that time
4 he saw another individual standing next to a tree. That
5 individual was described as a large man with long dark hair,
6 with facial hair, wearing a coat. This individual looked at
7 Officer Smith in a manner that he will describe for you.

8 Officer Smith remembered that individual
9 because he stood out to him. What you will also hear is
10 just a little earlier, shortly after midnight, an individual
11 matching the same description was seen by another person in
12 the parking lot just south of Lawlor Events Center. That
13 person also caught the witness's attention, and I'll let her
14 describe why.

15 She was there to pick up her father who works
16 at the university. After she picked up her father, she came
17 back down Virginia Street and again saw that same person.
18 He was located in the area right here close to Manzanita
19 Lake. This is Manzanita Lake at the University of Nevada.
20 He was walking in a southbound direction. That was
21 approximately three or four minutes before Officer Smith saw
22 him here.

23 At 0025, eight minutes later after Sergeant
24 Sullivan had made this stop, he advised dispatch he was done
25 talking to the people who are named Wood.

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1 Sergeant Sullivan went from this location to
2 this location, which is up by the information kiosk just
3 north of Ninth and Center on the university campus. An area
4 used by police officers all the time from UNR to go up and
5 write reports and do what they need to do because it's well
6 lit at night.

7 Officer Smith hung around the area for a few
8 minutes, and he left and went elsewhere on campus. While
9 this is going on, at approximately 20 minutes to 1:00 that
10 morning, we have another student at UNR who is in the area
11 of Seventh and Wells. He walks back to UNR. He goes to the
12 area of Ninth and Center. He goes up the stairs that lead
13 up that hill to the campus.

14 As he's approaching the kiosk, he sees a police
15 car sitting there. He sees an officer on the ground, and he
16 believes that there is some type of problem with the car
17 because he sees a large pool of fluid.

18 As he gets closer, he realizes that that pool
19 of fluid is blood and that the officer is injured. That
20 student, Mr. Andrew Ciocca, leaves that scene as soon as he
21 checks the officer and sees he is hurt bad, goes right next
22 door in that same immediate area and makes a 911 telephone
23 call to dispatch. He advises them they have a police
24 officer down.

25 Officer Smith, who was up in this area of the

1 campus, is notified of the problem, and he starts responding
2 to that scene, as do a lot of other Reno Police Department
3 officers.

4 They get to the scene. Mr. Ciocca, right after
5 he makes the phone call, goes back, rolls the officer over,
6 checks him, says he's still warm, but he does not find any
7 signs of life.

8 Officer Smith arrives at the scene. He checks.
9 He first reports that Sergeant Sullivan is found and he's
10 been shot, due to the damage that was done.

11 Mr. Ciocca, while Mr. Smith -- right before
12 Officer Smith got there, he gets on the radio and says that
13 it is Sullivan.

14 Reno Police Department officers are responding.
15 They start sealing off this entire area, and the manhunt is
16 on.

17 Let me digress here just a moment to explain to
18 you why we're here this morning, why we're doing what we're
19 doing now. If this was perfect, we could put a trial on for
20 you as it should go. We would start with item number 1,
21 witness number 1, and proceed right through chronologically.
22 That won't happen that way due to illness, putting witnesses
23 on, their schedules when we can get people in.

24 This is kind of like a road map. The opening
25 statement is to tell you what the evidence is going to be

1 showing you so you can put it in perspective and see where
2 various things go. When we're done with the trial, then we
3 will do closing and tell you exactly where everything fit.

4 It may get a little confusing because you will
5 hear the reference made Monday night and Tuesday night and
6 these different nights. Please keep in mind that all of the
7 charged crimes occurred on Tuesday, January 13th, 1998,
8 starting just after midnight and going til approximately
9 11:15 that night. It is almost a 24-hour crime spree.

10 The manhunt is on. At this time one year ago,
11 no one knew who did this that was involved with law
12 enforcement.

13 You will hear evidence about how a phone call
14 was made Tuesday evening, how a report was made to Secret
15 Witness, and the investigation started focusing. The
16 suspect was identified. Information was put out to the
17 media and broadcast. You'll see what was put out to the
18 media as far as a drawing of a person who was seen at the
19 scene. You will also see photographs that were used.

20 Once that information hit the media, then we
21 wind up with an armed robbery at the 7-11 on Baring next to
22 the YMCA. There is another armed robbery up close to the
23 area of where U.S. 395 and McCarran join each other.

24 You'll hear witnesses testify that this is the
25 man that committed those two armed robberies.

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1 And listen for something else because there is
2 a link here. He was armed with a semiautomatic Glock
3 handgun. The same gun that was taken off the body of
4 Sergeant George Sullivan, along with the rest of his pistol
5 belt and his equipment that was ripped from his body.
6 You'll see the belt buckle laying in the pool of blood.

7 That equipment was recovered. After the
8 robberies there's an arrest warrant requested and a
9 nationwide broadcast that we're looking for this individual.
10 Salt Lake City, Utah, notifies law enforcement agencies here
11 that they believe they have him there. After a standoff
12 with the police there, Defendant Vanisi was taken into
13 custody.

14 You are going to see some different people
15 during the course of this trial. One of them is Vainga
16 Kinikini, cousin to Siaosi Vanisi. He lives in Salt Lake
17 City; Texas. Has quite a colorful history. He is a
18 convicted felon. And he knows a lot about street life.

19 He will give you a blow-by-blow description of
20 what happened between 0025 and 0057 when Mr. Ciocca made his
21 call to 911. Listen to the detail. Watch the descriptions
22 of the person involved in this. Look at the various things
23 that are done.

24 You will find that Mr. Vanisi came to Reno
25 wanting to kill a cop. He said that several times.

1 Listen to the witnesses. You will find that
2 Mr. Vanisi purchased a hatchet from Wal-Mart for \$7 and took
3 it with him, to even include a dance, and was swinging this
4 hatchet around, again making statements about wanting to
5 kill a cop.

6 Listen to the evidence, and you make a decision
7 who this individual was that was on campus and close to
8 campus and watching Sergeant Sullivan just minutes prior to
9 his death. You will also hear evidence that Mr. Vanisi,
10 after the killing, had the gun and made statements about
11 having killed a cop.

12 I don't want to get into want Vainga Kinikini
13 is going to tell you because, as I said, he will give you a
14 lot of detail, direct from the mouth of Mr. Vanisi.

15 Ladies and gentlemen, you need to pay
16 attention. There are a lot of small details in this case
17 that will come together. The defendant wearing a wig to
18 change his appearance. Listen to how that tracks because
19 the way it was found after he discarded it.

20 Listen to the weapon belt and the other
21 equipment that belonged to Sergeant Sullivan and how it
22 tracks. The gun of Sergeant Sullivan was recovered in Salt
23 Lake City from the house where Mr. Vanisi was arrested.

24 Again, listen to all this detail. His clothing
25 was recovered. Listen to whose blood was found on the

1 Defendant Vanisi's clothing.

2 Once you have heard all of this evidence, once
3 you have seen this entire case, return to this courtroom
4 with a verdict of guilty of first degree murder, guilty of
5 armed robbery, guilty of armed robbery, guilty of armed
6 robbery, and guilty of grand larceny. Thank you for your
7 time.

8 THE COURT: Thank you.

9 Mr. Bosler. Will the bailiff remove the
10 exhibit?

11 MR. BOSLER: Your Honor, the record should
12 reflect the District Attorney was pointing and approaching
13 the defense table and raising his voice for the last portion
14 of his argument, just for the record. You are not going to
15 say that?

16 THE COURT: What do you want me to say? You
17 just said it.

18 MR. BOSLER: The record will so reflect?

19 THE COURT: Do you want me to agree with it? I
20 don't understand. Did you want me to reflect --

21 MR. BOSLER: I made the record, Your Honor.
22 Thank you.

23 THE COURT: Go ahead.

24 MR. BOSLER: Ladies and gentlemen, paying
25 attention to details, being careful, being fair, all things

1 that we have promised to do. What I want to do is first do
2 this. Can everybody see those pictures at all?

3 The first thing I guess I need to do is explain
4 to you. You have heard Siaosi Vanisi, also known as George,
5 also known as Pe. I need to probably give you a little
6 explanation about that.

7 Siaosi Vanisi, that's his Tongan name. What
8 happens is that he was cared for by an aunt. Siaosi, George
9 is Siaosi in English. The name George. Tafuna was the
10 aunt's name. He took that name when he went to school in
11 San Bruno, California. He went to high school.

12 Pe, the other name that you have and you have
13 heard mentioned in the Information, Pe means baby in Tongan.
14 So those are the reasons that there are three names listed
15 on that Information.

16 These high school photos, typical in every high
17 school yearbook. What you are going to hear is that in high
18 school, his high school friend is going to come up, and you
19 will hear good student, good athlete. In fact, you are
20 going to hear in their high school, Cappuchino High School
21 in San Bruno, there is a Tongan community, there is a white
22 Caucasian community.

23 You are going to hear that if there was
24 problems between those communities, there was a person who
25 was a peace maker between those two groups. That person,

1 George Tafuna, the person reflected in that yearbook photo.
2 Again, George Tafuna is Siaosi Vanisi. Just like an assumed
3 name, to stay with the aunt. George and Siaosi are the same
4 things.

5 Why is that important? Well, I guess we all
6 have to wonder, how does this person end up sitting in a
7 chair in a courtroom in another city defending himself of an
8 accusation of first degree murder and in fact ultimately
9 fighting for his life?

10 Ladies and gentlemen, you are going to hear
11 other things.

12 MR. GAMMICK: Excuse me, Your Honor. I object
13 to this comment at this stage of the proceedings.

14 MR. BOSLER: I'll move on, Your Honor.

15 THE COURT: Go ahead. Thank you.

16 MR. BOSLER: What we're going to have to -- the
17 questions we have to answer are how does a person come to be
18 accused of killing a UNR police officer.

19 You are going to hear some information both
20 through the State's case and through the witnesses we are
21 going to put up.

22 There is another person, another person who
23 worked at UNR. There is another person who is a boyfriend
24 of one of Mr. Vanisi's relatives. That person was
25 interviewed by the police.

1 That person, the evidence and circumstances
2 will show that that person, through 80 pages of transcript
3 while they are talking to the police, isn't truthful. When
4 that person becomes ultimately truthful, that person admits,
5 Well, if you check that gun, the Glock that is mentioned,
6 you might find my fingerprints on it, too.

7 In fact, that person is going to admit that he
8 was out to kill a police officer, and he might have said
9 that to some people. But he doesn't really mean it now,
10 that he wants to back off that statement.

11 Why is that important? Because this case, you
12 are going to have to answer a question to yourself, how does
13 this person come to be accused of this crime? From what you
14 know about him, how does he become accused of this crime?

15 The Reno police detectives will tell you he
16 thinks there is another person involved. You are going to
17 hear that during the robberies, the witnesses to the
18 robberies are going to say that they believe they see
19 another person in the car. It isn't just Mr. Vanisi there.

20 Ladies and gentlemen, we're not going to offer
21 a defense to those robberies. But the bigger issue and the
22 issue that we need to talk about is knowing that the State
23 is going to present this evidence and knowing that there is
24 another person. Can we all be fair when we consider the
25 evidence and not make some decision before we hear what

1 every witness has to say?

2 All I can do is ask you to be fair and consider
3 some of these details before you decide how did this person
4 got to sit in that chair and have to do what's happening
5 now. All I can do is ask you to be fair. Thank you.

6 Thank you, Your Honor.

7 THE COURT: Thank you. Well, ladies and
8 gentlemen of the jury, I told the State to bring their
9 witnesses for after lunch. I didn't know how long opening
10 statements would take.

11 So it looks like we're back on schedule, and
12 we're going to be doing the rest of the day on our regular
13 schedule. So I'm going to let you go to lunch now, ask that
14 you return at 1:30 p.m. or a few minutes before so we can
15 actually start at 1:30.

16 During this recess, I ask that you remember the
17 admonition I'm going to be giving you at all breaks.

18 Counsel, I ask that you return at 1:15.

19 See the jury back and be ready to go to court
20 by 1:30, but I want counsel here at 1:15.

21 Ladies and gentlemen of the jury, during this
22 break, you are reminded by me and admonished by me that it
23 is your duty not to discuss among yourselves or with anybody
24 else any matter having to do with this case. It is your
25 further duty not to form or express any opinion regarding

1 the guilt or innocence of the defendant until the case has
2 been finally submitted to you for decision.

3 You are not to read, look at or listen to any
4 news media accounts relating to this case should there be
5 any. You should not allow anyone to attempt to influence
6 you with regard to this case or discuss it with you in any
7 manner. If anyone should attempt to influence you with
8 regard to it, in any way, advise the bailiff as soon as you
9 return to court, who in turn will advise the Court.

10 Ladies and gentlemen of the jury, we are in
11 recess. Please go with the bailiff.

12 Court is in recess.

13 (Recess taken at 11:56 a.m.)

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1 RENO, NEVADA, WEDNESDAY, JANUARY 13, 1999, 1:32 P.M.

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3
4 (Whereupon, the following proceedings were held
5 in open court, in the presence of the jury.)

6 THE COURT: Counsel, can you stipulate to the
7 presence of the jury?

8 MR. GAMMICK: Yes, Your Honor.

9 MR. BOSLER: Yes, Your Honor.

10 THE COURT: You may proceed. Call your first
11 witness.

12 MR. GAMMICK: Your Honor, the State would call
13 Brenda Martinez.

14 **BRENDA MARTINEZ**

15 called as a witness on behalf of the Plaintiff,

16 having been first duly sworn,

17 was examined and testified as follows:

18 **DIRECT EXAMINATION**

19 BY MR. GAMMICK:

20 Q Would you please state your name and spell your
21 last name?

22 A My first name is Brenda. Martinez. My last
23 name is M-A-R-T-I-N-E-Z.

24 Q And Miss Martinez, are you a student at UNR?

25 A Yes, I am.

1 Q That is the University of Nevada, Reno?

2 A Yes.

3 Q How long have you a been student there?

4 A Three years. I'm a junior.

5 Q Do you have any relatives who work at the
6 university?

7 A My father works as a custodian at the
8 university.

9 Q And what shift does he work?

10 A He works graveyard. He works from 4:00 in the
11 afternoon until 12:00 midnight, quarter after 12:00.

12 Q How does that affect your life?

13 A Well, when I was living at home -- I'm not
14 currently with them anymore -- but when I was living at
15 home, I would pick my dad up every day, you know, after
16 work, because my dad doesn't have a car. So every day at
17 the same time, I will get off my house and go pick my dad up
18 at the same time, Monday through Friday.

19 Q That was at midnight?

20 A That was at midnight.

21 Q If you weren't there, what would happen?

22 A He will start walking and go take the bus.

23 Q And how long would he give you to get there?

24 A Probably about until 12:08 or 12:10 at the
25 most. If -- I knew that if I was one minute late, I will

1 not see him, and I will have to drive down Virginia Street
2 to go find him, because my dad is pretty stubborn.

3 Q Let me call your attention to Monday night,
4 January 12th, 1998, one year ago from yesterday.

5 A Uh-huh.

6 Q Did you pick up your dad that night?

7 A Yes, I did.

8 Q And where would you enter the campus in order
9 to go to pick him up?

10 A Through the parking lot that's between Lawlor
11 Events Center and Jot -- what is the name of that building?
12 The arts building, through that parking lot.

13 Q The Fine Arts Building?

14 A Fine Arts Building.

15 Q Is that up close to Lawlor Events Center?

16 A No. It's farther down.

17 Q On that night, what time did you enter that
18 parking lot?

19 A It was 12:08 when I went down to the parking
20 lot.

21 Q Eight minutes after midnight?

22 A Uh-huh.

23 Q Did you see anything unusual that night?

24 A A dog caught my attention. There was a dog in
25 the parking lot, and I took a good look at the dog because I

1 liked animals. And then I looked around to see if there was
2 somebody there, and there was a man walking in the parking
3 lot, and he caught my attention, too.

4 Q A big dog, small dog?

5 A It was a big dog.

6 Q And why the man? The man caught your
7 attention?

8 A Yes. He was walking funny, and he was walking
9 slanted towards Virginia Street. His appearance was
10 different.

11 Q Describe different.

12 A Well, he had a beanie cap, and he had long big
13 hair and a full-face beard. So he caught my attention the
14 way he was dressed, too. He had a long coat, and it was
15 tied with a rope.

16 I got to see him close because there was a
17 point where we kind of crossed, and I looked at him, and he
18 just scared me, because I always see the same people, same
19 cars, same everything, and he was not somebody that I would
20 see there at that time.

21 Q How close did you get to this man?

22 A Probably about I would say 15 feet.

23 Q And you were in your car?

24 A Yes, I was in my car.

25 Q He was walking?

1 A He was walking.

2 Q I believe you stated he scared you.

3 A Yes. When I was looking at the man and when we
4 crossed, I made eye contact with him, and I turned around
5 and started driving towards where I pick up my dad.

6 Q Okay. What did you do next?

7 A I went in through the other side of the parking
8 lot, and I waited for my father. It's right in front of the
9 social studies building, that little parking lot right
10 there.

11 Q Is that approximately the center of the campus?

12 A Approximately, yes. And I waited for my dad to
13 get off work.

14 Q Did you pick up your dad that night?

15 A Yes. My mom was with me in the car, but she
16 was asleep, and I had my dog with me in the car. By the
17 time I got off work, they were awake, my mom was awake.

18 Q Okay. Then after you picked up your dad, did
19 you leave the school or leave the parking lot?

20 A Yes.

21 Q What direction did you go when you left the
22 school?

23 A The same direction that I came in. I drove
24 south on North Virginia Street.

25 Q About how -- you say you came into the parking

1 lot at 12:08. How do you know that?

2 A Because like I said before, I had to be there
3 at that time so my dad would see me, would see my car parked
4 in front.

5 Q I mean, how do you know it was 12:08?

6 A I have a clock in front on -- in my car on the
7 board.

8 Q On the dashboard?

9 A Dashboard, yeah.

10 Q So when you left the parking lot to go back
11 south on Virginia, about how much time had passed from the
12 time you first entered it, from 12:08, about what time was
13 it you went back out on Virginia Street?

14 A Approximately about 10 minutes or less, a
15 little bit less than that.

16 Q Did you see the dog again?

17 A Yes. When I was walking -- when I was driving
18 out on South Virginia, I had mentioned the man I saw to my
19 parents, and the dog, and when we were driving down, I said,
20 look, there's the dog again. The dog was right underneath
21 the bridge, the North Virginia bridge. And I said, There is
22 the man again, too. And the man was walking inside the
23 little parking lot in front of the JTSU, the Student Union.

24 Q The Student Union?

25 A That is when I last saw him.

1 Q Is that the same person you had seen in the
2 parking lot?

3 A Yes, it was.

4 Q May I have you step down here for a minute to
5 show you Exhibit 7, which is a large photograph?

6 Now, if you could, please, I would like to --
7 we'll go through this real quickly again. Where did you
8 enter the parking lot at 12:08?

9 A Through this parking lot right here.

10 Q Where did you first see the man and the dog?

11 A Right in this parking lot. The dog was farther
12 away than the man was. The man must have been like right
13 here.

14 Q Can I put a little red dot there to show where
15 you are pointing at? Is that the place?

16 A Yeah.

17 Q And then you say you went and picked up your
18 dad. Where was that?

19 A I came into this parking lot through here,
20 through this little gate, and I parked right here. And I
21 waited for my dad. When he got off work, he came into the
22 car, and I went out the same way.

23 Q So if you would, just show the ladies and
24 gentlemen of the jury how you went back out of the parking
25 lot and what direction you were driving.

1 A Okay. I went out through the same gates to
2 this entrance right here, and I turned out on North Virginia
3 Street.

4 Q You mentioned a bridge over North Virginia.
5 Where is that?

6 A The bridge is right here, yeah, right there, I
7 believe.

8 Q Does that go between a couple dormitories?

9 A Yes.

10 Q And you say you saw the dog again once you got
11 to the bridge. Where was the dog?

12 A The dog was right underneath the bridge.

13 Q How about the man? Where did you see him?

14 A The last time I saw the man, he was right here
15 at the end of the parking.

16 Q You are showing a parking lot. Is that the Jot
17 Travis Student Union that you were talking about?

18 A Yes.

19 Q Can I put another dot there where you last saw
20 him? That is a correct location?

21 A Yes.

22 Q Could you tell what direction he was walking
23 the last time you saw him?

24 A He was walking forward the inside.

25 Q Inside of the campus?

1 A Inside of the campus, yes.

2 Q You can have a seat again. Thank you.

3 After this happened, did there come a time when
4 you talked to police officers?

5 A Uh-huh.

6 Q Did you explain to them what you had seen?

7 A Yes, I did.

8 Q Did they ask for your assistance?

9 A Yes. They called me the same day that I talked
10 to a detective on the phone. They called me to do a
11 composite of the man I saw in the parking lot.

12 Q You said a composite. What do you mean by
13 that?

14 A Well, they had me do a drawing. Well, not a
15 drawing. It was a computerized drawing where they showed me
16 like noses and eyes and faces where I could just choose and
17 make up a person that I saw that day.

18 Q Were you able to complete a close likeness of
19 the person you saw that night at both locations on campus?

20 A Yes.

21 Q Let me show you what's been marked as Exhibit 6
22 and ask if you recognize that.

23 A Yes.

24 Q Is that the composite you completed for police?

25 A Uh-huh.

1 Q Does that look like the man you saw that night
2 twice on campus at 12:08 and a few minutes later?

3 A Yes, except the color of his skin. When I was
4 doing the composite, I described the man as not white or
5 black. I said something in between. And the computer
6 couldn't give me the color that I wanted. So that's why --
7 that's the only thing.

8 Q Were you able to tell the police what
9 nationality you believe this person was?

10 A I said he could have been Hawaiian.

11 MR. GAMMICK: Move for 6 to be admitted,
12 please, Your Honor.

13 THE COURT: Any objection?

14 MR. SPECCHIO: No objection, Your Honor.

15 THE COURT: Exhibit 6 is admitted.

16 (Exhibit No. 6 admitted.)

17 MR. GAMMICK: May I publish?

18 THE COURT: Yes.

19 BY MR. GAMMICK:

20 Q This is the man you say scared you when you
21 first saw him?

22 A Yes, he did.

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

25 THE COURT: Cross-examination.

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MR. SPECCHIO: No questions, Your Honor.

THE COURT: Thank you. You may step down.

(The witness was excused.)

THE COURT: Call your next witness.

MR. GAMMICK: Your Honor, I'd like to call
Officer Carl Smith, please.

MR. GAMMICK: Your Honor, may we approach for
just a moment?

THE COURT: Yes.

(Whereupon, a bench conference was held among
Court and counsel as follows:)

MR. GAMMICK: I noticed the Court looking at
the officer's weapon, and I noticed the magazine is removed.

THE COURT: I was aware of that. I was really
looking to make sure everyone in the courtroom saw that.

(One witness sworn.)

CARL H. SMITH

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?

A Carl H. Smith, S-M-I-T-H.

Q And is it Mr. Smith now?

1 A I'm sorry?

2 Q Is it Mr. Smith now or Officer Smith?

3 A Well, it's still Officer Smith while in a duty

4 status, and this is kind of a duty status.

5 Q Did you recently retire?

6 A I did.

7 Q And you still work part time at University of

8 Nevada Police Department?

9 A I do.

10 Q How long had you worked there?

11 A About 13 years.

12 Q Did you know Sergeant George Sullivan?

13 A I did.

14 Q In what capacity?

15 A He was my training officer when I first came on

16 the department, and patrol supervisor for a period of almost

17 14 years.

18 Q How long had Sergeant Sullivan been with the

19 University of Nevada, Reno, Police Department?

20 A I believe 19 years.

21 Q I call your attention to -- well, wait. I show

22 you what's been marked as Exhibit No. 9 and ask if you

23 recognize that photograph.

24 A Yeah.

25 Q Is that Sergeant Sullivan?

1 A (Positive nod.)
2 MR. GAMMICK: Move for admission of No. 9, Your
3 Honor.
4 THE COURT: Any objection?
5 MR. SPECCHIO: No objection.
6 THE COURT: Exhibit 9 is admitted.
7 (Exhibit No. 9 admitted.)
8 MR. GAMMICK: May I publish quickly, Your
9 Honor?
10 THE COURT: Yes.
11 MR. GAMMICK: Just walk by.
12 BY MR. GAMMICK:
13 Q January of 1998, one year ago, were you and
14 Sergeant Sullivan working together?
15 A We were.
16 Q And what shift did the two of you work?
17 A The early morning graveyard shift.
18 Q What was the graveyard shift at the department
19 at that time?
20 A 11:00 or 2300 til 0700 in the morning.
21 Q Police department use what's known as military
22 time, when you say 2300?
23 A Yes, sir.
24 Q That is 11:00 p.m.?
25 A Yes, sir, it is.

1 Q So I call your attention specifically to
2 Monday, January 12th, 1998. Did you and Sergeant Sullivan
3 go to work that night?

4 A We did.

5 Q Both of you at 11:00 o'clock?

6 A Both at 11:00 o'clock.

7 Q Now, you are dressed in uniform today. Were
8 you wearing that uniform that night?

9 A I was.

10 Q And how was Sergeant Sullivan dressed?

11 A Similar but without the sweater.

12 Q Did he also have some type of designation of
13 his rank on his uniform?

14 A He had sergeant stripes on his uniform, he did.

15 Q When you talk about similar, are you wearing
16 what's known as a duty belt?

17 A Yes, I am.

18 Q What is on that duty belt? What's that do?

19 A Gun, handcuffs, the tools that we need.

20 Q That include things like radio, handcuffs?

21 A It does.

22 Q Was Sergeant Sullivan wearing his duty belt
23 that night?

24 A He was.

25 Q What type of weapon did you carry a year ago?

1 A A year ago?

2 Q Yes.

3 A A nine millimeter Sigsauer, but Sergeant

4 Sullivan was carrying --

5 MR. SPECCHIO: Objection, Your Honor. That is

6 not responsive to the question.

7 THE COURT: Sustained.

8 BY MR. GAMMICK:

9 Q What type of weapon was Sergeant

10 Sullivan carrying?

11 A Glock .45, model 21.

12 Q Is that a semiautomatic pistol?

13 A It is.

14 Q Let me call your attention to about 17 minutes

15 after midnight. Did Sergeant Sullivan become involved in

16 some type of police activity?

17 A He did. He made a traffic stop at Ninth and

18 Center.

19 Q What did you do with respect to that?

20 A Responded to the area to act as a backup unit.

21 Q And how many officers were on the graveyard

22 shift at UNR on that night?

23 A Two of us. Sergeant Sullivan and myself.

24 Q He was at Ninth and Center?

25 A He was at Ninth and Center, but actually on

1 Center Street down about a hundred fifty feet or so from the
2 corner of Ninth and Center.

3 Q When you arrived at the scene -- and we'll back
4 up in just a minute, but when you arrived at the scene, was
5 Sergeant Sullivan with someone?

6 A Yes.

7 Q Do you know who that was?

8 A A Mr. Woods, I believe.

9 Q Prior to your actually arriving at the scene
10 itself, with Sergeant Sullivan, did you see anyone else in
11 the area of Ninth and Center?

12 A I did.

13 Q How many other people?

14 A Just one.

15 Q Would you describe that person, please?

16 A Roughly six feet, maybe a little more, dark
17 complected. A dark three-quarter-length coat, appeared to
18 be leather, could have been brown or black. I couldn't be
19 sure because it was just a real brief flash. Hair down to
20 about here, and a reggae hairstyle like you would see
21 somebody that subscribed to the reggae music from Jamaica,
22 that general locale.

23 Q How about facial hair?

24 A He had kind of like a beard.

25 Q Let me show you what's been admitted as State's

1 Exhibit 6 and ask --

2 A Yes, that looks similar to the individual I
3 saw, except I don't know if he had on a cap or not. But
4 it's similar.

5 Q Aside from whether or not he was wearing a cap,
6 how about the rest of the face, the hair, all the other
7 things?

8 A Pretty close, yes, sir. Maybe the beard a
9 little thinner. But that's pretty close.

10 Q What was that person doing?

11 A As I drove down Ninth Street getting ready to
12 make the turn, he turned, squared off at me and gave me a
13 stare that drew my attention to him, like one of hatred, I
14 want to fight you, that kind of look. And of course, I was
15 going to back up Sergeant Sullivan. So I drove by.

16 Q Did you have the opportunity to get a good look
17 at this person's face?

18 A I did.

19 Q Is that person in this courtroom today?

20 A He is.

21 Q Would you please indicate where that person is
22 sitting and what he is wearing today?

23 A He is sitting to the left of you, and he looks
24 considerably different than he did that night.

25 Q What is he wearing, please?

1 A A jacket, cream-colored jacket or light-colored
2 jacket, yellow tie, white shirt.

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

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

6 BY MR. GAMMICK:

7 Q Now, you made a comment that he looks quite a
8 bit different than he did that night. Has his appearance
9 changed?

10 A Yes, sir, it has.

11 Q In what ways?

12 A Hair, facial hair.

13 Q Is there any doubt in your mind that is the
14 same person?

15 A No doubt.

16 Q Now, when you pulled up, did you pull in behind
17 Sergeant Sullivan's car?

18 A I did.

19 Q And what direction on Center Street was he
20 parked facing?

21 A It's actually facing in a southbound direction.

22 Q So the back of his car was toward the
23 university?

24 A Yes, it was.

25 Q Did he have any kind of lighting on that would

1 identify it as a police car?

2 A He had his rear flashers on. Not the front

3 ones.

4 Q When you talk -- are you talking about what all

5 of us know on a car as the flashing lights that are also the

6 brake lights or some other type of flashers?

7 A There is overhead flashing lights from the

8 back, so that oncoming traffic knows that you are there.

9 Q Are those bright?

10 A Yes, they are.

11 Q About 25 minutes after midnight, did you and

12 Sergeant Sullivan complete your contact with Mr. Wood?

13 A Yes, we did.

14 Q Where did Sergeant Sullivan go?

15 A Sergeant Sullivan got in his car, turned

16 around, went back northbound on Center Street, turned right

17 to go up into the -- and turned right up into the campus.

18 Q Is there a particular parking lot or a building

19 located in that area that UNR police officers frequent?

20 A I'm sorry. Repeat the question, please?

21 Q You say he went back up into the campus.

22 A Right.

23 Q And then turned right. Is there a place there

24 where UNR police officers park?

25 A There is a place up by the kiosk where it's

1 fairly well lighted that we utilize that area from time to
2 time to fill out FI cards or do documentation that we need
3 to do.

4 Q What is an FI card?

5 A It's a small white card that has name, date of
6 birth, serial number, phone numbers, next of kin. General
7 trace information for an individual.

8 Q Is that a field interrogation card?

9 A It is.

10 Q Do you maintain those? Why do you complete
11 those?

12 A Well, we maintain them and keep them on file so
13 that we have a good idea who was in the area, who was around
14 at a particular time. It could be both for the good of the
15 person or --

16 Q Let me show you first of all what's been marked
17 as Exhibit 12 and ask you to look at that item. And do you
18 recognize that?

19 A Yeah.

20 Q What is that, sir?

21 A Sergeant Sullivan's notebook. Frequently --

22 Q Would you please turn to what appears to be a
23 broken rubber band in that? Do you see some writing on that
24 page?

25 A I do.

1 Q Does that reflect the stop that Sergeant
2 Sullivan had with Mr. Wood?

3 A It does.

4 Q Now, you mentioned an FI card. As a general
5 practice, would Sergeant Sullivan take notes in his book and
6 then use that to complete a field interrogation card?

7 A He did it consistently and religiously.

8 Q Let me show you what's been marked as item 13
9 and ask if you recognize that.

10 A Yes, and it is Sergeant Sullivan's handwriting.

11 Q Is that also in relationship to talking to
12 Mr. Wood?

13 A Yes, it is.

14 MR. GAMMICK: I'm going to move for 12 and 13,
15 Your Honor.

16 THE COURT: Mr. Specchio, any objection?

17 MR. SPECCHIO: No objection, Your Honor.

18 THE COURT: Exhibit 12 and Exhibit 13 are
19 admitted.

20 (Exhibit Nos. 12 and 13 admitted.)

21 BY MR. GAMMICK:

22 Q Officer Smith, may I have you step down here
23 for a minute, please, sir? I have Exhibit No. 7. Would you
24 please indicate to the ladies and gentlemen of the jury
25 where the contact with Mr. Wood was at?

1 A This is Ninth Street. Turn onto Center Street.
2 This is going in a southbound direction. It was just right
3 in front of it. There is a church located here. Just right
4 in front of the church.

5 Q Is there a red dot located where that stop is?

6 A There is a red dot located where the stop was.

7 Q Now, you described seeing Mr. Vanisi. Would
8 you please indicate and describe where you saw him?

9 A As I came down Ninth Street --

10 Q Excuse me, Officer Smith. You can move a
11 little bit so all the members of the jury can see.

12 A As I came down Ninth Street, coming in this
13 direction, there is the wheelbarrow is right here. There is
14 a line of trees right after that, and between the second two
15 trees, Mr. Vanisi was standing there.

16 Q I believe you have already testified he was
17 watching you and -- watching you anyway?

18 A He actually turned around, squared off at me
19 like this (indicating).

20 Q Did you see him again anymore that night?

21 A No, I did not.

22 Q Now, you mention after you were completed with
23 this stop, would you please indicate where Sergeant Sullivan
24 went?

25 A Sergeant Sullivan turned around in the street,

1 up here, and in -- like this, into the university and back
2 over to the kiosk.

3 Q Is that an information kiosk?

4 A That is the information booth.

5 Q Where did you go?

6 A There's a parking lot right here. You can see
7 it right here. And I drove right over, pulled right out,
8 right into there and pulled up and stopped right there and
9 was right there in that position for about 20 minutes.

10 Q And then where did you go?

11 A Because he had directed me to do some other
12 things, I left, went up and went over behind, actually came
13 in behind the old gym.

14 THE COURT: I'm going to stop you there. The
15 jury can't see.

16 THE WITNESS: Up to the Church of Fine Arts,
17 parked my car right here and checked the calibration on my
18 radar unit.

19 BY MR. GAMMICK:

20 Q If you would have a seat, please. Thank you.
21 What was your call sign that night?

22 A Union 129.

23 Q Do you recall Sergeant Sullivan's call sign?

24 A Union 140. I'm sorry. Union 130.

25 Q Union 130? When I asked about a call sign,

1 what does that mean? What is that used for?

2 A Indicates -- it's the officer's personal

3 identifier.

4 Q Is that used by dispatch to contact you?

5 A It is used by dispatch to contact you.

6 Q About 0057, just before 1:00 o'clock in the

7 morning, did you get a radio call?

8 A I did.

9 Q What was that?

10 A It was respond to the vicinity of the kiosk for

11 a trouble unknown.

12 Q Did you respond to that location?

13 A Yes, I did.

14 Q What did you discover when you got there?

15 A Sergeant Sullivan was on the ground, and there

16 was a white male bent over him.

17 Q Do you know who the white male was?

18 A I do.

19 Q Who is that?

20 A I know him as Drew.

21 Q Drew?

22 A Yes.

23 Q Student at the university?

24 A He is.

25 MR. GAMMICK: Excuse me just a moment, Your

1 Honor.

2 THE COURT: Okay.

3 BY MR. GAMMICK:

4 Q When you first pulled up, what did you see
5 occurring?

6 A Sergeant Sullivan was on the ground, his back
7 out. The door on his car was open. The car was running,
8 and there were no lights on, no overhead lights.

9 Q Where was Drew?

10 A He was bent over Sergeant Sullivan.

11 Q Did you check Sergeant Sullivan?

12 A I did.

13 Q And how did you find him?

14 A With his head in a pulverized state.

15 Q Was he still alive?

16 A No, he wasn't.

17 Q Did there come a time that you made a broadcast
18 concerning possible gunshot?

19 A I did.

20 Q Why did you say gunshot?

21 A Because the only time I have ever seen a
22 person's head in that kind of shape has been from a close
23 contact gun wound that literally implodes.

24 Q Were you able to recognize Sergeant Sullivan
25 looking at his face?

1 A I could recognize him because I have known him
2 for 14 years.

3 Q Let me show you what's been marked as
4 Exhibit 17-A. Do you recognize what's depicted in that
5 photograph?

6 A Yes. That's Sergeant Sullivan.

7 Q Was that his police unit in the scene as you
8 found it that morning?

9 A It is.

10 MR. GAMMICK: Your Honor, I move for 17-A.

11 MR. SPECCHIO: No objection.

12 THE COURT: 17-A is admitted.

13 (Exhibit No. 17-A admitted.)

14 MR. GAMMICK: May I publish?

15 THE COURT: Yes.

16 BY MR. GAMMICK:

17 Q Was there something missing from Sergeant
18 Sullivan?

19 A Yes, there was.

20 Q What was that?

21 A His gun belt was missing. Along with his
22 radio, his handcuffs, and I didn't see any keys at the
23 location.

24 Q Now, was there some of his equipment still at
25 the scene?

1 A Yes, there was.

2 Q There is a brass-looking object lying next to

3 Sergeant Sullivan in the pool of blood. Were you able to

4 determine what that is?

5 A His glasses were there, his key ring keeper,

6 his night stick and pepper gas container.

7 MR. GAMMICK: May I approach the witness, Your

8 Honor?

9 THE COURT: Yes.

10 BY MR. GAMMICK:

11 Q Were you able to determine what that object

12 right there was?

13 A Oh, yes, yes.

14 Q What was that, Officer Smith?

15 A Well, it was his belt buckle.

16 Q Is that the buckle --

17 A Specifically the one you are asking me, that's

18 his belt buckle.

19 Q Are you wearing a buckle such as that yourself?

20 A Yes.

21 Q Would you indicate what it is?

22 A It's right here.

23 Q The buckle for the weapons belt?

24 A Right.

25 Q I believe you testified that Sergeant Sullivan

1 carried a Glock Model 21, .45 caliber pistol?

2 A He did.

3 Q Let me show you what's been marked as item 15-A
4 and ask you if you recognize that.

5 A Yes. That's his handgun.

6 MR. GAMMICK: Move for its admission, Your
7 Honor.

8 THE COURT: Any objection?

9 MR. SPECCHIO: No objection.

10 THE COURT: 15-A is admitted.

11 (Exhibit No. 15-A admitted.)

12 BY MR. GAMMICK:

13 Q Did he have other items on his weapon belt that
14 were identified as belonging personally to Sergeant
15 Sullivan?

16 A Certainly any departmental equipment he had, he
17 always inscribed his name or personal identifier on it.

18 MR. GAMMICK: Your Honor, I have a box that's
19 been marked as Exhibit 16. Contained within that are a
20 couple of items that I would like to have marked as 16-A and
21 16-B, please. 16-A will be a radio and 16-B will be a
22 flashlight.

23 (Exhibit Nos. 16-A and 16-B marked.)

24 THE CLERK: 16-A marked; 16-B marked.

25 BY MR. GAMMICK:

1 Q Let me show you first of all, just ask you to
2 look in the box that's been marked as 16 and ask you if you
3 recognize the other items that are still in the box.

4 A I do.

5 Q Do you know who that -- first of all, what do
6 you see?

7 A I see his radio holder, his belt, his cuff
8 case, both his cuff cases, flashlight holder, and magazine
9 pouch holder.

10 Q Is there also a set of keys in that box?

11 A There's a set of keys, and those are his keys.

12 Q Are any of those marked by Sergeant Sullivan?

13 A I'm not sure if any of his keys are marked or
14 not.

15 Q Do you see his name engraved on a large brass
16 key I have shown you?

17 A Yes. That's a traffic control box. He is one
18 of the few people that had one.

19 Q Let me show you 16-A and ask you to look at
20 that item.

21 A That's his radio, and that's his name.

22 Q How do you know that is his radio?

23 A Because I have seen him put the tag on the back
24 of it.

25 Q Is there a name tag on there that says

1 Sullivan?

2 A There is.

3 Q Let me show you 16-B and ask you if you

4 recognize that item.

5 A Yes. That's his flashlight.

6 Q How do you know that?

7 A He and I engraved our names on our flashlights

8 at the same time.

9 Q That flashlight does have "Sullivan" engraved

10 on it?

11 A It does.

12 Q After -- first of all, to back up even a step

13 from there, are you aware of anyone at UNR or Sergeant

14 Sullivan ever having contact with the Defendant Vanisi prior

15 to that night?

16 A No, I'm not personally aware of that.

17 Q After this occurred, do you know whether there

18 was a check made or search made of the field interrogation

19 cards at UNR concerning Mr. Vanisi?

20 A I don't know.

21 Q Have you talked to other officers about any

22 possible contact with Mr. Vanisi prior to that night?

23 A As far as I know, nobody has had any prior

24 contact with him.

25 Q You say that you were Union 129 and Sergeant

1 Sullivan was Union 130 that night and that dispatch uses
2 those particular call signs for you.

3 A Yes.

4 Q Are there tape recordings made of dispatch
5 calls?

6 A Yes, there is.

7 Q And 911, what is that?

8 A 911 is the emergency number for emergencies to
9 Reno.

10 Q Are there also tape recordings made of 911
11 calls?

12 A All 911 calls are tape recorded.

13 Q Had you previously heard a tape of some of the
14 dispatch calls that were made that night and a 911 call?

15 A I'm sorry?

16 Q Have you previously listened to a tape of a 911
17 call and some dispatch calls that were made that night?

18 A Yes, I have.

19 MR. GAMMICK: Your Honor, I'd like to ask for
20 the admission of 18 and publish it, please.

21 THE COURT: Has he identified that one
22 particularly?

23 MR. GAMMICK: I'm not sure how the Court would
24 want to do this without actually hearing it.

25 THE COURT: Has he listened to it previously?

1 MR. GAMMICK: He has listened to another copy
2 of the same information. I would represent that to the
3 Court.

4 THE COURT: Counsel, do you want to stipulate
5 to the admission?

6 MR. SPECCHIO: No problem, Judge. Sure.

7 THE COURT: Exhibit 18. Did you say there were
8 two numbers, Mr. Gammick?

9 MR. GAMMICK: Exhibit 18, Your Honor.

10 THE COURT: It is admitted.

11 (Exhibit No. 18 admitted.)

12 (Exhibit No. 18 played.)

13 BY MR. GAMMICK:

14 Q Is that the person who you have stated earlier
15 you know as Drew who was at the scene when you arrived
16 there?

17 A That is Drew's voice.

18 (Exhibit No. 18 played.)

19 BY MR. GAMMICK:

20 Q Union 130 was Sergeant Sullivan?

21 A Yes, sir.

22 Q And Union 129, that was you responding?

23 A Yes, sir.

24 (Exhibit 18 played.)

25 BY MR. GAMMICK:

1 Q Was that Mr. Ciocca again?

2 A Yes, it was.

3 Q And Nora 136 I believe we heard, do you know
4 who that was, at least what agency?

5 A He's with Reno.

6 (Exhibit 18 played.)

7 BY MR. GAMMICK:

8 Q Does UNR Police Department and Reno Police
9 Department work on the same frequencies at night?

10 A We do.

11 Q And when she says green is closed, what does
12 that mean?

13 A It means the channel is closed except for those
14 officers actually involved in the call.

15 (Exhibit 18 played.)

16 BY MR. GAMMICK:

17 Q First of all, the screaming sound we hear in
18 the background, what is that?

19 A That's sirens.

20 Q When you say Union 129 or 129, 23, what does
21 that mean?

22 A It means I'm there, I have arrived.

23 Q That's when you arrived at the scene?

24 A Right.

25 (Exhibit 18 played.)

1 BY MR. GAMMICK:

2 Q We have heard several different numbers come up
3 during that last little bit. Are those different Reno units
4 arriving?

5 A They are.

6 Q We just heard I believe his comment set up a
7 perimeter. What does that mean?

8 A It means surround the area at all possible exit
9 routes.

10 (Exhibit 18 played.)

11 BY MR. GAMMICK:

12 Q What did you say at that time?

13 A I told the Reno dispatch operator to get FIS
14 there as soon as possible and to notify Chief Shone.

15 Q Who was Chief Shone?

16 A He is the chief of police for our department.

17 Q At this particular time, when you made this
18 radio call, had you determined that Sergeant Sullivan was
19 dead?

20 A Yes.

21 (Exhibit 18 played.)

22 BY MR. GAMMICK:

23 Q I believe at that time you state that officer
24 was shot.

25 A Apparently shot.

1 Q From the reason that you have already given
2 that you believed that at that time?

3 A Right.

4 (Exhibit 18 played.)

5 BY MR. GAMMICK:

6 Q What did you say then?

7 A I said, advise that his gun belt was gone.

8 Q You mentioned a couple of minutes ago to notify
9 FIS. Who is that?

10 A That is forensic science people that do crime
11 scene investigation. The quicker they get there.

12 (Exhibit 18 played.)

13 BY MR. GAMMICK:

14 Q You were asked if you had a witness on scene.
15 How did you respond to that?

16 A At first I -- because there was a person there
17 I said yes, but you know, not really because he found him.
18 I had no reason to disbelieve him at that point.

19 (Exhibit 18 played.)

20 BY MR. GAMMICK:

21 Q What did you say that time?

22 A I told them to get some units down by Ninth and
23 Evans Street right across from the agriculture building
24 because I felt like in my mind that would be the most likely
25 route someone would take if they were on foot.

1 Q Why do you say that?

2 A Because it's an area where we have had people
3 that have committed burglaries before escape, and we have
4 actually caught them in there.

5 Q Is that a dark area?

6 A It is.

7 Q What else is in that area that would facilitate
8 an escape?

9 A There's the railroad tracks, and there is a
10 clear path that's fairly smooth traveling. It's not
11 lighted. There are trees, there are bushes all along that
12 area with holes going back in them. Easy access to the
13 private fences that go back through that area. And there
14 are actually holes through the fences where someone can go.

15 Q Where is the Orr Ditch located with respect to
16 this path and the railroad tracks?

17 A The Orr Ditch comes up, goes underground, runs
18 along underground and comes out over by Highland.

19 Q Is that the area of Ninth and Evans where you
20 were talking about?

21 A Yes, it is.

22 Q Have you walked that area, that path, what you
23 are describing?

24 A Yes.

25 Q During your career with UNR?

1 A Oh, yes, I have.

2 Q Would you please step down here for just a
3 moment and indicate what you are talking about, what area
4 you asked to be covered and then where this trail path, that
5 type of stuff, is located?

6 If I can get you to step over just a little bit
7 further. Thank you.

8 First of all, if you would start with Ninth and
9 Evans, please, and what you were talking about there.

10 A This is Ninth.

11 Q Maybe we can turn this a little bit.

12 A Ninth Street. This is Ninth and Evans right
13 here. There is the Y. There is the ag building.

14 Q Now, from where you just indicated to get to
15 the trail we were just talking about that goes along the Orr
16 Ditch, do you have to cross Evans Avenue?

17 A Yes, you do. It goes right across, come right
18 in through here. Right on down.

19 Q Is there a chain link fence located along that
20 trail, too?

21 A Yes, there is.

22 Q Is that where you were talking about when you
23 said there were holes through the fence?

24 A Right.

25 Q Thank you, sir.

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

3 THE COURT: Yes.

4 BY MR. GAMMICK:

5 Q I'd like to show you what has been marked as
6 14-A and 14-B and ask you if you recognize those.

7 A Yes, those are Sergeant Sullivan's glasses.

8 Q 14-B, if you just feel? I think you mentioned
9 there was a lens laying there next to the car?

10 A Yes.

11 Q Does that feel like the lens?

12 A Yes.

13 Q Go ahead and take a look.

14 A That's a lens, yes.

15 MR. GAMMICK: Move for 14-A and B, Your Honor.

16 THE COURT: Mr. Specchio?

17 MR. SPECCHIO: No objection.

18 THE COURT: Exhibit 14-A and 14-B are admitted.

19 (Exhibit Nos. 14-A and 14-B admitted.)

20 BY MR. GAMMICK:

21 Q I have item number 11. We talked about
22 Mr. Vanisi wearing what you believed could be leather or
23 light material and a dark brown or black coat. Does this
24 appear to be --

25 A That appears to be the jacket, including the

1 sleeves that are not the button down type but the open type
2 sleeve.

3 Q And the length, sir?

4 A Absolutely correct there.

5 MR. GAMMICK: That's all the questions I have
6 at this time. Thank you, Officer Smith.

7 THE COURT: Cross-examination.

8 MR. SPECCHIO: Thank you, Your Honor.

9 **CROSS-EXAMINATION**

10 BY MR. SPECCHIO:

11 Q I'm sorry sir. I don't understand. Is it
12 Officer Smith or is it Mr. Smith? Are you working?

13 A Am I working? Yes, sir.

14 Q Are you still with the UNR Police Department?

15 A Yes, I am.

16 Q Are you working today?

17 A Any time I go to Court, yes, sir, we are.

18 Q Well, you're considering your appearance in
19 court today as part of your job?

20 A Right.

21 Q Is this part of your shift?

22 A No, it's not part of the shift.

23 Q Do you still work graveyard?

24 A No, I don't.

25 Q What hours do you work now?

1 A I'm on an on-call basis.

2 Q What does that mean?

3 A It means if they need somebody to fill in, they

4 call me.

5 Q You didn't work yesterday?

6 A No, I did not.

7 Q You don't know if you are going to work

8 tomorrow?

9 A No.

10 Q So the uniform is merely for effect rather than

11 because you have to have it on?

12 A No, sir, it is not.

13 Q Why are you wearing the uniform?

14 A Because our departmental guidelines suggest

15 that we wear a uniform to court whenever we go to testify.

16 Q I see. Even --

17 A On departmental matters. .

18 Q Even if you are off duty?

19 A Even if you are off duty.

20 Q I notice you used your glasses sometimes and

21 sometimes you didn't. Were you wearing your glasses the

22 night of January 12th, sir?

23 A I use them for reading up close.

24 Q You use them for reading?

25 A Yes.

1 Q You didn't have them on on the night of
2 January 12th?

3 A No, sir. Not unless I had to read something.

4 Q Okay. You indicated that you were traveling on
5 Ninth Street going west to east?

6 A West to east is correct.

7 Q When you saw the defendant?

8 A Yes, sir.

9 Q Mr. Vanisi.

10 A Yes, sir.

11 Q How far away from you -- how far away from you
12 was Mr. Vanisi?

13 A Approximately 25 feet.

14 Q And how fast -- you were in your vehicle, I
15 assume?

16 A Yes, sir.

17 Q How fast were you going?

18 A Probably about four, five miles an hour at that
19 point.

20 Q And then you made a turn on Center Street?

21 A Yes, sir.

22 Q How far from the corner to Center Street did
23 you see Mr. Vanisi?

24 A About 31 feet.

25 Q About 31 feet?

1 A Yeah. I didn't get a tape measure and get out
2 and measure it.

3 Q You didn't?

4 A No, sir, I didn't.

5 Q But you got 31 feet?

6 A That's about what it would be. Between 30, 35
7 feet.

8 Q Okay. How long did you get to see this person?

9 A Two, maybe three seconds.

10 Q Have you had the opportunity to look at any
11 news accounts of the death of Sergeant Sullivan?

12 A As of now? Yes, sir.

13 Q How about in January and February, did you?

14 A For the first three days, no.

15 Q How many times have you seen pictures of
16 Mr. Vanisi since January 12th, 1998?

17 A Oh, quite a few times.

18 Q And you're basing your identification of him in
19 court not on the number of times that you have seen
20 likenesses or photographs of him, but based on your two- to
21 three-second view while you're in an automobile 25 feet
22 away?

23 A Yes, sir.

24 Q I assume at 12:00 o'clock it was still dark on
25 January 12th, 1998?

1 A It was.

2 Q Was he under a street light?

3 A That's a fairly well-lighted area, yes, sir.

4 Q That is not my question. Was he under a street

5 light when you saw him?

6 A Not directly under a street light.

7 Q Talk to me about these FI things, you want to

8 know where everybody is cards. Every cop fills these out?

9 That's a question. You can say yes or no.

10 A Yes, every cop on our department fills them

11 out.

12 Q Now, I just want to make sure that I understand

13 your testimony. Sergeant Sullivan is stopping Mr. and

14 Mrs. Wood around the corner?

15 A Right.

16 Q On Center Street. You are going to be, I think

17 you guys call it backup?

18 A Right.

19 Q And basically Wood is just lost; right? He

20 doesn't know where he is. Isn't that what happened with

21 Mr. and Mrs. Wood?

22 A He was looking for an address, yes, sir.

23 Q An address that didn't exist or was the church

24 or something like that?

25 A It was the church.

1 Q But you pass this guy that squares off to you
2 on the sidewalk?

3 A Right.

4 Q And this isn't the guy that you are
5 interested -- you didn't stop to do an FI, did you?

6 A No, because we already had an officer out on
7 someone.

8 Q So FI's aren't that important? If one cop is
9 busy, then no more FI's; is that what you are telling me?

10 A No, that's not what I'm telling --

11 Q How does it work? Why didn't you stop the
12 menacing-looking guy?

13 A Because I was going to assist Sergeant
14 Sullivan.

15 Q Okay. So when a cop is otherwise involved in
16 some activity, we stop the FI's?

17 A I wasn't there to stop Mr. Vanisi, to FI him.

18 Q Why not? You were 25 feet away from him. He
19 made a menacing look at you. And you determined this in two
20 minutes. And you know positively he's the one?

21 A Right.

22 Q You are amazing. Two seconds?

23 A Two to three seconds.

24 Q Three seconds. In the dark. Okay.

25 Let's forget that for a moment. You remember

1 giving statements to police officers, Reno police officers
2 in this case?

3 A Yes.

4 Q According to your -- do you remember giving a
5 statement to Detective Jenkins?

6 A Jenkins?

7 Q David Jenkins?

8 A I don't know that I gave one to David Jenkins.

9 Q Ron Dreher?

10 A Ron Dreher.

11 Q If I told you in their report that it says you
12 said the guy that was stopped in the menacing manner was a
13 black man, would that ring a bell with you?

14 A I said he appeared to have African American
15 features. I didn't say he was a black man.

16 Q Okay. But if their report says that you said
17 he's black, that report is incorrect?

18 A I said that he was --

19 Q Had African American features?

20 A Right.

21 Q If that same report said that you indicated
22 that the person you saw had red pants on, would that be
23 correct or incorrect?

24 A I don't recall telling anybody he had red
25 pants.

1 Q You don't remember saying that? Could be true,
2 though?

3 A I'm sorry?

4 Q It could be correct?

5 A I believe I said the guy had on dark trousers.

6 Q Well, do you remember testifying at the
7 preliminary hearing in this matter? Do you remember
8 testifying?

9 A Right.

10 Q We met one other time, didn't we?

11 A Right.

12 Q Do you remember testifying at that court?

13 A Right.

14 Q And didn't you say at that time that he had
15 dark trousers on?

16 A Right.

17 Q If the officer indicated that you said he had
18 red trousers on, that report would be incorrect; is that a
19 fair statement?

20 A I would think so. I don't recall telling
21 anybody he had on red trousers.

22 Q How long after January 12th, 1998, did you
23 first see a picture of Mr. Vanisi?

24 A Three -- I think maybe three, four days.

25 Q Do you remember testifying at the preliminary

1 hearing in February 1998? Do you remember testifying? I'll
2 do it one more time.

3 A Do I remember testifying? Yes, sir. I thought
4 you were coming up with another.

5 Q That is what I was looking for was a yes or a
6 no.

7 Do you remember indicating in that hearing --
8 do you remember testifying at that hearing in February that
9 you had never seen a picture of Mr. Vanisi on television or
10 otherwise?

11 A A picture of him? Is correct.

12 Q You didn't?

13 A A picture of him.

14 Q That you did see or did not see?

15 A Did not see.

16 Q See, when I was standing over here, right here,
17 you said you didn't see a picture until three days after the
18 death of Sergeant Sullivan. When I --

19 A There is a difference between a composite and a
20 picture of someone.

21 Q Oh, that's the difference. When is the first
22 time you saw a picture, you know, like film and cameras and
23 click?

24 A I can't be -- I'm not sure of the exact date.
25 But there's -- certainly it was sometime afterwards, quite a

1 while afterwards.

2 Q So it was after -- do you remember me asking
3 you whether or not you saw a likeness on television?

4 A No, I don't remember that.

5 Q Well, I did ask you that. I remember that
6 because it's written down.

7 A Whatever. I didn't watch the television.

8 Q What is the -- I want to go back to the
9 beginning. When you came on to work, came to work on
10 January 12th, Sergeant Sullivan was there. Where do you go?
11 Do they have a police department?

12 A We have a briefing room.

13 Q And is that over off of the street on the west,
14 the east side of the campus?

15 A It's in the station house, yes, sir. 1305
16 Evans to be exact.

17 Q You are the only two guys working graveyard?

18 A Right.

19 Q You get in your car at some point in time?

20 A Right.

21 Q And do you go -- do you follow each other or do
22 you go in different directions?

23 A We go in different direction.

24 Q Basically what you do is patrol until you make
25 a stop?

1 A Right.

2 Q Or somebody needs help or whatever; right?

3 A Right.

4 Q Do you know which direction Sergeant Sullivan
5 went when he left the police compound or whatever you call
6 it?

7 A I have absolutely no idea. I was not there
8 when he drove off.

9 Q You didn't do it at the same time then?

10 A No.

11 Q Who left first?

12 A That particular night?

13 Q Okay. We got to do what we have to do, and his
14 car is there --

15 A I left first.

16 Q And you went which direction?

17 A That particular night?

18 Q Yeah.

19 A Left.

20 Q Which would be through the campus? Did you
21 drive through the campus as opposed to stay on Evans Avenue?

22 A No, I was on Evans.

23 Q You came out this way, made a left on Evans?

24 A Yes.

25 Q Did you have different assignments? You had to

1 do this area of the campus and he had to do -- or did you
2 just both generally patrol everything?

3 A No, we both generally patrolled everything, and
4 he was the supervisor and provided assignments for specific
5 tasks.

6 Q So let's talk a minute about the gentleman that
7 was stopped. He had a blond lady with him, Mr. Wood and
8 Mrs. Wood?

9 A She appeared to be blond to me. I don't know
10 if it was Mrs. Wood or not.

11 Q The information they gave you at that time was
12 that they were looking for property to buy?

13 A It was.

14 Q And it's dark out?

15 A It's dark.

16 Q Was there anything unusual about that stop?

17 A I thought it was unusual.

18 Q Just because of trying to buy real estate at
19 midnight? Is that the reason?

20 A It's not often you encounter that.

21 Q I would imagine. Was there anything else
22 unusual about that stop?

23 A Well, they had the wrong address.

24 Q Right. He told you like 481, and then he
25 changed it and said no, it's 484, and finally ended up with

1 the church; right?

2 A Went back to the car and got a correct address
3 and came back and it was the church.

4 Q Now, assuming this is Center Street, I assume
5 the first vehicle stopped would be the Woods' vehicle, the
6 one furtherest to town, the furtherest south?

7 A Right.

8 Q Behind that would be Officer Sullivan's
9 vehicle?

10 A Sergeant Sullivan.

11 Q Then yours.

12 A Mine.

13 Q Now, how far is your vehicle from Ninth Street?

14 A From Ninth Street?

15 Q Did you make the turn on Ninth down on Center?

16 A It's about probably close to 60 feet.

17 Q Little longer than the courtroom here? Maybe
18 as long as the courtroom?

19 A About that distance. About from here to there.

20 Q Mr. Wood is out of the vehicle, his vehicle?

21 A Right.

22 Q The blond we think is Mrs. Wood is in the
23 vehicle?

24 A Right.

25 Q Sergeant Sullivan is out of his vehicle?

1 A Right.

2 Q How about you?

3 A I walked over by Sergeant Sullivan.

4 Q So you got out of the car?

5 A Right.

6 Q Did you ever look back to Ninth and Center to

7 see that person, Mr. Vanisi, that you say is Mr. Vanisi?

8 Did you ever look back at that person that gave you the

9 menacing look?

10 A No, I was too interested in the guy that was

11 directly in front of Sergeant Sullivan that was walking

12 around.

13 Q How big of a guy is Wood?

14 A Fairly good sized.

15 Q Good sized, like me, full figured, or tall?

16 A Well, he's full figured.

17 Q Matter of fact, you testified that you didn't

18 like the way Wood was answering questions; right?

19 A That's true.

20 Q But it's your testimony here today that on

21 January 12th, January 13th, sometime around midnight, you

22 are driving down Ninth Street west to east, see this

23 menacing figure through -- I assume you had the windows

24 rolled up. It had to be pretty cool out.

25 A No, I don't patrol with my windows rolled up.

1 Q You had the windows down?

2 A Oh, yes.

3 Q What about the prismatic effect you talked

4 about at the preliminary hearing? Do you remember

5 testifying about because of the prismatic effect of the

6 glass, he looked darker than he is?

7 A I didn't say anything about the glass.

8 Q Well --

9 A Prismatic effects come from a lot of things.

10 Q Does prismatic effect mean anything to you?

11 A Yes.

12 Q What does it mean?

13 A Protracting or bending of light.

14 Q Is that what was happening that night?

15 A I can't be for sure.

16 Q It can't be if you got your window rolled down?

17 A I'm sorry?

18 Q It couldn't be if you had your window rolled

19 down, could it? I'm at a loss here. I don't know what

20 you -- do you want me to give you the direct quote?

21 A I know what I said.

22 Q Okay. Well, maybe. Tell me what it means.

23 A Sometimes at night because of the prismatic

24 effect, reflecting lights coming off of patrol cars, with

25 the overhead lights on can make colors seem darker than what

1 they are. Or lighter.

2 Q But you didn't have any lights on; right?

3 A I didn't have any lights on.

4 Q And Sullivan was already down and around the
5 corner, so that wouldn't have created a prismatic effect?

6 A Not true because you could see the lights from
7 where he is at.

8 Q He is 60 feet down Center Street?

9 A Right.

10 Q You are 31 feet over on Ninth Street. And the
11 prismatic effect of these flashing lights caused you --

12 A They are not the only lights.

13 Q They caused you to say the person you saw was
14 black and red trousers?

15 A I didn't say he was black.

16 Q You didn't say he was black?

17 A I didn't say he was black.

18 MR. GAMMICK: That --

19 THE COURT: Wait, wait, wait. I'm sorry to
20 interrupt you, but if Mr. Specchio is speaking, sir, you
21 will have to wait until he is through.

22 And the same for you, Mr. Specchio. The court
23 reporter can't take you both down.

24 Go ahead. I think you were asking a question.

25 BY MR. SPECCHIO:

1 Q If that officer has that in his report, his
2 report is incorrect?

3 A I don't believe I said that.

4 Q It's your testimony that based on two to three
5 seconds a year ago, you can positively identify Mr. Vanisi?

6 A Absolutely.

7 Q No hesitation?

8 A No hesitation. None whatsoever.

9 Q You have a stake in this, don't you? You
10 really want to see this man die for what you think he did?

11 A Absolutely not.

12 MR. GAMMICK: Objection, Your Honor.

13 MR. SPECCHIO: I'll withdraw it. No more
14 questions.

15 THE COURT: Are you going to be asking
16 redirect, Mr. Gammick?

17 MR. GAMMICK: I have about two questions.

18 THE COURT: Okay.

19 MR. GAMMICK: Two areas.

20 THE COURT: Sir, you really have to wait until
21 the other person is through speaking before you say
22 anything. Okay?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Thank you. Mr. Gammick, redirect.

25 MR. GAMMICK: May I come up, Your Honor?

1 THE COURT: What are you showing him?

2 MR. GAMMICK: I mentioned to Mr. Specchio.
3 Preliminary hearing transcript starting at page 182, Your
4 Honor.

5 THE COURT: Thank you. You may.

6 **REDIRECT EXAMINATION**

7 BY MR. GAMMICK:

8 Q To yourself, please, if you would, would you
9 read starting on page 182, line 9, through the rest of that
10 page, and read page 183 to yourself?

11 Have you read those pages, Officer Smith?

12 A Yes, sir, I have.

13 Q Anywhere were you asked about a likeness,
14 having seen a likeness or a composite of the defendant?

15 A Yes, sir.

16 Q You were asked about a likeness or were you
17 asked about photographs?

18 A I was asked if I had seen any photographs.

19 Q Anywhere were you asked if you had seen a
20 likeness or a composite?

21 A Not a likeness nor a composite at all.

22 Q You were asked about photographs?

23 A I was asked about photographs.

24 Q And had you seen any photographs prior to the
25 first time you saw Mr. Vanisi in person after January 12th,

1 1998?

2 A Absolutely not.

3 Q Excuse me. 13th, 1998?

4 A Absolutely not.

5 Q You identified Mr. Vanisi at the prior hearing?

6 A I did.

7 Q Face-to-face?

8 A I did.

9 Q Did he appear the same as he does today?

10 A No.

11 Q What did he have that day that he does not have
12 today?

13 A Facial hair, hair was longer than what it is
14 now, dressed differently.

15 Q Let me show you what's been marked as 24-A and
16 24-B and ask you to look at those photographs. Defendant
17 appear closer to those photographs when you saw him
18 previously in court --

19 A Absolutely.

20 Q -- than he does today?

21 A That's him.

22 MR. GAMMICK: I move for admission, Your Honor.

23 THE COURT: Mr. Specchio?

24 MR. SPECCHIO: Hard for me to argue with
25 anybody, Judge. I'm all for it.