

**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 3 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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## **CERTIFICATE OF SERVICE**

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

Electronic Service of the foregoing Appellant's Appendix shall be made in accordance with the Master Service List as follows:

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Sara Jelenik  
An employee of the Federal  
Public Defender's Office

1 Mr. Peaua, directing your attention to  
2 approximately 10:00 p.m., on that date, was the defendant  
3 staying at your home?

4 A Yes, he was.

5 Q And do you remember him arriving at your home  
6 on Monday evening?

7 A No.

8 Q You don't? Were you there all day?

9 A Pretty much.

10 Q Do you remember your cousin, the defendant,  
11 Mr. Vanisi, being there all day?

12 A Off and on, I believe.

13 Q Well, I want to direct your attention  
14 specifically to 10:00 p.m. Do you recall your cousin, the  
15 defendant, Siaosi Vanisi, arriving at your home at  
16 approximately 10:00 p.m.?

17 A I saw him around 10:00.

18 Q Would you say you saw him but you don't know if  
19 he necessarily arrived then; is that your testimony?

20 A Yes.

21 Q Could he have arrived at that time, or do you  
22 not remember?

23 A Could have, I guess.

24 Q How was he dressed?

25 A He had a shirt, pants. He may have had the

1 brown jacket, I think.

2 Q Exhibit 11, does that look like the jacket?

3 A It looks like it.

4 Q About the same length of Mr. Vanisi?

5 A Just about, yeah.

6 Q What were you doing at about 10:00 o'clock that

7 evening at your home?

8 A Watching TV.

9 Q Other family members watching TV as well?

10 A Yeah.

11 Q Did Mr. Vanisi have the wig and the beanie on?

12 A No.

13 Q You didn't see that?

14 A No.

15 Q Was he carrying anything?

16 A No.

17 Q What did you do the rest of the evening from

18 10:00 o'clock on?

19 A Just watch movies.

20 Q Did you go to sleep any time before midnight?

21 A No.

22 Q What time the next morning did you ultimately

23 go to sleep?

24 A On the next morning?

25 Q Yes.

1           A     About 2:30, maybe three.

2           Q     Prior to you going to sleep, do you recall

3     Mr. Vanisi leaving your home?

4           A     Yes.

5           Q     What time did he leave the home?

6           A     About 2:30, 2:00 o'clock, between 2:00 and

7     2:30.

8           Q     From the time of 10:00 o'clock p.m. to 2:30 in

9     the morning, you never saw him leave?

10          A     No.

11          Q     He was there all the time?

12          A     Last time I seen him, yes, he was there.

13          Q     Okay. When was the last time you seen him?

14          A     About 10:30, about 10:30, close to there.

15          Q     Let me get this straight. You are watching

16     television, watching a movie with family members?

17          A     Right.

18          Q     Where is Mr. Vanisi?

19          A     He was sleeping in the bedroom.

20          Q     So he's not in the same room?

21          A     No.

22          Q     At sometime he comes into your house and asks

23     you for a ride?

24          A     Yes.

25          Q     What time of the morning does that occur?



1 A About 2:30. 2:00 to 2:30.

2 Q Where does he ask you to take him?

3 A To our cousin's house on Rock Boulevard.

4 Q What is your cousin's name?

5 A Losa's house.

6 Q To Losa's house?

7 A Right.

8 Q Was he by himself?

9 A Yes.

10 Q Do you know Sateki Taukiuvea?

11 A Yes.

12 Q Was he there?

13 A At which place?

14 Q At Sterling?

15 A No.

16 Q When the defendant, Mr. Vanisi, asked you for a

17 ride, was he by himself?

18 A Yes.

19 Q And did you take him to Losa's house?

20 A Yes.

21 Q Did you take anybody else to Losa's house?

22 A No.

23 Q How was the defendant, Mr. Vanisi, acting when

24 he asked you for a ride?

25 A Usual, just quiet and just chitchatting.

1 That's about it.

2 Q Was it usual for him to be quiet or was it  
3 usual for him to be chitchat?

4 A Either one. You know. It just depends on how  
5 he was at the time.

6 Q And how was he at that time?

7 A Just quiet at sometimes but, you know, start a  
8 little conversation here and there. That's about it.

9 Q When he asked you for the ride back to Losa's  
10 house, did he have the wig on?

11 A No.

12 Q Was he wearing the jacket that we just looked  
13 at?

14 A Yes.

15 Q Was he wearing any gloves?

16 A No.

17 Q Was he carrying anything with him?

18 A Plastic bag.

19 Q What color was it?

20 A White.

21 Q Showing you Exhibit 22, does that appear to be  
22 the color and type of bag that he had with him?

23 A Yeah.

24 Q Did you see what was in the bag, sir?

25 A No.

1 Q Did it appear to be empty or full?

2 A Halfway full, I suppose.

3 Q Did you ever see a hatchet on him?

4 A No.

5 Q If he was wearing a hatchet underneath his  
6 coat, would you have seen it?

7 A Probably not.

8 Q After dropping him off at Rock Boulevard, did  
9 you ever see him after that?

10 A No.

11 Q What time did you drop him off at Rock  
12 Boulevard?

13 A About 2:30.

14 Q Did you go into the house?

15 A No.

16 Q Do you know Mr. Taukiuvea's vehicle that he  
17 drives?

18 A No.

19 Q You don't know it?

20 A No.

21 Q So you wouldn't know whether or not it was at  
22 the Losa's house when you arrived?

23 A I wouldn't know.

24 MR. STANTON: No further questions.

25 THE COURT: Cross-examination?

MR. SPECCHIO: Thank you, Your Honor.

**CROSS-EXAMINATION**

BY MR. SPECCHIO:

Q Mr. Peaua, are you a student at UNR?

A Not at this time, no.

Q You were previously?

A Yes.

Q And who were you dating in January 1998?

A Christina, I think.

Q Is that -- what was the name?

A Christina.

Q Christina. You know the defendant?

A Yes, I do.

Q And you know Teki --

A Yes.

Q -- Taukiuvea? Do you know Chiatra Hanke,  
Chiatra Hanke?

A I don't think so.

Q Do you remember talking to her on the phone?

A I don't think so.

Q The times that you have just talked about with  
the District Attorney are in relation to the night of  
Monday, January 12th?

A Yes.

Q The best of your knowledge and recollection,

1 Mr. Vanisi was at the Sterling address from 10:30 to 2:30 in  
2 the morning?

3 A Yes.

4 Q The bag that he was carrying, did you look in  
5 it?

6 A No.

7 Q Did you carry it?

8 A No.

9 Q So you don't know if it was light or heavy?

10 A It looked like he had clothes in it.

11 Q So it looked like half full of clothes?

12 A Right, half full of clothes.

13 Q So I mean, you didn't have to have two hands to  
14 lift it up?

15 A No.

16 Q Do you know how Mr. Vanisi got -- the Sterling  
17 address is where you live; right?

18 A Right.

19 Q Do you know how he got there at around 10:00  
20 o'clock that night?

21 A No.

22 Q You didn't see Teki drive him over there at  
23 10:00 o'clock?

24 A No.

25 Q He could have walked?

1 A Could have.

2 Q He didn't have an automobile, did he?

3 A No.

4 Q He could have taken a cab?

5 A Could have.

6 Q And then around 2:30 in the morning, you drove

7 him over to Rock Boulevard?

8 A Right.

9 Q You didn't get out of the car so you don't know

10 who was in the house?

11 A Right.

12 Q Do you know Teki's vehicle?

13 A No.

14 Q You don't know what kind of car Teki has?

15 A No.

16 Q If I were to say the word or the number to you

17 187, do you know what that means?

18 A Oh, yeah.

19 Q What does that mean?

20 A Murder.

21 Q Do you ever remember having a conversation with

22 Teki where he said to you, I just did a 187?

23 A No.

24 Q I got to hang up?

25 A No.

1 Q That never happened?

2 A No.

3 Q And you don't know anybody by the name of  
4 Chiatra Hanke?

5 A Not from that name, no.

6 MR. SPECCHIO: No further questions, Your  
7 Honor.

8 THE COURT: Redirect?

9 MR. STANTON: Briefly, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. STANTON:

12 Q Mr. Peaua, on the night of Monday,  
13 January 12th, from 10:30 to 2:00 o'clock in the morning when  
14 Mr. Vanisi asked you for a ride, did you ever see him in  
15 your home during those time periods?

16 A Between the time period?

17 Q Between 10:30 p.m. on January 12th, and to the  
18 time he comes in and asks for a ride back to Losa's house,  
19 did you ever see him in your house?

20 A No, I don't think so.

21 Q You don't think so?

22 A No.

23 Q Now who is Doobie?

24 A My dog.

25 Q Your dog?

1 A Right.

2 Q Can you describe your dog to the ladies and  
3 gentlemen of the jury?

4 A Husky, half husky, white with black spots.

5 Q Big dog?

6 A Pretty big, yes.

7 Q Did you ever see Mr. Vanisi walking your dog?

8 A Sometimes.

9 MR. STANTON: Thank you. Nothing further.

10 THE COURT: Anything further?

11 MR. SPECCHIO: No, ma'am. No, Judge. No, Your  
12 Honor.

13 THE COURT: Do you need a break?

14 MR. SPECCHIO: Sure.

15 THE COURT: You may step down.

16 (The witness was excused.)

17 THE COURT: Ladies and gentlemen of the jury,  
18 we'll take our afternoon recess now. During this break do  
19 not discuss the case among yourselves or with anyone else.  
20 It is your further duty not to form or express any opinion  
21 regarding the guilt or innocence of the defendant until the  
22 case has been finally submitted to you for decision.

23 You are not to read, look at or listen to any  
24 news media accounts regarding this matter should there be  
25 any, and should any person attempt to discuss the case with



1 you or in any manner attempt to influence you with regard to  
2 it, you are to advise the bailiff who in turn will advise  
3 the Court.

4 Ladies and gentlemen of the jury, go ahead and  
5 have a recess now. The bailiff will be bringing you back in  
6 as soon as we're through with our recess.

7 Court is in recess.

8 Counsel, I will see you back in 15 minutes.

9 (Recess taken at 3:03 p.m.)

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RENO, NEVADA, THURSDAY, JANUARY 14, 1999, 3:32 P.M.

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

THE COURT: Counsel, can we stipulate to the presence of the jury?

MR. GAMMICK: Yes, Your Honor.

MR. SPECCHIO: Yes, Your Honor.

THE COURT: Call your next witness.

MR. STANTON: Your Honor, I'm going to have to use the nickname. It would be Laki.

THE CLERK: Exhibits 30-A through G marked.

(Exhibit Nos. 30-A through 30-G marked.)

**METUISELA DANIEL TAUVELI**

called as a witness on behalf of the Plaintiff,

having been first duly sworn,

was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. STANTON:

Q Sir, if you could pull your chair up so that you are real close, as far as you can, close to the microphone. Lift that microphone so it is as close to your mouth as you can get it.

If you need to, lean forward just a little bit

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1 when you give your answers. Okay?

2 Could you please state your complete name, and  
3 I need you to spell both your first and last name?

4 A Metuisela, Daniel, Tauveli. The first name is  
5 M-E-T-U-I-S-E-L-A. The last name is T-A-U-V-E-L-I.

6 Q You have a nickname that you go by?

7 A Laki.

8 Q How do you spell that?

9 A L-A-K-I.

10 Q And sir, how old are you?

11 A Twenty.

12 Q How long have you lived in Reno?

13 A Twenty years.

14 Q Do you know Siaosi Vanisi?

15 A Yes.

16 Q How do you know him?

17 A He's my cousin.

18 Q And how often have you seen him through the 20  
19 years of your life?

20 A Off and on. The longest I haven't seen him was  
21 like two years, three.

22 Q You see him regularly?

23 A Yes.

24 Q You see him in court today?

25 A Yes.

1 Q Where is he and what is he wearing?

2 A He's over there, and he's wearing a gray suit.

3 Q Is he wearing a tie?

4 A Yes.

5 Q What color is the tie?

6 A It's blue.

7 Q Sitting down at this table?

8 A Yes.

9 Q Now, I want to direct your attention to January  
10 of 1998. Over your right shoulder, a blowup of that month,  
11 a calendar month.

12 And as a frame of reference, sir, I'd indicate  
13 to you that you talked to the police and gave a recorded  
14 statement on Tuesday, January 13th, 1998, in the evening,  
15 around almost 10:00 p.m.; is that correct?

16 A Yes.

17 Q Using that as a frame of reference, Tuesday,  
18 the 13th of January, when was the first time that you saw  
19 the defendant, Siaosi Vanisi, in January 1998?

20 A The first time? About a week before.

21 Q Where was the first time that you saw him?

22 A At Jack-in-the-Box.

23 Q How was he dressed?

24 A He was wearing some jeans. I think it was  
25 jeans or slacks. And a shirt and a vest.

1 Q What color was his jeans?  
2 A They were dark color. I can't remember what  
3 color it was exactly.  
4 Q Could you raise your voice up a little bit for  
5 me?  
6 A Yes.  
7 Q What color jeans was he wearing?  
8 A I can't remember. They were just dark.  
9 Q And does he look or did he look different that  
10 first time you saw him than he does in court?  
11 A Yes.  
12 Q How does he look different?  
13 A He had a full beard and long hair.  
14 Q Long hair. Was that his natural hair or  
15 something else?  
16 A It was a wig.  
17 Q How do you know it was a wig?  
18 A Because his hair wasn't that long.  
19 Q Did you ever see him take it off?  
20 A Yeah.  
21 Q And do you know what dreadlocks are?  
22 A Yes.  
23 Q Did it look like that?  
24 A No.  
25 Q How long was it?

1 A About shoulder length.

2 Q And what color was the hair?

3 A It was a dark color. Dark brown probably.

4 Q And did he wear any hat over the wig?

5 A No. He just wore a bandana over it.

6 Q What color was that bandana?

7 A I don't remember.

8 Q Showing you Exhibit 6, is that how your cousin

9 Pe looked on that day when you saw him at Jack-in-the-Box?

10 A Yes. But he was wearing a bandana instead of a

11 beanie.

12 Q Other than that?

13 A Yes.

14 Q You say that was a week before your interview

15 with the police. So that would put it about January 6th?

16 A I think so, yes.

17 Q How was your cousin acting when you saw him on

18 the 6th of January?

19 A Funny.

20 Q Pardon me?

21 A He was pretty weird. He was funny.

22 Q Acting different than he normally had?

23 A Yeah.

24 Q What was different about how he was acting?

25 A He was just very talkative, more -- I don't

1 know. He was different. He talks more differently.

2 Q Did you ever hear him speak about killing a  
3 cop?

4 A Yes.

5 Q When was the first time you heard that?

6 A I think later on that day at home or after.

7 Q That would have been the 6th of January?

8 A Yes.

9 Q What did you think when you first heard that?

10 A I thought it was just a joke.

11 Q And who else was present when he said that?

12 A I'm not sure. It could have been -- I think  
13 most of us at the apartment.

14 Q And which apartment is that?

15 A Losa's apartment.

16 Q Who usually was hanging out at Losa's  
17 apartment?

18 A Losa, her brothers and sister, me, Teki.

19 Q Teki is Sateki Taukiuvea?

20 A Yes.

21 Q What was the conversation about at Losa's house  
22 when you first heard the defendant say he wanted to kill a  
23 cop? Do you remember?

24 A No.

25 Q Were the rest of you talking about killing a

1 cop?

2 A No.

3 Q Was it out of the blue, in other words?

4 A Yes.

5 Q Was it out of context when he said that?

6 A Yes.

7 Q You thought he was joking?

8 A Yes.

9 Q Do you remember the exact words that he used?

10 A "I want to kill a cop."

11 Q And from the first time you heard him say it to  
12 the last time you heard him say it, how many times do you  
13 think he said I want to kill a cop?

14 A Probably close to 10 times probably.

15 Q Now, up on that chart you were interviewed by  
16 the police on Tuesday, January 13th. I'll represent to you  
17 Sergeant Sullivan was murdered on the university campus just  
18 after midnight on that day.

19 When was the last time you heard Mr. Vanisi say  
20 he wanted to kill a cop?

21 A I think the day before that.

22 Q Did you ever hear him say I want to kill a cop  
23 after that?

24 A No.

25 Q Did he ever mention to you about why he wanted



1 to kill a cop?

2 A No.

3 Q Did he ever mention to you about getting  
4 money --

5 A No.

6 Q -- from killing a cop? You don't remember  
7 that?

8 A I don't remember.

9 Q Do you remember giving a statement to the  
10 police?

11 A Yes.

12 Q And that that statement was recorded?

13 A Yes.

14 MR. STANTON: Court's indulgence one moment.

15 THE COURT: Yes.

16 BY MR. STANTON:

17 Q Take a glance at the first couple of pages and  
18 see if you recognize that transcript. Does that look like a  
19 transcript of the questions that were asked of you and the  
20 answers you gave on January 13th?

21 A Yes.

22 Q I'd like you if you could, sir, to turn to page  
23 26. When you get to 26, on the left-hand column of that  
24 page is a series of numbers. If you would direct your  
25 attention and read for me, just to yourself, lines 26

1 through 39. Do you remember what he said about killing a  
2 cop?

3 A Yes.

4 Q What was that?

5 A He said he wanted to kill a cop and he can get  
6 us some money.

7 Q Get you some money?

8 A Yes.

9 Q Showing you photograph 20-A, this document has  
10 been admitted into evidence. Do you recognize anything in  
11 that photograph?

12 A Yes.

13 Q Those shoes right here, are those yours?

14 A These are.

15 Q These two here?

16 A Yeah.

17 Q Did you ever see that hatchet at Losa's house?

18 A Yes.

19 Q When did you see the hatchet at Losa's house?

20 A What do you mean like?

21 Q When was the first time you saw it? Did you  
22 see it in this condition at the home?

23 A Yes.

24 Q And when was that?

25 A Tuesday night.

1 Q Had you ever seen that hatchet before?

2 A Yes.

3 Q Who had it?

4 A Siaosi.

5 Q Mr. Vanisi?

6 A Yes.

7 Q Did you ever see anybody else with that  
8 hatchet?

9 A Sometimes some of my family would play with it,  
10 but he usually had it.

11 Q Where did he have it?

12 You need to lean down in that microphone and  
13 speak up real loud.

14 A He had it right on this side or in this side or  
15 tucked in his pants.

16 Q You are pointing to this side or this side,  
17 your upper chest?

18 A Hooked on to a belt.

19 Q Where was the belt; wrapped around his chest?

20 A Wrapped around his chest.

21 Q It was up this high?

22 A Uh-huh.

23 Q Was that inside or outside his coat?

24 A Inside.

25 Q What kind of coat was he wearing?

1           A     It was a leather coat.

2           Q     Now, Monday, January 12th, 1998, did you see

3     Mr. Vanisi that day?

4           A     Yes.

5           Q     Where was it and what time of day did you see

6     him?

7           A     I think at home in the morning time.

8           Q     Do you remember approximately what time?

9           A     No, I don't.

10          Q     When was the last time you saw him on the 12th

11     of January, Monday?

12          A     When I was heading home.

13          Q     What time did you head home?

14          A     I was going home around 9:30, almost 10:00.

15          Q     Morning or night?

16          A     Night. Evening.

17          Q     And where did you see Mr. Vanisi?

18          A     Him and Teki were driving toward the Peauas'

19     residence.

20          Q     When was the next time you saw Mr. Vanisi?

21          A     The next morning after I got off work, Tuesday

22     morning.

23          Q     Where were you and what time did you see him?

24          A     I walked in the house from work around 8:30 or

25     9:00.

1 Q Morning or night?

2 A Morning.

3 Q Who was present inside the Losa Louis home on  
4 Rock Boulevard?

5 A Losa, her sister, the boys. No, I think the  
6 boys went to school. And Siaosi and Shamari.

7 Q And did you see Mr. Vanisi after he had had his  
8 beard shaved?

9 A Did I see him after?

10 Q Yes.

11 A Yes.

12 Q When was his beard shaved, do you --

13 A In the morning.

14 Q Tuesday morning?

15 A Yes.

16 Q On Tuesday morning, did you see Mr. Vanisi  
17 wearing a wig?

18 A No.

19 Q The night before when you saw him with Sateki  
20 about 10:00 o'clock at night, did you see him wearing a wig?

21 A I don't remember.

22 Q On Tuesday morning, did you ask Mr. Vanisi  
23 where the wig was?

24 A I don't remember.

25 Q Turn to page 16, if you would. Direct your

1 attention to line 31 through 33.

2 MR. SPECCHIO: I'm sorry, what page again?

3 MR. STANTON: 16.

4 BY MR. STANTON:

5 Q Does that help you remember?

6 A Yes.

7 Q So on Tuesday morning, the 13th of January,  
8 1998, sir, did you ask Mr. Vanisi where his wig was?

9 A Yes.

10 Q What did he tell you?

11 A He said it was missing.

12 Q Did you see Mr. Vanisi with the hatchet inside  
13 Losa's house the morning of Tuesday, January 13th?

14 A No.

15 Q When was the -- I direct your attention to page  
16 12. Directing your attention to lines 23 through 25. Does  
17 that help you out?

18 A Yeah.

19 Q Do you remember Tuesday morning whether or not  
20 you saw the defendant with a hatchet at Losa's house?

21 A The last time I saw it was just on the  
22 microwave.

23 Q The last time you remember seeing it was on the  
24 microwave?

25 A On the microwave.

1 Q Inside Losa's house?

2 A Yes.

3 Q Who put it there?

4 A I don't know who put it there.

5 Q On Tuesday, were you present inside Losa's

6 house when the 6:00 o'clock evening news came on?

7 A Yes.

8 Q Was Mr. Vanisi there?

9 A Yes.

10 Q Where was Mr. Vanisi?

11 A He was sleeping on the other bed in the room I

12 was sleeping in.

13 Q And did there come a time where he was snoring?

14 A Yes.

15 Q And did the evening news come on and broadcast

16 the story about Sergeant Sullivan's murder?

17 A Yes.

18 Q What was Mr. Vanisi's reaction when that story

19 came on?

20 A He wasn't snoring no more.

21 Q What did you do at that point, sir?

22 A I got scared.

23 Q And did you make plans to leave the apartment?

24 A Yes, I did.

25 Q And who were you going to leave the apartment

1 with?

2 A With Corina and Priscilla.

3 Q You left the apartment and you went into what  
4 vehicle?

5 A To my van.

6 Q And prior to you leaving the van, did something  
7 happen?

8 A Yes.

9 Q What was that?

10 A Vanisi came out and got in also.

11 Q And you didn't want that to happen, did you?

12 A I was scared, yes.

13 Q Why were you scared?

14 A I don't know. I just had a feeling.

15 Q Had a feeling?

16 A Yes.

17 Q Where were you going when you left the Rock  
18 Boulevard apartment?

19 A We were going to our church.

20 Q What church is that?

21 A The Church of Jesus Christ of Latter Day  
22 Saints.

23 Q I ask you to take a look at Exhibit 8. Take a  
24 moment to familiarize yourself with that. Specifically if  
25 you can on that map, sir, orient yourself to Losa's



1 apartment on Rock Boulevard and the Mormon church that you  
2 just spoke of.

3 Does that map fairly and accurately depict the  
4 street map or the streets that you are familiar with,  
5 specifically Rock Boulevard and the Mormon church on Buena  
6 Vista?

7 A Yes.

8 MR. STANTON: Your Honor, I move Exhibit 8 into  
9 evidence at this time.

10 THE COURT: Is it 8?

11 MR. STANTON: 8.

12 MR. SPECCHIO: No objection.

13 THE COURT: Exhibit 8 is admitted.

14 (Exhibit No. 8 admitted.)

15 BY MR. STANTON:

16 Q Sir, could you take that pointer for me? Can  
17 you show me on that map the route that you took on Tuesday  
18 leaving Losa's apartment to go to the Mormon church?

19 A I took Rock Boulevard South down to I-80. I  
20 took I-80 west, exit off the Virginia exit, and I went up I  
21 think it's Evans. Yeah, I went up Center Street and took a  
22 left on Ninth Street and went up on Virginia Street and made  
23 a left on the first block and took a right and on Imperial I  
24 took a left.

25 Q On the way over to the Mormon church on Buena

1 Vista, did Mr. Vanisi tell you to take an alternative route  
2 that you normally wouldn't take to get to the church?

3 A Yes.

4 Q What did he tell you to do?

5 A He told me to take the back way.

6 Q Why did he tell you that?

7 A He told me because the police might be still  
8 investigating the murder or the crime.

9 Q Was Mr. Vanisi acting any differently when he  
10 told you that?

11 A No.

12 Q He wasn't?

13 A No. He was just telling me to go.

14 Q Did you see this composite on the evening news?

15 A Yes.

16 Q When you saw that composite, did someone come  
17 to mind as soon as you saw it as to who it was?

18 A Yes.

19 Q Who?

20 A Mr. Vanisi.

21 Q Is that the way he looked the last time you saw  
22 him on Monday night, the 12th of January?

23 A Yes.

24 MR. STANTON: No further questions.

25 THE COURT: Cross-examination?

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MR. SPECCHIO: Thank you, Your Honor.

**CROSS-EXAMINATION**

BY MR. SPECCHIO:

Q Mr. Tauveli, the route that you just showed that you went from Rock Boulevard to the church, is that the route you would normally take?

A That's the route I usually always take from Rock Boulevard.

Q So you didn't pay any attention to what Mr. Vanisi said, you went the way you usually go anyway?

A Yes.

Q Last year, January of '98, Priscilla Endemann was your girlfriend?

A Yes.

Q Is that still a fact today?

A No, it's not.

Q How about Teki? Do you know Teki?

A Yes.

Q Do you know who his girlfriend was at that time?

A Renee Peaua.

Q Do you know a young lady by the name of Chiatra Hanke?

A That's his ex-girlfriend.

Q That is his ex-girlfriend?

1 A Yes.

2 Q You saw -- what kind of car does Teki drive?

3 A He was an '87 Cutlass Supreme Oldsmobile.

4 Q You would be able to recognize that car?

5 A Yes.

6 Q Matter of fact, you did recognize that car on

7 Monday night?

8 A Yes.

9 Q And you saw Teki driving Mr. Vanisi someplace?

10 A Yes.

11 Q It was at least -- would you point out on that

12 map where you saw that Oldsmobile?

13 A I was making a right going south on Sullivan,

14 and he was making a left going north off of Merchant towards

15 Oddie.

16 Q So you were in the area of Oddie and Sullivan?

17 A Yes.

18 Q And you saw the Oldsmobile, and it was late at

19 night?

20 A Yes.

21 Q It was dark out?

22 A Yes.

23 Q Do you know who was driving the car?

24 A Yes.

25 Q Did you see the driver or did you just see the

1 car and some people inside?

2 A No, I saw the driver.

3 Q And who was driving?

4 A Sateki.

5 Q Was Teki wearing the wig at that time?

6 A No.

7 Q And you saw the defendant, Mr. Vanisi. Was he  
8 sitting in the front seat or the back seat?

9 A I don't know. I saw another person, but I  
10 didn't know who it was.

11 Q Let me ask you this: Could there have been two  
12 other people besides Teki in that car?

13 A Yes.

14 Q Matter of fact, did you tell the police that  
15 you thought somebody was sitting in the back seat?

16 A Yeah. I'm not sure.

17 Q You spoke to the police for a couple hours on  
18 January 13th?

19 A Yes.

20 Q You obviously can't remember everything you  
21 said, but you have an idea pretty much everything you told  
22 them; right?

23 A Yes.

24 Q You weren't involved in this incident in any  
25 fashion, were you?

1 A No.

2 Q As a matter of fact, you made a number of

3 comments, did you not, about Mr. Vanisi's mental capacity?

4 A Yes.

5 Q You said a couple of times you thought he was

6 crazy?

7 A Yes.

8 Q And that's based on the fact that you knew he

9 was the suspect in this criminal case; right?

10 A No.

11 Q No?

12 A No.

13 Q You just thought that because of his --

14 A His behavior.

15 Q His behavior. Coupled with his attire?

16 A Yes.

17 Q So you saw him with bandanas and hatchets and

18 dreadlocks and beanies and figured this guy is a little

19 weird?

20 A Yes.

21 Q So the statements that you made regarding his

22 mental capacity are based primarily on your observations of

23 him?

24 A Yes.

25 Q And the way he was acting, what he was doing

1 and the way he was dressed?

2 A Yes.

3 Q The hatchet, they showed you the picture of the  
4 hatchet?

5 A Yes.

6 Q Let me just show you Exhibit 26. First of all,  
7 you're familiar with the Rock Boulevard address, aren't you?

8 A Yes.

9 Q Aren't you actually the lessee; isn't the place  
10 in your name?

11 A Yes.

12 Q So it's your name. It's in your name and your  
13 relatives Losa, Maria -- Losa Louis lives there with her  
14 sister and brothers?

15 A Yes.

16 Q So you must be related somehow?

17 A Yes.

18 Q And how are you related?

19 A They are my nieces.

20 Q Losa is your niece?

21 A Yes.

22 Q That being said, you're familiar with the 1098  
23 Rock Boulevard Apartment A address?

24 A Yes.

25 Q How long have you had that address, that

1 apartment in your name?

2 A About two years now.

3 Q About a year before this incident?

4 A Yes.

5 Q You're familiar with the layout of the  
6 apartment, how it's laid out, where the rooms are, et  
7 cetera?

8 A Yes.

9 Q And how it's furnished?

10 A Yes.

11 Q Let me show you this exhibit. Exhibit 26, ask  
12 if you recognize that.

13 A Yes, I do.

14 Q What would you say that is?

15 A That's the bag.

16 Q What is this?

17 A That is our kitchen.

18 Q Is that the kitchen at 1098 Rock Boulevard?

19 A Yes.

20 Q Where in relation to this photograph would the  
21 microwave be?

22 A The microwave would be right here.

23 Q Okay. Is this bag on it or in front of it?

24 A In front of it.

25 Q So I think your testimony before was at the



1 time that you saw the hatchet, it was on the microwave?

2 A Yes.

3 Q What time is that? When did you see the  
4 hatchet on the microwave?

5 A It was in the morning.

6 Q Of Tuesday?

7 A Yes.

8 Q Do you know what time?

9 A I would say around 8:30 or 9:00, 9:30, 10:00.

10 Q Do you know if that hatchet had already been  
11 discovered by William or Brandon?

12 A No, not yet.

13 Q It hadn't been?

14 A It hadn't been.

15 Q You're not sure of that, though?

16 A I'm not sure.

17 Q You were there when Mr. Vanisi got a change of  
18 appearance; is that right?

19 A Yes.

20 Q Did you recognize him before the shave?

21 A Yes.

22 Q Did you recognize him after the shave?

23 A Yes.

24 Q Did he have long hair before or reasonably long  
25 hair before, before he was shaved?

1 A He had a full beard and shaved into an Elvis  
2 cut.

3 Q By Elvis cut, you mean the sideburns were cut  
4 off here?

5 A Yes.

6 Q You had no trouble recognizing him before and  
7 after the shave?

8 A No.

9 Q How about his hair? Was his hair cut?

10 A I don't remember.

11 Q So you don't know if anything happened other  
12 than the shaving?

13 A Yes.

14 Q You know Shamari Roberts?

15 A Yes.

16 Q Shamari did the shaving?

17 A Yes.

18 Q Has he ever shaved you or cut your hair?

19 A Yes.

20 Q It wasn't unusual to see Shamari shave somebody  
21 or cut somebody's hair?

22 A He cuts everyone's hair.

23 THE COURT: I'm going to stop you for just a  
24 moment, Mr. Specchio.

25 Will the court reporter approach?

1 Thank you, Mr. Specchio. You may continue.

2 MR. SPECCHIO: Thank you, Your Honor.

3 BY MR. SPECCHIO:

4 Q Mr. Tauveli, when the wig was gone, Mr. Vanisi  
5 didn't tell you that he lost it, he just said it's missing;  
6 right?

7 A Yes.

8 Q Isn't that what you said in your report?

9 A Yes.

10 Q Now, you -- the place is in your name and you  
11 sleep there upon occasion, don't you, at Rock Boulevard?

12 A Yes.

13 Q Where do you work?

14 A I used to work at Colorite Plastics.

15 Q You don't work there anymore?

16 A No.

17 Q At the time that was in closer proximity to  
18 Colorite Plastics than your house?

19 A Yes.

20 Q You lived north of town, did you not?

21 A Yes.

22 Q So you spent some nights there because it was  
23 easier for you to go to work?

24 A Yes.

25 Q You worked what, graveyard shift?

1 A Yes.

2 Q And that began at what time?

3 A 12:00 a.m.

4 Q Midnight?

5 A Yes.

6 Q On Monday, January 12th, did you work that

7 night?

8 A Yes.

9 Q Which would be your Tuesday morning, I guess?

10 A Yes.

11 Q So you left at midnight to go to work; is that

12 right?

13 A I left at 11:30.

14 Q Of course. You left a little earlier to go to

15 work?

16 A Yes.

17 Q Did you work Sunday night, Monday morning?

18 A I think I did. I think that was one of our

19 overtime weeks.

20 Q So if I tell you that -- well, let me digress a

21 minute here so I don't confuse you. I'm already confused.

22 You indicated that Teki was asleep in the Rock

23 Boulevard apartment at -- let me rephrase that again. You

24 get off work at what time?

25 A 8:00 in the morning.

1 Q Okay. And after that it was not unusual for  
2 you to go to the Rock Boulevard apartment either?

3 A Yes.

4 Q In fact, you went there on Tuesday morning at  
5 about 10:00 o'clock, didn't you?

6 A Around 8:00, 9:00, 10:00.

7 Q And who was there at that time?

8 A Everyone.

9 Q By everyone, Losa?

10 A Yes.

11 Q Corina?

12 A Yes.

13 Q William Christopher?

14 A Yes.

15 Q Masi?

16 A Yes.

17 Q Mr. Vanisi?

18 A Yes.

19 Q Teki?

20 A I think so, yes.

21 Q Do you remember telling the police officers  
22 that Teki had been asleep in the room with William and Masi?

23 A Yes.

24 MR. SPECCHIO: I have no further questions.

25 Thank you, Your Honor.

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THE COURT: Redirect?

**REDIRECT EXAMINATION**

BY MR. STANTON:

Q Did you hear anybody else besides Siaosi Vanisi say they wanted to kill a cop during any time of January 1998?

A No.

Q Not anybody we have mentioned here today?

A No.

Q Did you ever see the defendant wearing the wig after Monday night when you saw him with Sateki Taukiuvea?

A No.

Q Never saw him again wear that wig?

A Yes.

MR. STANTON: Nothing further.

THE COURT: Recross?

MR. SPECCHIO: No, no further questions.

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

(The witness was excused.)

THE COURT: Call your next witness.

MR. GAMMICK: We call Detective Jim Duncan, Your Honor.

(One witness sworn.)

**JIM DUNCAN**

called as a witness on behalf of the Plaintiff,  
having been first duly sworn,  
was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. GAMMICK:

Q Would you please state your name and spell your  
last name, sir?

A Jim Duncan, D-U-N-C-A-N.

Q What is your profession or occupation?

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

Q How long have you been a police officer?

A Thirteen years.

Q Has all that been with the City of Reno?

A Yes, sir, it has.

Q What type of assignments have you held?

A I worked the patrol division, the canine unit,  
the detective division. I spent some time in burglary and  
fraud sections, and approximately six years now in the  
homicide section, robbery, homicide.

Q You say you worked in the patrol division.  
Would you explain briefly the difference between someone who  
works in the patrol division and someone who works in the  
detective division?

A Yes. Patrol are the uniformed officers that

1 are on the streets around the clock, in the marked police  
2 cars. They are the first responders to any call for service  
3 from a citizen.

4 Detectives are the ones that go out after  
5 patrol has made their initial reports or their preliminary  
6 investigation, and if there is any follow-up needed to  
7 complete whatever they started, that comes to the detective  
8 to finish and then advances to the District Attorney's  
9 Office.

10 Q Homicide robbery, what is that?

11 A Crimes against persons, violent crimes against  
12 persons. It includes all armed robbery, whether they are  
13 business, or purse snatches downtown, on up to all death  
14 investigations, including suicides, homicides, murder, et  
15 cetera.

16 Q Let's say that officers, patrol officers  
17 respond to a murder scene. Who do they contact once they  
18 arrive and feel they may have a murder or suspicious death?

19 A It actually goes through a chain of command.  
20 They would make sure one of their immediate supervisors in  
21 patrol responds and makes the same assessment. Then his job  
22 is to contact a detective supervisor who will make the  
23 assessment and start sending out detectives from their  
24 residence or depending on the time of day.

25 Q Is that how you get involved in these types of



1 cases as being called up while the scene is still there?

2 A Yes, sir.

3 Q I want to call your attention specifically to  
4 the morning, early morning hours of January 13th, 1998.

5 Were you notified that morning of a murder?

6 A Yes, sir, I was.

7 Q And where was that and what were the  
8 circumstances you were initially given?

9 A I was told that a UNR police sergeant had been  
10 shot to death on the campus, and I was asked to respond to  
11 the station initially to help with interviews of witnesses  
12 or persons that patrol had found and thought may be of some  
13 assistance, and they were being transported for interviews.

14 Q Did you receive a special assignment as to this  
15 case?

16 A Yes, sir. Eventually I was named one of the  
17 co-case agents or lead agents.

18 Q What does that mean?

19 A Well, we try to assign generally at least two  
20 primary or lead agents in every case. There are a lot of  
21 things that come up not only through the investigation but  
22 later on for crime lab requests. A lot of items that have  
23 to be taken care of that at least the case agents are then  
24 responsible for after the initial investigation.

25 Q And do you work with the District Attorney's

1 Office in preparation of a case as a case agent?

2 A Yes, sir.

3 Q Were you assigned, as I believe you stated, a  
4 co-case agent in this case?

5 A Yes, sir, I was.

6 Q Did you arrive at the scene?

7 A Yes. After I went to the station, there had  
8 been a change, and I was asked to go to the crime scene, and  
9 a detective there would come back and help with the  
10 interviews. Then I did go to the scene and stayed there for  
11 some time.

12 Q How many different agencies were involved?

13 A I think most if not all agencies in this part  
14 of the state showed up to assist or actually did assist us  
15 at some point.

16 Q And detectives, do you have any idea how many  
17 detectives were called out on this?

18 A I couldn't tell you an exact number. I believe  
19 all of the Sparks Police Department detectives, all of the  
20 Reno robbery homicide detectives, Washoe County detectives  
21 were there. I think every detective in the area.

22 Q You mentioned that you were asked to come in  
23 and do some interviews and some initial investigation at the  
24 station. When you went to the scene and there were all  
25 these different agencies and police officers involved, were

1 different officers and different detectives involved in  
2 tracking down any leads you had at that time?

3 A At the scene there had been -- one of the main  
4 things we want to do at the scene is start canvassing.  
5 There weren't a lot of leads. There were some things,  
6 information that had come forward that we wanted to track  
7 down as early as possible.

8 We also want to make sure that the entire area  
9 around the crime scene as far as residences, any open  
10 businesses, delivery people, anybody in the area is actually  
11 talked to to see if they saw anything. They were busy doing  
12 a lot of the outer crime scene work.

13 Q Does the names of Jack and Julie Wood mean  
14 anything to you as far as this case is concerned?

15 A Yes, sir.

16 Q How were they involved?

17 A One of the first things we did was also try to  
18 determine what Sergeant Sullivan's last movements and last  
19 known movements were, and we found out that he had made a  
20 traffic stop involving those two persons, and that was the  
21 last known radio contact with the department. Those persons  
22 were contacted at their residence by police officers, and I  
23 believe it is over in Sparks.

24 Q And were they interviewed and any follow-up  
25 investigation done with respect to them?

1           A     Yes. They came done to the Reno Police  
2 Department, and they were interviewed by detectives at the  
3 station.

4           Q     And was there a conclusion reached as to  
5 whether or not they were involved in the murder of Sergeant  
6 Sullivan?

7           A     Yes. We will felt comfortable that they  
8 weren't involved.

9           Q     Now, you mentioned you do an area canvass.  
10 Just what was going on at this scene as we start getting  
11 toward dawn Tuesday morning?

12          A     When I first got there, I noticed the yellow  
13 crime scene barrier ribbon we put up at crime scenes had  
14 stretched all along the south, what I call the south border  
15 of the main campus along Ninth Street. Also along that  
16 ribbon every few feet, every few yards was a police officer  
17 to make sure nobody crossed under the ribbon.

18          Q     Let me have you refer to Exhibit 8, which is  
19 a -- do you recognize that exhibit?

20          A     Well, it looks like a map of part of Reno and  
21 Sparks.

22          Q     Do you recognize the University of Nevada  
23 campus?

24          A     Yes.

25          Q     Would you please indicate as you are talking

1 about what was happening there -- in fact --

2 THE COURT: You guys can't see? We have a  
3 couple jurors outside the box. Back up.

4 Can you see now?

5 A JUROR: Yes.

6 BY MR. GAMMICK:

7 Q At this point would it be better to use No. 8  
8 or No. 7, which is a blown up photograph of the campus?

9 A Whatever you want.

10 Q Go ahead.

11 A This is all that is marked in pink is the  
12 University of Nevada campus. The actual area I'm talking  
13 about is this Ninth Street, which intersects with Center  
14 Street. Actually the campus extends, to my way of thinking,  
15 right up to Virginia Street and Ninth.

16 I was told that the main entrance to the campus  
17 would actually be the easiest way to enter the crime scene.  
18 At Ninth and Center where that main campus entrance is, is  
19 where I was going.

20 As I'm pulling in along Ninth Street, I noticed  
21 the crime scene barrier tape, police officers to insure that  
22 people didn't go into that scene; and at the entrance  
23 itself, there were three or four police officers that made  
24 sure nobody drove through them and into the entrance. That  
25 was the main portion of the crime scene where I went and

1 that I entered.

2 Q What is a command post?

3 A We have a mobile command post, which is really  
4 a custom built motor home that the Reno Police Department  
5 has. I think most agencies have them. We don't use it all  
6 the time. It just depends on the circumstances of the  
7 investigation.

8 But in this particular case, we did roll out  
9 the mobile command post and park it there near the  
10 intersection of Ninth and Center.

11 Q Did the Washoe County Search and Rescue play a  
12 role in this investigation that was happening?

13 A Yes, they did.

14 Q What as their role?

15 A Well, they did a couple of things that I can  
16 think of. We were looking for Sergeant Sullivan's handgun  
17 and some other items that were missing from him.

18 They did things -- we lowered the level of the  
19 lake, and they checked lakes, ditches, all the area around.  
20 They searched shoulder to shoulder and inch by inch as best  
21 they could, not only on the campus but also a block or two  
22 off the campus.

23 Q Was there any material that was picked up  
24 during that search of the area that was later discounted as  
25 having any connection with the crime?

1 A Yes, sir.

2 Q Quite a bit of it?

3 A Plenty of things, yes.

4 Q Would it be fair to say that just about every

5 gum wrapper got picked up in that entire area?

6 A Absolutely.

7 Q Is there a procedure known as a canvass of the

8 area?

9 A Yes, sir.

10 Q And what's that entail?

11 A That's what I was talking about earlier.

12 That's physically talking to everybody that we can place in

13 the area, not only residences and any open businesses. We

14 try to look for delivery people. Depending on the time of

15 day, any number of people, power company, utilities people

16 can be in the area. So it's a physical canvassing of the

17 area for persons or evidence, anything that we think might

18 be related.

19 Q Does that include knocking on doors?

20 A Yes, sir.

21 Q And was that done in this case?

22 A Yes, sir.

23 Q Let's move to sun's up Tuesday, even into noon,

24 early afternoon. Did you have any leads at that time as to

25 who was responsible for this?

1           A       Not what I'd call good concrete leads, no. The  
2 media coverage was massive. That fueled numerous phone  
3 calls into the police department, and so those were leads  
4 that had to be followed up. But there weren't any leads  
5 that subsequently turned out to be of substance.

6           Q       Did there come a time when a telephone call was  
7 received that did start building into something?

8           A       Yes, sir.

9           Q       And where was that call received?

10          A       It was received at the Secret Witness hotline.

11          Q       Are you familiar with the term 187 PC?

12          A       Yes, sir, I am.

13          Q       What is that?

14          A       That's the -- PC is for the penal code. That  
15 is a California Penal Code number for murder.

16          Q       And did this telephone call involve use of that  
17 terminology?

18          A       Yes, sir.

19          Q       Was there follow-up done with respect to the  
20 Secret Witness report?

21          A       Yes, sir, there was.

22          Q       And was a suspect developed at that time?

23          A       Yes.

24          Q       What information did you have to lead you to a  
25 suspect?



1           A       We knew that we were looking for a Tongan male  
2 that went by the name of Pe or Pea that was currently  
3 visiting and in the Reno area.

4           Q       Were you able to find a photograph of that  
5 person?

6           A       Yes, we did.

7           Q       And was that given to the media for  
8 broadcasting?

9           A       Yes.

10          Q       Let me show you what's been marked as 24-D and  
11 ask if you recognize those photographs.

12          A       Yes, that is the photograph.

13          Q       It appears to be a passport photo?

14          A       Yes.

15          Q       Who is the photograph of?

16          A       That would be the defendant, Mr. Vanisi.

17          Q       Would you please indicate where he is seated  
18 and what he is wearing today?

19          A       He is seated to the table left of yours and  
20 next to Mr. Gregory. He has a gray suit, blue and red tie.

21                 MR. GAMMICK: Move for 24-D to be admitted,  
22 Your Honor.

23                 THE COURT: Any objection, Mr. Specchio?

24                 MR. SPECCHIO: No, Your Honor.

25                 THE COURT: 24-D is admitted.

1 (Exhibit No. 24-D admitted.)

2 BY MR. GAMMICK:

3 Q Was there also a composite drawing that was  
4 obtained and becoming involved in the investigation Tuesday  
5 evening?

6 A There were a couple of composites from  
7 different people.

8 Q Let me show you Exhibit No. 6 and ask if you  
9 recognize that.

10 A Yes, sir, that is one of the composites that  
11 was done.

12 Q Was this also released to the media?

13 A I believe it was, yes.

14 Q Did you receive information as to a possible  
15 address frequented by Mr. Vanisi?

16 A Yes, sir.

17 Q And where was that?

18 A That was in Sparks off of Rock Boulevard, and  
19 you have marked it here as 1098 Rock, Apartment A.

20 Q What did you do once you received that  
21 information?

22 A I went to the apartment with another detective,  
23 and we actually sat outside on a surveillance initially to  
24 see and ascertain what kind of movement may be in and around  
25 the apartment. We also noted there was a vehicle parked

1 outside that had come up in the investigation that was  
2 connected to Mr. Vanisi, and so we watched that for maybe a  
3 half hour to an hour.

4 Q Was there information received about another  
5 possible residence?

6 A Yes.

7 Q In Reno?

8 A Yes. On Sterling Drive, 1645 Sterling.

9 Q Is that close to the University of Nevada  
10 campus?

11 A Yes, it is.

12 Q Did officers also respond to that location?

13 A Yes, they did.

14 Q You say you set up a stakeout outside. What  
15 did you do after a period of time?

16 A We noticed some kids playing out front, some  
17 juvenile males. They looked of Tongan descent to us. We  
18 finally approached and contacted them, identified ourselves  
19 and told them what we were doing there and asked them if we  
20 could speak to them. We also wanted to speak with their  
21 parents and asked who lived at home.

22 They said they were currently locked out and  
23 couldn't get in the house. It was a cold night, and that's  
24 why they had been playing outside. They were waiting.

25 Not long after we were there talking with them,

1 some other folks pulled up, and it was a male and either two  
2 females or at least one female, as I recall, that introduced  
3 themselves and said that this was in fact their residence  
4 and they lived there with the juveniles.

5 We explained to them what was going on, and  
6 they invited us inside, because it was cold, to finish the  
7 rest of our conversation.

8 Q So you entered the residence at that time?

9 A Yes, sir.

10 Q It may be obvious, but through the front door?

11 A Yes.

12 Q Did you almost step on something?

13 A I did, without noticing it. Shortly after I  
14 was inside, I looked down, and literally at my feet, just 12  
15 inches or so inside the door was a small hatchet.

16 Q Let me show you 20-A and 20-B and ask if you  
17 recognize those photographs.

18 A Yes, sir. This is the hatchet just the way I  
19 saw it.

20 Q Let me show you No. 21 and ask if you recognize  
21 that item.

22 A It certainly looks like the same hatchet.

23 Q Same hatchet depicted in these photographs and  
24 that you almost stepped on?

25 A Yes, sir.

1 MR. GAMMICK: I'm not sure if it's been done  
2 previously, Your Honor. I'm going to move for 20-A and -B  
3 and for 21.

4 THE COURT: 20-A and -B have been admitted. 21  
5 has not.

6 Mr. Specchio, do you have any objection?

7 MR. SPECCHIO: Well, not to 20-A and -B. 21 is  
8 the hatchet?

9 THE COURT: Correct.

10 MR. SPECCHIO: May we approach?

11 THE COURT: Certainly.

12 (Whereupon, a bench conference was held among  
13 Court and counsel as follows:)

14 MR. SPECCHIO: We have two hatchets, one the  
15 actual, one facsimile, whatever you want to call it. We  
16 will have a problem admitting one and not the other.

17 MR. GAMMICK: What I wanted to do -- go ahead.

18 MR. SPECCHIO: I mean, they are like the same  
19 thing. Maybe he should offer 5 or whatever it is.

20 MR. GAMMICK: Yes, 5 is the demo hatchet.

21 MR. SPECCHIO: I'm just thinking that we ought  
22 to clear this up right now. I mean, I don't really care. I  
23 just think it is going to be awful bizarre to somebody  
24 reading this down the road that we got a hatchet and another  
25 hatchet in. I'm just thinking we ought to --

1 MR. GAMMICK: I can clear it up at this time or  
2 I can wait until tomorrow when Dr. Clark comes in. And No.  
3 5 is here because it is accessible. 21, as you noted, is  
4 sealed in a plastic bag.

5 THE COURT: What you want to do, as I  
6 understand, is use Exhibit 5 for demonstrative purposes  
7 only?

8 MR. GAMMICK: For Dr. Ellen Clark's testimony,  
9 and then I am going to ask for it to be admitted also should  
10 the jury want to examine it closely. They can't actually  
11 handle No. 21 because it is sealed in a plastic bag.

12 No. 5, and we'll explain very carefully that  
13 that was purchased at Wal-Mart. It still has the label with  
14 it, the advertising that says what it is, where it is  
15 distributed, all that. I'm not trying to confuse anyone on  
16 this.

17 THE COURT: I don't think the jury needs to  
18 have both of them in the jury room. We can let Dr. Clark  
19 use Exhibit 5 for demonstrative purposes, and then if the  
20 jury thinks they need it, they will ask for it. But I think  
21 it could become kind of confusing.

22 MR. SPECCHIO: He can talk about No. 21 all you  
23 want. You can even show 21 to her and say, Are these  
24 similar.

25 MR. GAMMICK: That is what I plan on doing.

1 THE COURT: When you have the demonstrative  
2 purposes.

3 MR. GAMMICK: Definitely don't want to confuse  
4 them at all.

5 MR. SPECCHIO: Okay. You can clear it up with  
6 him as to why there are two now. Let him -- he doesn't need  
7 5, he needs 21. Tomorrow she needs 5 and not 21. You can  
8 clean it up with either one of them. I just think it's  
9 cleaner that way.

10 THE COURT: Now, I have got your stipulation.  
11 I have got proposed instructions on the stipulation. It is  
12 a pattern instruction from the civil pattern book.

13 I'll have to canvass Mr. Vanisi. We'll do that  
14 at the end of business today, after I excuse the jury.  
15 We'll put it on the record, and then you can do it tomorrow.

16 MR. STANTON: What time are you going to break?

17 THE COURT: 5:00.

18 MR. STANTON: What time do you want to break?

19 THE COURT: I was thinking of breaking at 5:00.  
20 How much more direct examination do you have?

21 MR. GAMMICK: I'm going to be talking to him  
22 for a little while about evidence and stuff. I think by the  
23 time they cross, he will probably be the last witness today,  
24 would be my guess.

25 THE COURT: Let's finish up with him and then.

1 we'll break, do the stipulation on the record. I'll send  
2 the jury home.

3 MR. GAMMICK: Did you want to put the DNA up  
4 today?

5 MR. STANTON: We won't have time.

6 MR. SPECCHIO: 10:00 tomorrow?

7 THE COURT: I haven't looked at the calendar.  
8 I think 10:00 tomorrow.

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

11 MR. GAMMICK: At this time I'll move for 21,  
12 Your Honor.

13 THE COURT: Based upon the bench discussion and  
14 Mr. Specchio's stipulation, it's admitted.

15 (Exhibit No. 21 admitted.)

16 BY MR. GAMMICK:

17 Q As to Item No. 21, maybe we can digress here  
18 for just a moment. The hatchet, during the course of your  
19 investigation, were you able to determine the source of  
20 that -- of the hatchet?

21 THE COURT: Exhibit No.?

22 THE WITNESS: Yes, sir.

23 THE COURT: You were referring to Exhibit  
24 No. 21?

25 MR. GAMMICK: 21, yes, Your Honor.



1 BY MR. GAMMICK:

2 Q And let me show you what's been marked as  
3 No. 5. Does that appear to be at least the same type of  
4 hatchet?

5 A Yes, sir, it does.

6 Q And where was No. 21, the actual weapon,  
7 purchased with respect -- referring to No. 5?

8 A At Wal-Mart store.

9 Q In this case, were there two hatchets involved  
10 in the case itself in the investigation?

11 A There were as far as -- you mean that we bought  
12 our own later?

13 Q That's where I'm headed.

14 A Yes.

15 Q So that hatchet was purchased by police  
16 officers later on during the investigation?

17 A Absolutely.

18 Q And I'm referring to Exhibit No. 5.

19 A Yes.

20 Q The one that still has the Wal-Mart label on  
21 it.

22 A Correct.

23 Q No. 21 is the one you actually found in the  
24 residence?

25 A Yes, sir.

1 Q At your feet?

2 A Yes, sir.

3 Q What did you do with respect to No. 21 once you  
4 went in and saw it lying there on the floor?

5 A Actually left it and didn't touch it.

6 Q Why is that?

7 A We don't normally have the detectives, at least  
8 in the Reno Police Department, collect our own evidence. We  
9 have trained crime lab personnel who will come out at our  
10 request, and they are trained more in the photography and  
11 collection and packaging of the material.

12 Q Is that FIS personnel?

13 A Yes.

14 Q Forensic Investigative Services?

15 A Yes.

16 Q Did you call FIS then when you saw the hatchet  
17 laying on the ground?

18 A Not at that point. Subsequently they did come  
19 out and collect it.

20 Q Now, you stated I believe when you were  
21 initially called that you were told that Sergeant Sullivan  
22 had been shot. During the day of the 13th, Tuesday, was  
23 that opinion changed as to how he died?

24 A Yes.

25 Q And was that pursuant or after an autopsy by

1 Dr. Ellen Clark?

2 A When I first viewed the decedent, I didn't see  
3 any evidence of gunshot wounds. I know sometimes the  
4 initial information, especially through the radio and  
5 through the telephone getting to the detectives, is not  
6 always absolutely accurate.

7 All I could see was obvious bludgeoning and  
8 blunt force type injuries. But they were to the extent that  
9 a gunshot wound could certainly be there.

10 But through the autopsy, we were able to find  
11 there were no gunshot wounds.

12 Q So you weren't looking for a gun come Tuesday  
13 night?

14 A Correct.

15 Q With respect to the death of Sergeant  
16 Sullivan -- we'll talk about another gun here in a minute.

17 A Yes.

18 Q You were looking for some type of instrument  
19 that would create those wounds?

20 A Yes, sir.

21 Q I believe I asked you, you didn't call FIS at  
22 that time?

23 A No, sir, not immediately.

24 Q And why not?

25 A There wasn't any hurry on my part since I was

1 there and I could see that nothing would happen to the  
2 hatchet from then on. As we spoke with the people there at  
3 the house, they made some statements that we certainly would  
4 be interested in getting a formal statement from them. So  
5 they agreed to follow one of the detectives down to the  
6 station for those formal interviews while I stayed there  
7 with the hatchet.

8 Along with that before they left, I asked them,  
9 Well, whose hatchet was it? And they said it belonged to  
10 Pe, a person who had been staying there.

11 I asked them, was there any other items in the  
12 house that belonged to Pe. They showed me a red or what I  
13 call a wine-colored jacket in an entryway, or a hallway,  
14 short hallway near a bathroom. And sticking out of the  
15 jacket were some cream-colored gloves. They said those were  
16 his gloves also.

17 Q Let me show you what's been marked -- excuse  
18 me, counsel -- 23-A and -B and ask if you recognize the  
19 items depicted in those photographs.

20 A Yes. That's the jacket and gloves that were in  
21 the short hallway near the bathroom.

22 MR. GAMMICK: Move for admittance of 23-A and  
23 -B, Your Honor.

24 MR. SPECCHIO: I think they are in, Judge. But  
25 I'm willing to stipulate again to let them in.

1 THE COURT: 23-A and 23-B are admitted --

2 MR. SPECCHIO: Okay.

3 THE COURT: -- now.

4 (Exhibit No. 23-A and 23-B admitted.)

5 BY MR. GAMMICK:

6 Q Let me show you what's been marked as Item  
7 No. 11 and ask if you recognize that.

8 A Yes, sir. That is the jacket that we're  
9 talking about that's in the photos.

10 Q This was in the house at 1098 South Rock or  
11 Rock Boulevard when you went in?

12 A Yes, sir.

13 MR. GAMMICK: Move for No. 11, Your Honor.

14 MR. SPECCHIO: Can't change now, Judge.

15 THE COURT: Any time you want to, Mr. Specchio.  
16 Does that mean you are stipulating?

17 MR. SPECCHIO: Yes, ma'am.

18 THE COURT: Or stipulating?

19 MR. SPECCHIO: Judge, Your Honor, yes.

20 (Exhibit No. 11 admitted.)

21 MR. SPECCHIO: You know, Judge, I got to say,  
22 it's hot in here. You know that?

23 THE COURT: I agree. Pour some water.

24 MR. SPECCHIO: Then I'll have to go to the  
25 little room, and you know. One thing leads to another.

1 THE COURT: Do you want a stretch break?

2 MR. SPECCHIO: Could we?

3 THE COURT: Ladies and gentlemen of the jury,  
4 if you'd like to stand and stretch for a minute, please feel  
5 free to do so.

6 Ladies and gentlemen of the jury, do any of you  
7 need any fresh water? Let's be seated and proceed.

8 MR. SPECCHIO: Thank you, Your Honor.

9 THE COURT: You are welcome.  
10 You may continue.

11 MR. GAMMICK: Thank you, Your Honor.

12 BY MR. GAMMICK:

13 Q You mentioned some tan gloves sticking out of  
14 the jacket. Let me show you what's been marked as Item  
15 No. 25 and ask if you recognize those items.

16 A Yes. Those are the gloves.

17 Q Those were with the burgundy jacket, Item  
18 No. 11 at 1098 Rock?

19 A Yes.

20 MR. GAMMICK: I move for admission of that  
21 exhibit, Your Honor.

22 THE COURT: 25. Mr. Specchio, any objection?

23 MR. SPECCHIO: No objection, Your Honor.

24 THE COURT: Admitted.

25 (Exhibit No. 25 admitted.)

1 BY MR. GAMMICK:

2 Q Now, if I can digress for just a moment, and  
3 then we'll come back to this scene. As to Items 11, 25 and  
4 21, the jacket, the gloves and the hatchet, did you  
5 ultimately call FIS to respond to that scene?

6 A Yes, sir.

7 Q And were those items collected?

8 A Yes, they were.

9 Q Now, as the case agent, does that end your  
10 involvement with those items?

11 A No.

12 Q Who makes the request for any type of lab or  
13 laboratory examinations to be done of evidence?

14 A The case agents, whether it be written or  
15 verbal or a combination of all lab requests.

16 Q And as to these items that we have before us  
17 now, the jacket, the gloves and the hatchet, did you make  
18 such request that tests be made for blood and then further  
19 type that blood?

20 A I'm sure I either made them or another case  
21 agent detective with my sanctioning did, yes.

22 Q What is a staffing?

23 A Staffing is a meeting. We use the term a  
24 couple of ways. But with the crime lab and District  
25 Attorney's Office, we have a staffing or a meeting of all

1 agencies that will be involved in the case, usually prior to  
2 the actual testing of any items that have been recovered so  
3 we can discuss what we have, what's available, what kind of  
4 tests we can run on them without damaging prior to another  
5 test, things like that.

6 Q Were staffings held later on in this case?

7 A Yes.

8 Q Once you had these items of evidence?

9 A Yes, they were.

10 Q As a result of those staffings, whether by you  
11 personally or with you present, were requests made to test  
12 these various items?

13 A Yes, sir.

14 Q And as far as you know, were those tests  
15 completed?

16 A Yes, sir.

17 Q As part of your request for testing as the case  
18 agents, were you also familiar with any type of evidence  
19 that may have existed on Sergeant Sullivan's vehicle?

20 A Yes, sir. There was what appeared to be blood  
21 spatter evidence.

22 Q Did you request that some samples be taken from  
23 that vehicle to also be tested?

24 A Yes, sir.

25 Q As far as you know, was that completed?



1 A Yes, sir.

2 Q Now, I'll jump back to 1098 Rock Boulevard,  
3 early morning hours -- or correction -- evening hours of  
4 January 13th, 1998.

5 A Yes, sir.

6 Q After you had discovered the jacket and gloves,  
7 what did you do?

8 A Since we hadn't found this Pe or Pea and we  
9 knew we were missing a weapon, and certainly we considered  
10 him a very dangerous individual, we thought he may in fact  
11 come back to that residence. We continued the surveillance  
12 once the folks had left to go down to the police department  
13 to give the formal statement.

14 Myself and some other law enforcement officers  
15 stayed inside and some officers in the outside. That was  
16 being done at other locations in the city. But at that  
17 particular residence, we had inside and outside  
18 surveillances.

19 Q I asked you a few minutes ago if you were  
20 looking for a gun as to a weapon that inflicted injuries on  
21 Sergeant Sullivan. You responded no.

22 A Correct.

23 Q Were you looking for a gun?

24 A Yes. We were looking for Sergeant Sullivan's  
25 gun.

1 Q And where did you believe at that time that gun  
2 was?

3 A Based on the statements by the first person who  
4 found him and Officer Carl Smith, the actual second person,  
5 we believed that his assailant had removed the gun along  
6 with some other items.

7 Q So was that a reason for your extra caution in  
8 the number of officers involved at that time at the  
9 stakeout?

10 A Absolutely.

11 Q While you were at 1098, did you have a police  
12 radio with you?

13 A Yes, I did.

14 Q And were you in contact with dispatch through  
15 the communications center?

16 A Yes. I also had a cellular phone, and I used  
17 both.

18 Q Over the radio did you monitor some type of  
19 calls later on that evening?

20 A Yes, sir.

21 Q What type of calls were those?

22 A They were armed robbery calls that were  
23 occurring. There was actually armed robberies occurring in  
24 Reno and Sparks. I had a Sparks police officer, more than  
25 one with me, and I could hear their radios.

1 Specifically in the Reno armed robberies, I  
2 heard a location of a vehicle that had been stolen and then  
3 one armed robbery after another. There were two. And in  
4 each of them, they have described a large, sometimes  
5 Hawaiian type male, and one specifically had mentioned that  
6 he used a Glock brand pistol as the weapon in the armed  
7 robbery, which to me, it certainly sounded like it was our  
8 same suspect who was now on a continuing type crime spree.

9 Q What was your reaction to monitoring these  
10 types of calls?

11 A Hearing what was going on and knowing the  
12 locations that they were giving us, I knew he was not  
13 actually that far from my address or out of the Reno area at  
14 all. He was in close proximity.

15 So we continued the surveillance. I called  
16 dispatch after hearing those and said, special attention,  
17 that this certainly sounds like our homicide suspect and  
18 it's going to be very dangerous. And I told them to pay  
19 particular attention to a Toyota Camry that I had heard  
20 announced just prior to the armed robberies as being stolen,  
21 because it sounded to me like he had taken that car.

22 I knew from the area, he was very comfortable  
23 in that area where the car was missing. So we continued the  
24 surveillances and waited to see if he would return to any of  
25 those residences.

1 Q Let's say that those string of three crimes,  
2 stealing of the car and the two armed robberies, occurred in  
3 the vicinity of 10:15 to 10:35 at night, Tuesday night. Was  
4 there any other activity that you either saw or monitored  
5 with respect to the suspect after that?

6 A No.

7 Q And on the 13th on to the 14th, something did  
8 happen; is that correct?

9 A That is correct.

10 Q We will get to that in a minute. Did there  
11 come a time that you did call FIS to collect this evidence  
12 then?

13 A Yes. After we had not heard of any further  
14 crimes, there was nobody had any contact with the suspect,  
15 we decided I think, and I'm just guessing, I think 1:00 or  
16 1:30, we finally had the crime lab people come into the  
17 residence, and even then we made them keep the lights down  
18 low, do their collecting and photography as quickly, as  
19 quietly as possible.

20 We didn't do a hard search of the entire  
21 residence to get them out, and actually we kept the  
22 surveillance going, although I left as soon as FIS did. But  
23 there were officers that still stayed on the residence in  
24 case he did come back.

25 Q By that time of the night, did you have all of

1 the identifying information that you needed on your suspect  
2 to pursue an arrest warrant?

3 A We got the arrest warrant the next -- well,  
4 several hours later. But as I recall, by then we did have  
5 enough to identify him.

6 Q And what is an arrest warrant? What process do  
7 you go through?

8 A We type out an affidavit to the judge outlining  
9 all of our probable cause to believe that a certain person  
10 in the case, the defendant, has committed whichever crimes  
11 we delineate in the arrest warrant. Our reasons to believe  
12 he committed the crime, that the crime occurred in Reno, and  
13 then we present that to the judge.

14 Q Was an arrest warrant issued in this matter?

15 A Yes, it was.

16 Q And what did you do with that information  
17 concerning the fact an arrest warrant had been issued?

18 A We immediately broadcast that to all local  
19 agencies, but we also put it on the national crime computer  
20 so that any officers that may come in contact with the  
21 suspect at least has a running chance, knowing that he's  
22 armed and dangerous and wanted in the State of Nevada.

23 Q Next day, January 14th, 1998, from where we  
24 left off, did you receive some information as a result of  
25 broadcasting that nationally or putting it on the computer

1 system?

2 A Yes. We were contacted by representatives of  
3 the Salt Lake County Sheriff's office.

4 Q Do you recall what time of the morning that  
5 was?

6 A I think it was later on into the afternoon,  
7 early evening. I'm thinking 5:00ish on the 14th.

8 Q Do you happen to know, Detective Duncan, what  
9 the mileage is, rough mileage is between Reno and Salt Lake  
10 City?

11 A I have heard it before as roughly 500 miles.

12 Q 500, 550?

13 A Somewhere in there, yes.

14 Q So by the time you were called by Salt Lake  
15 City, would that have given someone sufficient time from the  
16 last armed robbery to drive to Salt Lake City from Reno?

17 A More than enough time, yes.

18 Q What did you do as a result of the telephone  
19 call you received from Salt Lake City?

20 A Myself and another detective made immediate  
21 arrangements to travel to Salt Lake City, and we caught a  
22 flight out as soon as possible.

23 Q You're on the airplane headed for Salt Lake  
24 City. Did you receive some additional information.

25 A Yes. Not long after -- in fact, I don't think

1 we had left the runway. But we carry pagers. At that time  
2 they were alpha type pagers. And we got a message that said  
3 Mr. Vanisi is in custody at the Salt Lake County Sheriff's  
4 office.

5 Q Did you proceed to Salt Lake City?

6 A Yes, we did.

7 Q And did you meet with detectives there?

8 A Yes, we did the next morning, about 8:00 or  
9 9:00 a.m.

10 Q Was Detectives Keith Stevens from Salt Lake  
11 County one of the people you met with?

12 A Yes, sir.

13 Q After you met with the detectives in Salt Lake  
14 City on that trip, did you return to Reno?

15 A Yes.

16 Q And did you bring some items with you?

17 A Yes, we did.

18 Q A fingerprint master card for Mr. Vanisi?

19 A Yes, sir.

20 Q Did you bring back -- what other items did you  
21 bring back with you?

22 A Where they had actually found the stolen Toyota  
23 was up there in Salt Lake County near one of his relative's  
24 homes. They had impounded that.

25 So we went with them, and we searched the

1 vehicle, actually another detective from Reno and I, and we  
2 took the items out of the vehicle.

3 They also released the clothing that Mr. Vanisi  
4 was arrested in. We brought that back. And I believe I  
5 brought back some negatives of the film that they had taken  
6 but they hadn't even developed yet.

7 Q Let me show you photograph 32-B, ask if you  
8 recognize that.

9 A Yes, sir. That's a photo of the Toyota within  
10 the evidence section at Washoe -- I'm sorry -- Salt Lake  
11 County.

12 Q That is the vehicle you searched when you were  
13 up there?

14 A Yes.

15 Q I believe you stated you brought back some  
16 clothing?

17 A Yes, sir.

18 Q Let me show you what's been marked as 29-A and  
19 -B and ask if you recognize those items.

20 A Yes. That's the clothing we brought back, and  
21 they told us this is the clothing that Mr. Vanisi had on at  
22 the time of his arrest.

23 Q With respect to that clothing, we had already  
24 discussed as the case agent your requests to have certain  
25 tests done at the FIS, at the forensic laboratory. Did you



1 also request examination and tests be conducted on some  
2 articles of that clothing?

3 A Yes, sir.

4 Q And was that completed?

5 A Yes, sir.

6 MR. GAMMICK: Your Honor, I move for 29-A and  
7 -B, please.

8 THE COURT: Any objection?

9 MR. SPECCHIO: No objection, Your Honor.

10 THE COURT: 29-A and 29-B are admitted.

11 (Exhibit Nos. 29-A and 29-B admitted.)

12 BY MR. GAMMICK:

13 Q Did you also bring back a firearm?

14 A Yes, sir, we did.

15 MR. GAMMICK: Your Honor, I might indicate at  
16 this time that we do have this firearm No. 15-A that we have  
17 been using throughout the trial, that the white is simply a  
18 safety device to insure that the weapon is inoperable, the  
19 white tie.

20 THE COURT: All right. It has been admitted,  
21 Mr. Gammick.

22 BY MR. GAMMICK:

23 Q Did you have a serial number with you, when you  
24 went to Salt Lake City, of Sergeant Sullivan's firearm?

25 A Yes, sir, I did.

1 Q And when you arrived at Salt Lake City, did you  
2 compare that serial number with the serial number of the gun  
3 you have in your hand now?

4 A Yes, sir.

5 Q Is that Sergeant Sullivan's weapon?

6 A Yes, sir, it is.

7 Q Did you also bring back some other items that  
8 were part of that weapon?

9 A Yes, sir.

10 Q Let me show you what's been marked as Exhibits  
11 15-B, -C and -D, and ask if you -- you might want to look in  
12 the envelope -- ask if you recognize those items.

13 A Yes, sir, I do.

14 Q Were those with Sergeant Sullivan's weapon when  
15 you retrieved it in Salt Lake City?

16 A Yes.

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

19 THE COURT: Any objection?

20 MR. SPECCHIO: No, I don't have any. I thought  
21 we did this once already.

22 THE COURT: A was admitted.

23 Now we'll admit 15-B, 15-C and 15-D.

24 (Exhibit Nos. 15-B, 15-C and 15-D admitted.)

25 BY MR. GAMMICK:

1 Q After you came back from Salt Lake City, do you  
2 recall when Sergeant Sullivan's funeral was? If you need  
3 to, there is a calendar here right behind this map.

4 A I believe it would be Friday, the 16th.

5 Q Did you make it to that funeral?

6 A No, sir, I didn't.

7 Q Why not?

8 A I received a phone call from one of the  
9 residents at 1098 Rock Boulevard, the address we were at  
10 earlier. They said they had found something in their home  
11 that they thought would be pertinent to our investigation.

12 Q And did you respond to 1098 Rock?

13 A Yes, sir, I did.

14 Q Apartment A?

15 A Yes.

16 Q And did you find something else of evidentiary  
17 value there?

18 A Yes, sir.

19 Q Let me show you what's been marked photographs  
20 22 and 26 and ask if you recognize those.

21 A Yes, sir.

22 Q Are those true and accurate depictions of what  
23 you found?

24 A Yes. That's the picture just the way I found  
25 it before we recovered it, and then we opened the bag and

1 took another photo of the items inside the bag that we were  
2 recovering.

3 MR. GAMMICK: Your Honor, I move for 22 and 26,  
4 please.

5 THE COURT: Any objection?

6 MR. SPECCHIO: No objection, Your Honor.

7 THE COURT: 22 is admitted and 26 is admitted.

8 (Exhibit No. 22 and 26 admitted.)

9 BY MR. GAMMICK:

10 Q Let me hand you a box that's been marked as  
11 Item No. 16 and ask you to please look in there and see if  
12 you recognize the items contained.

13 A Yes, sir, I do.

14 Q Are those the same items to include the white  
15 plastic bags that you seized at 1098 South Rock Boulevard,  
16 Apartment A, on the 16th?

17 A Yes, sir, it is.

18 Q Were you able to identify the weapon belt and  
19 the equipment that is inside?

20 A Yes, sir.

21 Q Is that Sergeant Sullivan's equipment?

22 A Yes, it is. His name is actually engraved on  
23 some of the items, or with a Dynamo labeler type label on  
24 some of the others.

25 MR. GAMMICK: Your Honor, I move for 16 and

1 contents be admitted.

2 THE COURT: Any objection?

3 MR. SPECCHIO: No objection, Your Honor.

4 THE COURT: Exhibit 16 is admitted.

5 (Exhibit No. 16 admitted.)

6 THE COURT: That doesn't include 16-A or -B,  
7 does it?

8 MR. GAMMICK: Those are included in the box.  
9 I'll do those now.

10 THE COURT: Those have been marked separately.

11 MR. GAMMICK: Sure.

12 BY MR. GAMMICK:

13 Q I show you Items 16-A and 16 B. Were these two  
14 of the items that you mentioned that were marked with  
15 Sergeant Sullivan's name that were in that bag?

16 A Yes, they were. It says Sullivan on the radio,  
17 and then the name is actually engraved along the cone of the  
18 flashlight, Sullivan.

19 MR. GAMMICK: Your Honor, I move for admission  
20 of both those items too.

21 MR. SPECCHIO: Didn't we do those already?

22 THE COURT: We marked them previously.

23 MR. SPECCHIO: I have no objection.

24 THE COURT: 16-A and 16-B are admitted.

25 \_\_\_\_\_ (Exhibit No. 16-A and 16-B admitted.)

1 MR. GAMMICK: May I remove these items just in  
2 front of the jury to publish them? I don't want to hand  
3 them around or anything but just to show them what is in the  
4 box?

5 THE COURT: Yes.

6 BY MR. GAMMICK:

7 Q Actually I see numerous white plastic bags.  
8 Were these all within each other at the time?

9 A Yes.

10 Q We have this would be an officer's duty belt?

11 A Yes, sir.

12 Q Isn't there a buckle or something that goes on  
13 this?

14 A There is one missing for that one.

15 Q And was that found at the scene where Sergeant  
16 Sullivan was killed?

17 A Yes, sir.

18 Q Are these belts with the buckle system pretty  
19 strong?

20 A Yes, sir, they are.

21 Q Have you been involved wearing this type of  
22 equipment yourself over the last 15 years?

23 A More than I'd like to remember, yes, sir.

24 Q I notice that there is some -- let me ask you  
25 this first. We have already talked about laboratory

1 requests and having things done on several items now. Did  
2 you also request that these items be processed by the Washoe  
3 County crime laboratory?

4 A Yes, sir.

5 Q And for instance, on the radio, we see some  
6 white substance here. Are you familiar with that?

7 A Yes, sir. That is the remnants of the  
8 Supergluing technique which they employ to hopefully raise  
9 latent prints, fingerprints.

10 Q Now, from your experience and training, would a  
11 person leave a latent fingerprint if they are wearing  
12 gloves?

13 A No, sir.

14 Q You had information -- let me ask it this way.  
15 Did you have information that there was a hunt for a police  
16 officer Sunday evening?

17 A Yes, sir.

18 Q And did you have information who was involved  
19 in that?

20 A Yes, sir.

21 Q And who was that?

22 A I'm not good on the Tongan names. I believe  
23 it's Sateki Taukiueva and the defendant, Mr. Vanisi.

24 Q Also known as Teki?

25 A Yes.

1 Q So at that time you had information that two  
2 people were involved in that particular incident Sunday  
3 night?

4 A Yes, sir.

5 Q Absent that, was there any evidence that you  
6 found or anyone else that worked with you or any evidence  
7 that you are aware of during this entire investigation that  
8 would indicate that more than one person was involved in the  
9 death of Sergeant George Sullivan?

10 A Absolutely not.

11 MR. STANTON: That's all the questions I have  
12 at this time, Your Honor. Thank you.

13 THE COURT: Cross-examination?

14 MR. SPECCHIO: May we approach, Your Honor?

15 THE COURT: Yes.

16 (Whereupon, a bench conference was held among  
17 Court and counsel as follows:)

18 MR. SPECCHIO: I don't want to start now.

19 THE COURT: Do you have a lot for him?

20 MR. SPECCHIO: Yeah, probably 20 minutes or a  
21 half hour.

22 THE COURT: Okay.

23 MR. SPECCHIO: I don't want them to think that  
24 I'm going to keep them here that long.

25 THE COURT: What is the status of your



1 witnesses?

2 MR. SPECCHIO: We're rolling.

3 MR. GAMMICK: We're doing fine.

4 THE COURT: When is Dr. Clark going to be here?

5 MR. GAMMICK: She is on vacation this week. We  
6 can notify her at any time.

7 MR. STANTON: Right now, Judge, we're looking  
8 at a little slower than where we thought the cusp was going  
9 to be. We should have a pretty full -- your concern is  
10 advising the jury tomorrow?

11 We have Jeffrey Riolo after Jim Duncan. He is  
12 about DNA. He is a moderately lengthy witness. After that  
13 we have a series of witnesses involved in the robbery, or we  
14 have Fernando Moreira.

15 MR. GAMMICK: He is not very long.

16 MR. STANTON: We have the robbery folks which  
17 aren't very long. So I would think --

18 MR. SPECCHIO: We'll get done early tomorrow.

19 THE COURT: Will we be able to have Dr. Clark  
20 here when we get done so we can make that record?

21 MR. SPECCHIO: Probably Tuesday morning they  
22 will probably start with her, I think.

23 MR. GAMMICK: We can do her tomorrow.

24 THE COURT: I'm trying to think if we are going  
25 to take an extra long break so that I can have my

1 out-of-the-presence hearing with Dr. Clark.

2 MR. STANTON: Jeffrey Riolo is probably going  
3 to take an hour.

4 MR. SPECCHIO: At least. Yeah, about an hour,  
5 hour and a half for him. But the after that they should  
6 slide pretty easy.

7 MR. GAMMICK: Right now finishing with  
8 Mr. Duncan tomorrow morning on cross, the rest of the  
9 witnesses, I'm anticipating Dr. Clark 1:30 early afternoon  
10 we'll be ready for her.

11 MR. STANTON: Because if we have got the cross  
12 of Jim tomorrow morning, we have Riolo, that is probably  
13 going to carry us over into the afternoon.

14 MR. SPECCHIO: I don't think it will be that  
15 long, do you?

16 THE COURT: You said 20 minutes.

17 MR. SPECCHIO: Half hour, 20 minutes with him.  
18 Probably that long with Riolo. Maybe not that long with  
19 Riolo. I would think lunchtime we'd be done with these two  
20 days. After that they should be up and down like nothing.

21 MR. GAMMICK: I'm figuring Dr. Clark 1:30 at  
22 the earliest, depending if we carry over witnesses.

23 We're getting down to kind of shaving hours  
24 now, and it is going to be pretty close. I'll tell the jury  
25 they will probably get off early tomorrow afternoon, and I

1 would have to have Dr. Clark here at 1:00 so we can have our  
2 hearing outside the presence of the jury then, and then I'll  
3 bring the jury back from lunch at 1:30.

4 Q And then we have probably about a full hour of  
5 witnesses after that. That is 2:30?

6 MR. SPECCHIO: That is it.

7 MR. STANTON: Then we will be into Ellen if we  
8 can call her after those witnesses. I'm thinking somewhere  
9 around the afternoon recess, little bit before that, we'll  
10 be getting to --

11 MR. SPECCHIO: If we are going to bring that  
12 Teki back, we'll bring him back after her.

13 THE COURT: They are not resting yet.

14 MR. SPECCHIO: Who else do you have? You have  
15 the Salt Lake guys.

16 MR. GAMMICK: Tuesday morning.

17 THE COURT: Are you going to cross Dr. Clark  
18 very long?

19 MR. SPECCHIO: No, I don't think so.

20 THE COURT: All right. If you are, then they  
21 won't get out early.

22 MR. SPECCHIO: No, I don't think so.

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

25 THE COURT: Okay. Ladies and gentlemen of the

1 jury, we were just discussing the schedule for tomorrow so  
2 that I could give you some indication of what your schedule  
3 is going to be like tomorrow.

4 I do have an early morning hearing, but I  
5 anticipate that we will be able to start by 10:00 a.m. So  
6 I'd ask that you be back at 10:00 a.m. ready to go.

7 I anticipate that we will break for lunch  
8 approximately noon and that you will have a lunch break from  
9 12:00 to 1:30. Then you may get off early tomorrow  
10 afternoon.

11 We might have a situation where we have got  
12 some people coming from out of town to be witnesses, and  
13 we're not going to bring them in until after the holiday  
14 weekend. So when we get done with the witnesses tomorrow  
15 afternoon is when you will get to go home.

16 I can guarantee you, you won't be here past  
17 5:00, but I think it will probably be around 3:30 or 4:00.  
18 We'll work as diligently as we can. You might get a little  
19 bit long weekend.

20 We will not be holding court on Monday. Monday  
21 is a legal holiday, and so court will not be held on Monday.

22 So you will have the three-day weekend, and  
23 then you will return to the courthouse on Tuesday. I'll go  
24 over that in more detail with you tomorrow. But just so you  
25 can kind of make your schedules out.

1 Now, ladies and gentlemen, during this  
 2 evening's recess, I want you to remember the admonition that  
 3 you have received at all other breaks. It's your duty not  
 4 to discuss among yourselves or with anyone else any matter  
 5 having to do with this case. It is your further duty not to  
 6 form or express any opinion with regard to the defendant's  
 7 guilt or innocence until the case has been finally submitted  
 8 to you for decision.

9 You may not look at, read, view, listen to any  
 10 news media accounts regarding this case, and should any  
 11 person attempt to influence you in any manner about this  
 12 case, you are to report it to the bailiff as soon as you  
 13 return to the courthouse.

14 Ladies and gentlemen of the jury, you are  
 15 excused at this time.

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

19 THE COURT: Audience will remain seated,  
 20 please. Detective, you are excused until tomorrow morning  
 21 at 10:00 a.m.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness temporarily excused.)

24 THE COURT: Counsel, you have provided to me  
 25 something entitled Stipulation. It purports to be a  
 stipulation regarding Investigator William Stevenson's

1 testimony.

2 Have you signed that, Mr. Specchio?

3 MR. SPECCHIO: Yes, Your Honor.

4 THE COURT: And Mr. Gammick?

5 MR. GAMMICK: Yes, Your Honor.

6 THE COURT: Mr. Vanisi, did you have an  
7 opportunity to discuss the entering of a stipulation with  
8 your counsel?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And you saw the stipulation?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Did you discuss it with him?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you have any objection to his  
15 entering that stipulation?

16 THE DEFENDANT: No objection, Your Honor.

17 THE COURT: Now, counsel for the State has  
18 requested that a jury instruction be read to the jury at the  
19 same time as the stipulation is entered and provided to the  
20 jury. I don't know exactly what you want me to say, but I  
21 did pull out the Nevada pattern jury instructions for civil  
22 cases. This is Nevada pattern instruction 2.06.

23 The instruction reads: "If counsel for the  
24 parties have stipulated to any fact you will regard that  
25 fact as being conclusively proved." And the stock

1 instruction is "as to the party or parties making the  
2 stipulation," and I changed that to read just "conclusively  
3 proven."

4 MR. SPECCHIO: Well, Your Honor, I would oppose  
5 reading any instructions to the jury at this time. I think  
6 you can read the stipulation. If they don't understand it,  
7 I'm sure that somebody in closing argument will bring that  
8 out to them.

9 I just think highlighting an instruction to a  
10 jury before they are instructed is getting into dangerous  
11 territory.

12 THE COURT: Do you have any objection to the  
13 instruction as I have provided it to you in the instructions  
14 at the end of the case?

15 MR. SPECCHIO: No, I don't, Your Honor.

16 THE COURT: Mr. Stanton, would that satisfy  
17 your concerns?

18 MR. STANTON: Yes, Your Honor.

19 THE COURT: Okay. Well, he made the motion,  
20 Mr. Gammick. I wasn't trying to ignore you.

21 MR. GAMMICK: I understand, Your Honor.

22 I believe we did include a stipulation  
23 instruction in the stock jury instructions we furnished the  
24 court. It's not in there?

25 THE COURT: No. I looked for it this afternoon

1 after you gave me the stipulation, and it wasn't in the ones  
2 I received. That's why we did this one. So if you want to  
3 provide a different one by the time we settle instructions,  
4 that is fine. Otherwise this will be the one I'll give.

5 MR. GAMMICK: That is fine, Your Honor.

6 THE COURT: Counsel, do you understand that the  
7 clerk will file the stipulation in and mark it as an exhibit  
8 next in line? It will not go to the jury, but it will be  
9 part of the permanent record of this case, and counsel has  
10 requested being able to read the stipulation into the  
11 record.

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

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

14 THE COURT: Is that what you wanted to do?

15 MR. GAMMICK: That is fine, Your Honor.

16 THE COURT: The clerk will mark the entered  
17 stipulation, and we will place the proposed instruction with  
18 the other proposed instructions for final determination at a  
19 later time of jury settling, jury instruction settling.

20 It is hot in here, Mr. Specchio. You think  
21 it's hot for you, wear a wool bath robe, and you will feel  
22 even better.

23 MR. SPECCHIO: May I tomorrow, Your Honor?

24 THE COURT: You know, I have often thought we  
25 could give everybody different colors. Court clerk has



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asked for that before. At the present stage I don't think  
I'll let you.

Anything further?

MR. GAMMICK: No, Your Honor.

MR. SPECCHIO: No, Your Honor.

THE COURT: Court is in recess.

(Recess for day taken at 5:05 p.m.)

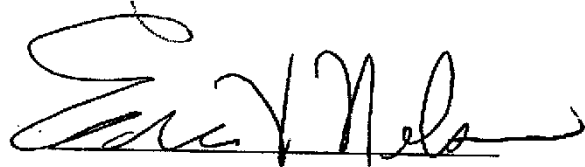
STATE OF NEVADA,     )  
                              )  
COUNTY OF WASHOE.    )

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

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

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

DATED: At Reno, Nevada, this 14th day of January, 1999.



ERIC V. NELSON, CCR No. 57

17

Case No. CR98-0516

Dept. No. 4

**FILED**

JAN 19 1999

AMY HARVEY  
By: MS  
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,  
Plaintiff,

vs.

SIAOSI VANISI,  
Defendant.

TRIAL  
VOLUME 5  
January 15, 1999

Reno, Nevada

**APPEARANCES:**

For the Plaintiff:

RICHARD A. GAMMICK  
District Attorney  
DAVID L. STANTON  
Chief Deputy District Attorney  
75 Court Street  
Reno, Nevada 89520

For the Defendant:

MICHAEL R. SPECCHIO  
Public Defender  
STEPHEN GREGORY  
and JEREMY BOSLER  
Deputies Public Defender  
One South Sierra Street  
Reno, Nevada

The Defendant:

SIAOSI VANISI

Reported by:

ERIC V. NELSON, CCR No. 57

**ORIGINAL**

50enisi 2JDC03178

I N D E X

EXHIBITS FOR MOTION HEARING		ID	EVID
A	Transcript	916	
B	Audio tape	919	
C	Videotape	919	

SIERRA NEVADA REPORTERS (702) 329-6560

2JDC03178  
AA00525

RENO, NEVADA, FRIDAY, JANUARY 15, 1999, 10:07 A.M.

-o0o-

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

THE COURT: Counsel, do you have a motion?  
Somebody has a motion?

MR. SPECCHIO: I think the State has something to say, Your Honor.

THE COURT: Okay.

MR. GAMMICK: Good morning, Your Honor.

THE COURT: Good morning.

MR. GAMMICK: In his opening statement on this trial on the 13th, two days ago, Mr. Bosler made some reference to -- and we'll call him Teki so I don't keep stumbling over his last name -- being involved in this murder. We did not know what the defense approach was until that time.

And then this morning based on the information that was coming forward during the course of the trial, we went back and pulled the transcript of the taped statement of Chiatra, C-H-I-A-T-R-A, Michelle Hanke, H-A-N-K-E. We looked at the transcript and found what we believe to be an error that hangs on one word.

1 To kind of set the scene here a little bit for  
2 the Court, it was my understanding from the transcript and  
3 the evidence that we have looked at that on January 13th,  
4 1998, there was a telephone conversation between an  
5 individual known as Namoa Tupou, N-A-M-O-A, T-U-P-O-U, and  
6 Miss Hanke. That while they were on the phone, Teki called  
7 Namoa.

8 So Namoa was talking to Teki on one part of the  
9 conversation and was talking to Miss Hanke on the other part  
10 of the conversation. Not all together as a conference call,  
11 but more on the call hold or having these two different  
12 discussions.

13 THE COURT: So there was a conversation going  
14 on between Hanke and Tupou, and Teki called Tupou.

15 MR. GAMMICK: Yes. So we have a person in  
16 between Hanke and Teki.

17 THE COURT: It is hard for me to follow this  
18 but I'm trying. Go ahead.

19 MR. GAMMICK: Teki makes a comment to Namoa.  
20 Namoa, when he goes back to talking to Hanke, where Teki is  
21 not on the line -- now we have just the two people in the  
22 conversation -- makes a comment to Hanke. The transcript  
23 which we did furnish defense reads, and this is Miss Hanke  
24 talking -- in fact, we could have a copy marked, if the  
25 Court would like.

1 THE COURT: That might make it easier. Did you  
2 want to mark this exhibit for purposes of the trial or just  
3 the hearing today?

4 MR. GAMMICK: I think at this time, Your Honor,  
5 it will be purposes for this hearing we're going to have  
6 this morning.

7 THE COURT: Now, we also -- is it all right for  
8 the officer to still be in the courtroom?

9 MR. GAMMICK: It might be better -- we would  
10 ask maybe Detective Duncan go ahead and step outside at this  
11 time.

12 THE COURT: Thank you.

13 THE CLERK: Exhibit A marked.

14 (Exhibit No. A marked.)

15 THE COURT: And where did you want me to look?

16 MR. GAMMICK: Your Honor, if you would go to  
17 page 18, please, starting at line 3. And I'm not really  
18 certain if the conversation between Namoa and Teki had  
19 already concluded or if he was still holding on the line.  
20 That I'm not sure of.

21 But I know from the evidence and from the  
22 statement there was a conversation between Namoa and Teki  
23 and a second conversation, another conversation between  
24 Namoa and Hanke.

25 THE COURT: Okay.

1 MR. GAMMICK: This is relating to the  
2 conversation between what Namoa told Hanke starting at line  
3 3:

4 "And then he's all, um, I said,  
5 'What'd Teki say?' And he said, 'I don't  
6 know.' I didn't get to talk to him that  
7 long because he said, he told me to hold on,  
8 and then he clicked over and then came back  
9 and said, 'I just did a 187. I have to go,  
10 bye, call you later.' So then I was like,  
11 'Hey, wait a minute,' and Teki had already  
12 hung up."

13 This is Namoa talking about his conversation  
14 with Teki.

15 We talked to Detective Duncan, and he did not  
16 recall the conversation going in the respect that Teki said  
17 he did a 187. We went back this morning. We did not have  
18 the audio or videotapes. We had not made copies of those,  
19 of this interview for us or for defense. Those were over in  
20 evidence. They were made available to everyone. But we  
21 never did make any copies of them.

22 What we believe the audio and videotapes say --  
23 she speaks very quickly. At that time they were not using  
24 the name Pe, they were using the name Baya. We believe that  
25 the tape says, starting on page -- or excuse me, on line 6,

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1 where it says, "... Came back and said I just did a 187,"  
2 the actual tapes say, "Baya just did a 187."

3 THE COURT: Well, do you have the tapes?

4 MR. GAMMICK: Yes, we have them with us.

5 THE COURT: Counsel, have you heard the tapes  
6 that he's talking about?

7 MR. SPECCHIO: No, and I'm sure that that's  
8 what they say. But that's not what I have been relying on  
9 for nine months, Judge.

10 We got a real problem here. Do you want me to  
11 make my motion for mistrial now, or do you want him to keep  
12 going?

13 THE COURT: Are you through, Mr. Gammick?

14 MR. GAMMICK: I do have quite a bit of other  
15 information to present to the Court. It can be done after  
16 he makes his motion or I can do it at this time.

17 THE COURT: Let's get everything from you, and  
18 then Mr. Specchio can be making his motion after everything  
19 is on the record. Let's mark those tapes also.

20 MR. GAMMICK: I have an envelope which is  
21 marked A44853, video slash audio, Hanke, H-A-N-K-E, comma C  
22 period. I would represent to the Court that Detective Joe  
23 Depczynski, D-E-P-C-Z-Y-N-S-K-I, if I recall correctly, did  
24 obtain these from RPD evidence this morning. He did bring  
25 them to our office at our request and then handed them to

1 me.

2 Contained therein is an audio tape, a Sony  
3 audio tape, which is marked Hanke, Chiatra, Michelle,  
4 1/13/98 at 1842. Contained within that envelope is also a  
5 videotape which is marked Hanke, Chiatra, Michelle, 1/13/98  
6 at 1842.

7 THE CLERK: Exhibits B and C marked.

8 (Exhibits B and C marked.)

9 THE COURT: The audio tape is B. The videotape  
10 is C.

11 MR. GAMMICK: Was the Court advising that's  
12 what they will be marked?

13 THE COURT: Yes.

14 MR. GAMMICK: Where we're at today is at the  
15 time this case commenced, when Mr. Specchio came on board,  
16 we had an open file policy. We furnished the defense with a  
17 police report from Detective Dave Jenkins, who was one of  
18 the two detectives who interviewed Miss Hanke.

19 In that police report on page 18, Detective  
20 Jenkins stated, "She stated that earlier in the day,"  
21 talking about Miss Hanke, "at approximately noon to 1300  
22 hours, she had been speaking on the telephone with Namoa and  
23 that he had told her that he had just been talking with Teki  
24 who reportedly told him, quotations, 'Baya just did a  
25 187...., got to go,' comma, 'bye,' end of quotations.

1 THE COURT: That's what Jenkins' police report  
2 says? That's Detective Jenkins' police report you were just  
3 reading from?

4 MR. GAMMICK: Yes, Detective D. Jenkins, who  
5 was the co-case agent along with Detective Jim Duncan.

6 THE COURT: Now, do you have any proof that  
7 that was provided to the defense, that report?

8 MR. GAMMICK: I believe that the defense will  
9 agree that it was provided. I don't have the stamp copy  
10 with me, Your Honor. We were grabbing things this morning.  
11 But I'm sure that is in our office if we need to bring that  
12 forward, too. I don't believe there is any issue there.

13 THE COURT: What has been marked as Exhibit A,  
14 was that provided to the defense, that transcript?

15 MR. GAMMICK: The transcript of Chiatra Hanke?

16 THE COURT: Yes.

17 MR. GAMMICK: Yes.

18 THE COURT: So they had both of these things?

19 MR. GAMMICK: Yes.

20 THE COURT: Okay.

21 MR. GAMMICK: Then we also furnished them with  
22 a report, it's called a sequential follow-up report from  
23 Detective Jim Duncan and -- excuse me. The date of the  
24 report from Detective Dave Jenkins, if I have that, January  
25 13-16/1998.

The date of the report from Detective Jim Duncan dated January 18th, 1998, on page 8 states:

"Apparently Albins had learned that Hanke had a recent telephonic conversation with her boyfriend, Sateki," quotations, "Teki," end of quotations, and then his last name, T-A-U-K-I-U-V-A, "during which Taukiuva mentioned that his cousin Baya," spelled B-A-Y-A, had committed a, quotations, "187," end of quotations, "recently.

"Hanke recognized the number 187 as a reference to murder that is used by youth gangs and modern music artists."

As I advised the Court, I did not pull his statement and review it until this morning. That is the transcribed statement of Miss Hanke. We did not intend to call her as a witness. We had not reviewed it until that was brought up in opening. We did not know the defense would be using that, even though they had advised us previously that Chiatra Hanke was a potential witness in this case. We did know that.

We furnished them with a copy of the transcript. We furnished them with both police reports. There is obviously an inconsistency between the different written documents.

This is not the first time that we have had errors in transcripts of taped conversations. In fact, the

1 15 years I have been practicing in the D.A.'s office, I have  
2 seen this a lot more often than I care to.

3 We have continually approached the police  
4 departments to get better equipment, to use certified court  
5 reporters to transcribe these tapes. Budgetary constraints  
6 have not allowed that to happen. So they use the personnel  
7 that they have at their department to transcribe these.

8 I know I have had cases with the Public  
9 Defender's Office before where we have had errors in  
10 transcribed statements.

11 Where I'm heading with this is with the  
12 inconsistencies in the discovered material that was  
13 furnished to defense, with all due respect to Mr. Specchio,  
14 I'm not trying to cast any stones or anything on disrespect,  
15 but we feel that there should have been, if they were going  
16 to rely this heavily on their defense and with the  
17 inconsistencies in the statements that were furnished, that  
18 the statements should have been reviewed to insure that this  
19 transcript was accurate.

20 The tapes were made available to even include  
21 the review of evidence last week, I believe.

22 There is a burden upon the defense to insure  
23 the accuracy of the material we furnish them, particularly  
24 transcribed statements.

25 And with that, Your Honor, that's what I have

1 to present at this time. I would like to, depending on what  
2 Mr. Specchio says, respond to any other information that  
3 they may furnish. Thank you.

4 THE COURT: Mr. Specchio?

5 MR. SPECCHIO: With all due respect to my  
6 brother, Mr. Gammick, I guess what he's saying is we can't  
7 believe anything they say, we have an obligation to check it  
8 out ourselves.

9 Well, there's 2,000 pages of documents, 1500  
10 pages of documents in those books provided by the District  
11 Attorney's Office. And I think what I'm hearing is there's  
12 one word that was misquoted or mistranscribed.

13 The problem is, Judge, is that it's at the  
14 heart of the defense's case. It speaks of the defense's  
15 case.

16 You have heard me stand in front of this group  
17 of people like an idiot asking these people if they know  
18 Chiatra Hanke. I have mentioned the name six times, maybe  
19 more. Because I know what I was going to do with Chiatra  
20 Hanke or her statement.

21 It says somebody else did a 187. It's no  
22 secret what the defense is now in this case. The defense is  
23 that Mr. Vanisi didn't kill Sergeant Sullivan.

24 Now the District Attorney conveniently finds  
25 this missing word from "I" to "Baya" on the third day -- I

1 have never been as upset in a courtroom as I am now. I have  
2 had this crap thrown at me two days before trial. Here is  
3 an eye witness, here is a confession.

4 Never on the third day of trial do I get  
5 something like which guts the defense's case.

6 This man -- I'm not saying the District  
7 Attorney did this. And I'm not blaming the cops, and I'm  
8 not even blaming the transcriber.

9 I had a right to rely on the statement that he  
10 gave me, and that statement said, "Teki did a 187."

11 The defense wasn't formulated last night. We  
12 formulated this defense in June and July based on all of  
13 those documents, including the ones he references.

14 I know what Duncan has in his report. I know  
15 what Jenkins has in his report. And I also know that I have  
16 got somebody saying they did a 187, other than the  
17 defendant.

18 Now they say no, we just want to change that.  
19 Judge, the bottom --

20 THE COURT: What about your investigation with  
21 Chiatra Hanke?

22 MR. SPECCHIO: She's out of state. She is not  
23 even going to be back until Wednesday.

24 But that doesn't cure anything. Chiatra Hanke  
25 is going to come in and say, Oh, yeah, I said that. I mean,

1 that's not -- the problem is not what she said. It's what  
2 they gave me that I relied on.

3 I mean, there is no defense. There is only one  
4 alternative available here and that's a mistrial. Because  
5 you cannot, you cannot, Judge, allow any modification of  
6 that statement and say that this man was afforded a fair  
7 trial.

8 I mean, this is a sham. You can't on the third  
9 day of trial -- they are going to finish up late today or  
10 Tuesday morning. Oh, by the way, the guy you were relying  
11 on, the one you were going to stick the pin in is not really  
12 true.

13 You can't do it, Judge. This is the most --  
14 this makes -- I love this business and I love the law. This  
15 makes me want to vomit.

16 I have been ambushed before. This is not even  
17 an ambush.

18 I don't care about me, but I got to care about  
19 him, and to do anything short of that is a denial of a fair  
20 trial for him. I'm not blaming anybody. I'm just saying  
21 forget blame. Is he going to get a fair trial? The answer  
22 is no, he's not.

23 Because all I can do from here on out is sit  
24 there and dribble. I have no defense left. I had one  
25 bullet this morning to hit with Duncan, and that is Teki did



1 a 187. Now I can't offer it because it's probably not true,  
2 because those tapes are going to say "Pe" instead of "I."

3 But don't penalize me. More importantly, don't  
4 penalize this poor soul. That is what I'm saying.

5 Quite frankly, Judge, I don't know if I can  
6 continue with this trial with that change. I don't even  
7 know -- if you said we'll just rely on your interpretation,  
8 I don't think I could ask Duncan to -- knowing it's a lie.  
9 I don't know. I make a motion for a mistrial, Your Honor.

10 THE COURT: Mr. Gammick?

11 MR. GAMMICK: Your Honor, we will confirm today  
12 that Miss Hanke is out -- actually, I believe she's in  
13 Hawaii at this time. If defense formed this defense in June  
14 or July, we don't know when Miss Hanke left or if she's been  
15 contacted by defense to go over this testimony or go over  
16 this statement. We do not have that information at this  
17 time.

18 I appreciate Mr. Specchio's comments that this  
19 is not intentional, because I think the Court is well aware,  
20 I do not believe in trial by ambush. We found this this  
21 morning, instantly got on the phone to Mr. Specchio to say,  
22 We got a problem, we have requested the tapes. They are  
23 enroute. As soon as we get them, I'll call you back.

24 THE COURT: Have you since listened to the  
25 tapes?

1 MR. GAMMICK: Yes, I have. I'm prepared to  
2 play them for the Court if the Court would like to see them.  
3 What happens in the audio portion of the tape is Miss Hanke  
4 is speaking fairly slowly and distinct up until she gets to  
5 this very crucial part, this one little sentence. She says  
6 it very fast. It is the difference between "Baya" and "I".  
7 It's hard to distinguish unless you are listening for it.  
8 So I'm not sure how to respond to that part of it as to why  
9 the mistake was made.

10 I won't even -- and I have learned a long time  
11 ago, I won't stand up and tell the Court that all the rest  
12 of the transcripts are correct because this is not the first  
13 time we have had this kind of difficulty with a combination  
14 between the equipment that is used to record, how people  
15 react to that and then a transcriber trying to do the best  
16 they can to figure out what is said. We have wound up with  
17 errors, and there may be other errors in these transcripts.

18 Unfortunately, this does come down to a very  
19 critical point. I'll agree with Mr. Specchio on that.

20 The State should not be punished for that. We  
21 did furnish all the information that we had. We did make  
22 the rest of it available. This was not discovered until  
23 this morning.

24 I would also ask if the Court is -- well, if  
25 you are entertaining the motion for a mistrial, that

1 Mr. Vanisi himself be canvassed to be sure this is what he  
2 wants to do this morning, if he agrees with his attorney.

3 THE COURT: Do you agree that Miss Hanke has  
4 been out of the country or out of the continental United  
5 States since approximately June or July of this year? Do we  
6 know?

7 MR. SPECCHIO: I think she's been out of the  
8 state, Your Honor.

9 THE COURT: So your investigators have not had  
10 a conversation with Miss Hanke?

11 MR. SPECCHIO: Talked to her mother. As close  
12 to her as we got. She advised she would be back in town I  
13 think on the 20th of January, which is next Wednesday.

14 THE COURT: So you had to go forward without  
15 talking to her?

16 MR. SPECCHIO: Exactly.

17 MR. GAMMICK: I think the relevant question  
18 there would be, Your Honor, is when were attempts made to  
19 contact her. We didn't -- we weren't going to use her. We  
20 had no intention of calling her in this trial, so we didn't  
21 even attempt until this morning.

22 MR. SPECCHIO: I was going to ask her one  
23 question, Judge, about the statement that she made that they  
24 told me is correct.

25 Quite frankly, I didn't care if I talked to her

1 or not before court. It wasn't that necessary. I had a  
2 statement from the police department which is they are never  
3 wrong, except where my client's name is concerned.

4 THE COURT: Do you agree that this motion for  
5 mistrial being raised by you at this time does not create  
6 double jeopardy?

7 MR. SPECCHIO: Oh, no, it doesn't create double  
8 jeopardy. I'm not saying -- if I knew that Mr. Gammick had  
9 done this on purpose, I'd been standing on this table here  
10 doing that. And then it would be double jeopardy.

11 But I'm not saying the police are wrong. I'm  
12 not saying the transcriber is wrong.

13 And I'm not trying to -- he says that why  
14 should they get blamed. I'm not blaming them or why should  
15 they suffer.

16 The person that can't suffer is the Tongan kid.  
17 He can't suffer. The rest of us can all suffer doing this  
18 again if we have to. But this young man can't.

19 You can't strip the defendant of his defense  
20 mid trial and say there's no problem. To answer your  
21 question, I don't see a double jeopardy issue here.

22 THE COURT: How much time, if I grant your  
23 motion, will you need to be prepared to try the case again?

24 MR. SPECCHIO: I have got another problem,  
25 really. Let's see.

1 MR. GAMMICK: Your Honor, while that question  
2 is pending, may I have just a moment to confer with  
3 Mr. Hatlestad?

4 THE COURT: Yes, you may.

5 MR. SPECCHIO: Judge, could I let you know  
6 sometime today about that? We wouldn't be asking to go out  
7 to July or anything. But there are certain things now that  
8 I have scheduled and have to be resolved. I mean, I  
9 wouldn't want to start Monday or the week after.

10 Let me say about 45 days, I would think. I  
11 would think we would be okay.

12 THE COURT: Mr. Gammick, is there anything  
13 additional with regard to the law that you'd like to put on  
14 in response to Mr. Specchio's motion?

15 MR. GAMMICK: Excuse me just a moment, Your  
16 Honor.

17 THE COURT: Yes.

18 MR. SPECCHIO: Judge, do you want to canvass  
19 Mr. Vanisi?

20 THE COURT: I will in a minute.

21 MR. GAMMICK: That would be my one concern. I  
22 believe Mr. Specchio just addressed it, Your Honor, is I  
23 believe there was a fairly recent case that said in this  
24 type of motion, the defendant has to be canvassed  
25 personally, and I believe the Court has already said you are

1 going to do that.

2 There was also a case that talked about a  
3 manifest necessity for a mistrial for double jeopardy  
4 purposes, but Mr. Specchio was in agreement that double  
5 jeopardy is not an issue in this matter, then we may be fine  
6 with that. So that would be my concern is canvassing him,  
7 and then the Court indicating on the record that there is a  
8 manifest necessity due to what has happened here.

9 THE COURT: Do you want time to talk to  
10 Mr. Vanisi, Mr. Specchio, Mr. Gregory?

11 MR. SPECCHIO: We have already spoken to him,  
12 Your Honor.

13 THE COURT: Mr. Vanisi, please stand.

14 Mr. Vanisi, as you have heard, your attorneys  
15 believe that the defense that they were proffering in this  
16 case is no longer viable because of this new information  
17 that they have discovered. Do you understand that?

18 THE DEFENDANT: Yes, I do, Your Honor.

19 THE COURT: Do you understand that if I grant  
20 this motion, you will be tried a second time?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: You know it just means that you are  
23 going to not have the resolution of this case at this time  
24 but sometime at the Court's convenience, I will reset the  
25 case for trial, and you'd have to go through the whole trial

1 again? Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Do you understand that your  
4 attorney has on the record indicated that he agrees with the  
5 State's position that this motion for mistrial is being  
6 caused by a manifest necessity and that double jeopardy  
7 would not attach?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand what I mean by  
10 double jeopardy would not attach?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: That means that you can't later  
13 claim in some appeal that you shouldn't have been tried the  
14 second time.

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: If your attorney stipulates to  
17 that, you are held to that at later appeals. Do you  
18 understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you have any question about  
21 what's going on here?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Do you feel you need to talk to  
24 your attorneys about the strategy that they are employing at  
25 this stage in the proceedings?

1 THE DEFENDANT: Eventually I will talk with  
2 them.

3 THE COURT: Do you want to talk to them now  
4 before you waive any potential right to claim that you are  
5 being subjected to double jeopardy?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: I saw you talk to Mr. Gregory for a  
8 minute. So now you feel comfortable saying no?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: So do you in fact agree with this  
11 motion?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Anything further with regard to the  
14 canvass the State would request?

15 MR. GAMMICK: No, I don't believe so, Your  
16 Honor. I believe that should cover all of it.

17 THE COURT: Please be seated.

18 I think that this problem maybe could have been  
19 resolved by some other circumstance. I agree -- clearly  
20 there was a disagreement. I would have preferred that  
21 someone had listened to this tape before they relied on the  
22 transcripts. I would have preferred that someone had talked  
23 to Miss Hanke before they relied the entire defense on her  
24 statement.

25 But I also believe that at this stage in the



1 proceedings, if I required the defense to proceed after they  
2 have placed this defense on the record, that in fact it  
3 would come back later anyway. We can't complete this trial.  
4 I'm going to find that manifest necessity requires that I  
5 grant the motion.

6 MR. SPECCHIO: Thank you, Your Honor.

7 THE COURT: Nobody is going anywhere. You all  
8 are sitting right there while I explain to this jury why  
9 they have been told and held. They are members of our  
10 community, and they are entitled to an explanation.

11 Please bring the jury in.

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

14 THE COURT: Ladies and gentlemen of the jury,  
15 good morning.

16 THE JURY: Good morning.

17 THE COURT: First I want to compliment all of  
18 you on being one of the finest juries I have ever seen. You  
19 have all been very attentive, and you suffered through many  
20 days of jury selection, and I just want to tell you how much  
21 I appreciate your service.

22 I, with a very heavy heart, have to inform you  
23 that the case that you have been called for has been  
24 mistried. That means that for legal reasons, I have been  
25 required to grant a mistrial, which means we're going to

1 have to start all over again with a new jury at some later  
2 time.

3 And I want to tell you right now that it isn't  
4 something that the Court would normally or ever want to do.  
5 But we must follow the law as I told you before, and there  
6 are certain things that occur during the course of the trial  
7 that require certain responses.

8 In this particular instance, as you have heard,  
9 the defense was relying upon a belief that the evidence  
10 would support some finding by the jury that perhaps there  
11 was reasonable doubt as to whether or not their defendant  
12 committed the offense. They were relying upon some  
13 statements in a transcript of a taped statement of another  
14 witness.

15 This transcript was not accurate as to what the  
16 witness had said. The actual tape said something different  
17 than the written transcript.

18 The first time the defense realized that was  
19 this morning when Mr. Gammick found the problem.

20 Because of that, they cannot rely on the  
21 defense that they had planned to rely on. They must look at  
22 the evidence and decide what defense they have to this  
23 offense and present a new position at some later time.

24 It would be manifestly unjust for me to require  
25 the defendant to proceed in this circumstance.

1           The cost and expense of this type of trial is  
2 of concern to everyone that's in the community. But we try  
3 to try these kind of cases only once, and as you know,  
4 there's very a significant issue at stake here; and for that  
5 reason, the Court has no choice but to be sure that  
6 Mr. Vanisi's defense is adequately presented to a jury.

7           For that reason I have granted the mistrial.

8           So that's the bad news. The good news is that  
9 you're not going to be held captive here for two more weeks.  
10 The good news is that your jury service is concluded this  
11 morning, and you may leave with our thanks.

12           Now, I know juror number 12 has some issues,  
13 and my administrative assistant left the courtroom a few  
14 minutes ago. She is probably working on your circumstance.  
15 Please stop there before you leave, and she will keep  
16 working on your circumstance and try to work it out the best  
17 way we can. We'll get you to your grandson as soon as we  
18 can.

19           Ladies and gentlemen of the jury, if you have  
20 any question about what's gone on, I'll be glad to review  
21 what's gone on with you today. Just tell the bailiff you  
22 want to come in and talk to me, you are more than welcome  
23 to, or at any future time you may certainly come in and  
24 discuss the case. Call me or write me a letter, and I'll be  
25 glad to talk to you about it.

1 If you have any concerns about your jury  
2 service, please feel free to talk to me or the staff.

3 I'm going to ask that the jury be allowed to  
4 leave the courthouse prior to the audience and family  
5 members leaving.

6 So I'd ask that you not leave at this time.  
7 I'm going to ask the jury to go on in with Mrs. Davis, and  
8 she'll take you wherever you want to go, or settle your  
9 circumstance or bring you into the courtroom -- into the  
10 chambers.

11 At this time, ladies and gentlemen of the jury,  
12 you are excused from further service.

13 (Whereupon, the jury was excused and the  
14 following proceedings were held in open court.)

15 THE COURT: I'd like to see counsel at the  
16 bench, please.

17 (Whereupon, a bench conference was held among  
18 Court and counsel.)

19 THE COURT: The clerk will set the date for  
20 another hearing on when we're going to set the new trial.

21 THE CLERK: Tuesday, January 19th, at 10:00  
22 a.m.

23 THE COURT: Counsel, I'll see you back at that  
24 time. Court is in recess.

25 (Court adjourned at 10:44 a.m.)

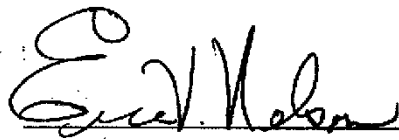
STATE OF NEVADA,       )  
                                  )  
COUNTY OF WASHOE.     )

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

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

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

DATED: At Reno, Nevada, this 15th day of  
January, 1999.

  
ERIC V. NELSON, CCR No. 57

CR98-0516  
STATE VS SIAOSI VANISI (D4) 3 Pages  
District Court 06/03/1999 10:16 AM  
Washoe County  
TWHITE

FILED

JUN 03 1999

AMY HARVEY, CLERK  
By: *RLT*  
ADMIN. ASST

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

\*\*\*\*\*

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR98-0516

SIAOSI VANISI, a.k.a. "PE," a.k.a.  
"GEORGE,"

Dept. No. 4

Defendant.

ORDER

IT IS HEREBY ORDERED that an additional examination of the Defendant be conducted, at the Nevada State Prison in Carson City, by two physicians, namely, Thomas E. Bittker, M.D., and Frank Evarts, Ph.D., at least one of whom is a psychiatrist, for the purpose of determining:

1. Whether or not the Defendant is of sufficient mentality to be able to understand the nature of the criminal charge against him; and
2. Whether or not, because of mental insufficiency, the Defendant is able to aid and assist counsel.

IT IS FURTHER HEREBY ORDERED that the said examination be made at the earliest practicable date. The examination shall be conducted in a secure room with an officer present at the Nevada State Prison in Carson City, Nevada. The results of

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1 said examination shall be made known to this Court, to the Washoe County District  
2 Attorney, and to the Washoe County Public Defender on or before June 15, 1999, and  
3 a hearing on this matter will be held on June 23, 1999, at 1:15 p.m. wherein the above  
4 named physicians may be required to attend.

5 DATED this 2 day of June, 1999.

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8 Connie J. Steinheimer  
9 DISTRICT JUDGE  
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CERTIFICATE OF MAILING

Case No. CR98-0516

Pursuant to NRCP 5 (b), I certify that I am an employee of JUDGE CONNIE  
STEINHEIMER, and that on the 3 day of June, 1999, and personally  
served a true copy of the attached document to:

Richard Gammick, District Attorney  
David Stanton, Deputy District Attorney  
VIA INTERCOUNTY MAIL

Michael Specchio, Public Defender  
Steve Gregory, Deputy Public Defender  
VIA INTERCOUNTY MAIL

Thomas E. Bittker, M.D.  
PO Box 30012  
Reno, NV 89520

Frank Evarts, Ph.D.  
Mountain Mental Health  
1071 Haskell St.  
Reno, NV 89509

  
Tiffany L. Clements



**Psychological Services of  
Frank Evarts, Ph.D.**

June 10, 1999

Honorable Connie J. Steinheimer  
District Court Judge  
Department #4  
P.O. Box 11130  
Reno, NV 89520

RE: Case # CR98-0516  
Siaosi Vanisi

Dear Judge Steinheimer:

I interviewed Siaosi Vanisi at the Nevada State Prison in Carson City on June 10, 1999. I attempted to assess his competency to stand trial. My findings are as follows.

Mr. Vanisi was heard to be conversing with prison guards as he was led to the examination room. He appeared in the room dressed in standard prison issue clothing. He had long hair and a mane down the center of his head, which was shaved on the sides. He sported a black beard. He was in full restraints. His facial expressions projected sadness and nervousness. Hygiene and grooming were adequate. He ambulated normally and it appeared that both gross and fine motor activity were within normal limits. This was a husky man with a normal body configuration. Based only upon body language, his mood appeared to be calm during the time that we were together.

When asked questions, Mr. Vanisi at times appeared slightly agitated, as if he might cry, although he did not. He seemed decidedly indifferent toward the examiner and was completely uncooperative about the interview. He did not speak to the examiner in response to between 20 and 30 questions. In response to some of the questions, he would close his eyes and tilt his head back.

Informal data from guards indicated that Mr. Vanisi is normally conversational with both guards and other prisoners. The examiner overheard him talking to guards both on the way to the examination room and when leaving the examination room area. It is felt that Mr. Vanisi's refusal to answer the examiner's questions was purposeful.

1071 Haskell Street, Reno, Nevada 89509 • (702) 323-5133 • FAX (702) 322-6566

## DIAGNOSIS:

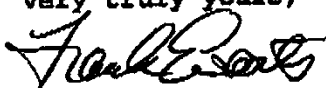
AXIS I V65.2 Malingering  
AXIS II 799.9 Diagnosis deferred  
AXIS III Nothing reported  
AXIS IV Incarceration  
AXIS V GAF- could not be determined

## DISCUSSION

It is the examiner's opinion that Mr. Vanisi's behavior toward the examiner was a reflection of malingering. Informal data gathered from prison personnel would indicate that Mr. Vanisi functions reasonably well in the prison population and is normally conversational with both prison guards and other prisoners. As noted above, he would not respond to the examiner's questions. Prison personnel also noted that Mr. Vanisi had spoken at length with his attorney earlier in the day. In the absence of data to the contrary, it is the examiner's assumption that Mr. Vanisi is competent to stand trial. In particular, it is the examiner's assumption that Mr. Vanisi understands the nature and extent of charges pending against him and that he is of sufficient mentality to aide and assist his attorney in his own behalf.

If there is any further information you need, please feel free to call or write.

Very truly yours,



Frank Evarts, Ph.D.  
Licensed Clinical Psychologist

ORIGINAL

FILED

SEP 03 1999

BY JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIAOSI VANISI,

Petitioner,

vs.

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

Respondents.

THE STATE OF NEVADA,

Real Party In Interest.

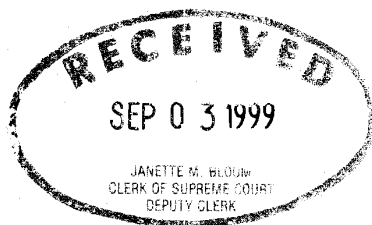
Docket No. 34771

Emergency request for Stay  
of Trial -- Preliminary  
Jury selection is set for  
Monday, September 13, 1999;  
Trial is set to commence on  
Monday, September 20, 1999.

ORIGINAL PETITION FOR WRIT OF CERTIORARI OR MANDAMUS  
AND REQUEST FOR EMERGENCY STAY OF TRIAL  
PENDING RESOLUTION OF THE ISSUES PRESENTED HEREIN

MICHAEL R. SPECCHIO  
Washoe County Public  
Defender

JOHN REESE PETTY  
Chief Deputy



99-08303

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Docket No.

PETITION FOR WRIT  
OF CERTIORARI OR MANDAMUS  
AND EMERGENCY REQUEST  
FOR STAY OF TRIAL

VS.

PETITION FOR WRIT  
OF CERTIORARI OR MANDAMUS  
AND EMERGENCY REQUEST  
FOR STAY OF TRIAL

Respondents.

PETITION FOR WRIT  
OF CERTIORARI OR MANDAMUS  
AND EMERGENCY REQUEST  
FOR STAY OF TRIAL

Real Party In Interest.

PETITION FOR WRIT  
OF CERTIORARI OR MANDAMUS  
AND EMERGENCY REQUEST  
FOR STAY OF TRIAL

PETITION FOR WRIT  
OF CERTIORARI OR MANDAMUS  
AND EMERGENCY REQUEST  
FOR STAY OF TRIAL

PETITION FOR WRIT  
OF CERTIORARI OR MANDAMUS  
AND EMERGENCY REQUEST  
FOR STAY OF TRIAL

1 that this Court direct the Respondent Connie J. Steinhilmer,  
2 district judge, to vacate her "Order Under Seal" filed on August  
3 30, 1999, and enter a new order "under seal" granting defense  
4 counsels' "Ex-Parte (Nevada Supreme Court Rule 172) Motion to  
5 Withdraw" that was filed on August 18, 1999. Petitioner also  
6 requests that this Court enter a stay of the proceedings below  
7 pending resolution of the issues presented in this Petition.  
8 Petitioner believes that the issues presented by the instant  
9 Petition are of significant interest and, as such, warrants  
10 consideration and guidance from this Court.

11 In support of this petition, counsel for the Petitioner  
12 alleges as follows:

13 I.

14 By an Information filed on February 26, 1998, in the Second  
15 Judicial District Court in case number CR98-0516, the State of  
16 Nevada charged Petitioner, Siaso Vanisi with one (1) count of  
17 Murder in the First Degree, a violation of NRS 200.010 and NRS  
18 200.030 and NRS 193.165; one (1) count of Robbery with the use of  
19 a Deadly Weapon, a violation of NRS 200.380 and NRS 193.165; two  
20 (2) counts of Robbery with the use of a Firearm, each a violation  
21 of NRS 200.380 and NRS 193.165; and one (1) count of Grand  
22 Larceny. A violation of NRS 205.220. (See Exhibit "A" attached  
23 hereto)<sup>1</sup>.

24  
25 <sup>1</sup> All documents attached hereto are matters of public record.  
26 Some pleadings have "Ex-Parte" or "Sealed" language in their  
headings, but in each instance Judge Steinhilmer ordered them

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II.

By a Notice of Intent to Seek the Death Penalty filed on February 26, 1998, in this action, the Real Party In Interest gave Notice to Petitioner that if convicted of first degree murder it would seek the death penalty in this action. (See Exhibit "B" attached hereto).

III.

On August 12, 1999, Petitioner's counsel filed a pleading entitled "Under Seal Ex-Parte Motion to Reconsider [Petitioner's request for] Self-Representation." (See Exhibit "C" attached hereto). By that ex-parte motion counsel sought to have Judge Steinheimer reconsider her earlier order denying Petitioner's own *Faretta* motion to allow him to represent himself. Counsel first explained that Petitioner's inability to fully articulate why he wished to represent himself during a hearing on the motion was due to their (counsels') instruction not to reveal his defense in open court. Counsel then explained to the court that Petitioner has elected a defense that counsel cannot present at trial and

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published and a copy delivered to the Real Party In Interest. However, the "Order Under Seal" is not attached because it is not a matter of public record. The same is true of the transcript of the in-camera hearing held before Judge Steinheimer on August 26, 1999; it is not a matter of public record. In an accompanying motion to this Petition, Petitioner is requesting that this Court order the district court to provide the sealed transcript and the sealed order to this court for its review. Petitioner also seeks other orders from this Court in that motion which are designed to aid this Court in its appellate review and provide an opportunity for Petitioner to explain to this Court (without violating the district court's order) why Judge Steinheimer's analysis and

1 that Petitioner has refused to cooperate in the defense suggested  
2 by counsel. Counsel noted that the defense chosen by Petitioner  
3 and the defense proposed by counsel are incompatible.

4 IV.

5 In an Order filed on August 12, 1999, Judge Steinheimer  
6 ordered counsels' motion (discussed above) to be "unsealed" and  
7 further ordered that a copy be provided to the Real Party In  
8 Interest for its response. (See Exhibit "D" attached hereto).

9 V.

10 In an Order filed on August 18, 1999, Judge Steinheimer  
11 denied the motion for reconsideration. (See Exhibit "E" attached  
12 hereto).

13 VI.

14 On August 18, 1999, Petitioner's counsel filed their  
15 pleading entitled "Ex-Parte (Nevada Supreme Court Rule 172)  
16 Motion to Withdraw." (See Exhibit "F" attached hereto). By that  
17 motion counsel put the court on notice that Petitioner  
18 categorically refused counsel permission to present their defense  
19 and refused to cooperate in that defense while at the same time  
20 insisting on a defense that was not supported by the evidence.  
21 Counsel further explained that that to present the defense sought  
22 by Petitioner would constitute a violation of Supreme Court Rule  
23 166 and Supreme Court Rule 172.

24  
25  
26 conclusions are in error.

VII.

On August 24, 199, Petitioner's counsel filed their "Ex-parte Request for Hearing." (See Exhibit "G" attached hereto). By this pleading counsel sought an in-camera hearing before the district court, pursuant to Supreme Court Rule 172(4), in order fully inform the court of the basis for the Motion to Withdraw.

VIII.

By an Order filed on August 24, 1999, Judge Steinheimer first noted that she had delivered to the Real Party In Interest both the motion to withdraw and the request for the in-camera hearing. (See Exhibit "H" attached hereto). Judge Steinheimer then set a hearing on the motion to be held on August 26, 1999.

IX.

On August 26, 1999, Petitioner, Petitioner's counsel and counsel for the Real Party In Interest appeared before Judge Steinheimer, in open court, for a hearing on whether an in-camera hearing of counsels' motion was appropriate. (See Exhibit "I" attached hereto). Following comments from the court, Petitioner's counsel and counsel for the Real Party In Interest, Judge Steinheimer recognized that Supreme Court Rule 172 did require an in-camera hearing in this matter, ordered everyone not connected with the defense, her staff and the staff serving the courtroom, i.e. security, to be excused from the courtroom and ordered the remaining portion of the hearing sealed.



1  
2 X.

3 On August 30, 1999, Judge Steinheimer issued her Order Under  
4 Seal denying the motion to withdraw.<sup>2</sup> At the same time Judge  
5 Steinheimer issued an Order continuing the trial in this matter.  
6 Later, on the same day, Judge Steinheimer issued a "Corrected  
7 Order" setting preliminary jury selection for Monday, September  
8 13, 1999 with trial set to commence on Monday, September 20,  
9 1999. (See Exhibit "J" attached hereto).

10 XI.

11 Respondent Second Judicial District Court in and for the  
12 County of Washoe is the court in which the subject action is  
13 pending.

14 XII.

15 Respondent, the Honorable Connie J. Steinheimer is the  
16 district judge who is presiding over and has exercised judicial  
17 functions in connection with the subject action.

18 XIII.

19 The Real Party In Interest to this Petition is the State of  
20 Nevada.

21 XIV.

22 Petitioner, Siaosi Vanisi, has no plain, speedy, adequate  
23 remedy at law, other than the relief sought in this petition.

24  
25 <sup>2</sup> As noted in footnote 1, *supra*, that Order is not attached to  
26 this Petition because it remains under the seal of the Second  
Judicial District Court.

1           **WHEREFORE**, Petitioner prays as follows:

2           1. That a Writ of Certiorari or a Writ of Mandamus be  
3 issued by this Court: directing the Respondent Connie J.  
4 Steinheimer, district judge, to vacate her "Order Under Seal"  
5 filed on August 30, 1999, and enter a new order "under seal"  
6 granting defense counsels' "Ex-Parte (Nevada Supreme Court Rule  
7 172) Motion to Withdraw" that was filed on August 18, 1999;

8           2. That a Stay be issued by this Court staying the  
9 proceedings below pending resolution of the issues presented  
10 herein; and,

11           3. For such other and further relief as the Court may  
12 deem just and proper.

13           RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of September, 1999.

14                           MICHAEL R. SPECCHIO  
15                           Washoe County Public  
16                           Defender

17           By: 

18                           JOHN REESE PETTY  
19                           Chief Deputy  
20                           State Bar Number 00010  
21                           P.O. Box 30083  
22                           Reno, Nevada 89520

23                           (775) 328-3475

24                           **VERIFICATION**

25           **STATE OF NEVADA**

26           **COUNTY OF WASHOE**

          JOHN REESE PETTY, being first duly sworn, deposes and says:

1 That affiant represents the Petitioner in the above-entitled  
2 matter; that he is familiar with the facts and circumstances set  
3 forth in the attached Petition for Writ of Certiorari and Writ of  
4 Mandamus and knows the contents to be true, except to those  
5 matters stated upon information and belief, and as to those  
6 matters he believes them to be true.

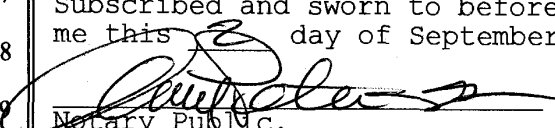
7 That affiant makes this verification pursuant to NRS  
8 15.010(1) because the facts stated in the Petition are solely  
9 within the knowledge of Petitioner's attorney, and the Petitioner  
10 herself has no personal knowledge of most of the facts set forth  
11 in the Petition.

12 I, John Reese Petty, do hereby swear under penalty of  
13 perjury that the assertions of this affidavit are true.

14 DATED this 2<sup>nd</sup> day of September, 1999.

15  
16   
JOHN REESE PETTY

17 Subscribed and sworn to before  
18 me this 2<sup>nd</sup> day of September, 1999.

19   
Notary Public.



AMY A. PETERSON  
Notary Public - State of Nevada  
Appointment Recorded in Washoe County  
No. 96-0224-2, EXPIRES DEC. 8, 1999

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF PETITION FOR WRIT OF CERTIORARI OR MANDAMUS

A.

1.

A writ of certiorari or, in the alternative, a writ of

1 mandamus is an appropriate procedure for review of the  
2 proceedings below and the relief requested herein.

3 A writ of certiorari is a writ of review. NRS 34.010. "A  
4 writ of certiorari is an extraordinary remedy and the decision to  
5 entertain a petition for writ of certiorari lies within the  
6 discretion of this court." *Zamarripa v. District Court*, 103 Nev.  
7 638, 640, 747 P.2d 1386 (1988) (citing *Schumacher v. District*  
8 *Court*, 77 Nev. 408, 365 P.2d 646 (1961)). Nonetheless, a writ of  
9 certiorari "is granted in all cases where an inferior tribunal,  
10 board or officer exercising judicial functions has exceeded its  
11 jurisdiction and there is no appeal nor plain, speedy and  
12 adequate remedy. NRS 34.020(2)." *Zamarripa*, 103 Nev. At 640.  
13 In the case of *Public Land Access v. Humboldt Co.*, 111 Nev. 749,  
14 895 P.2d 640 (1995), this Court said:

15 [a] petition for a writ of certiorari is  
16 properly granted when (1) an inferior  
17 tribunal has exceeded its jurisdiction; (2)  
18 no means of appeal exist; (3) and no plain,  
speedy, and adequate remedy at law is  
available. NRS 34.020(2).

19 111 Nev. At 751.

20 The instant Petition challenges an order issued by Judge  
21 Steinheimer denying a motion to withdraw as counsel. Further,  
22 that order purports to give guidance to defense counsel on how to  
23 resolve their ethical concerns which fails to address (other than  
24 to acknowledge) counsels' concerns and which relies on authority  
25 that can be distinguished from the instant case. Thus the  
26

1 instant petition for writ of certiorari is properly before this  
2 Court and properly seeks this Court's review of the proceedings  
3 below.

4 2.

5 Alternatively, a writ of mandamus "is available to compel  
6 the performance of an act which the law requires as a duty  
7 resulting from an office, trust or station, [NRS 34.160], or to  
8 control an arbitrary or capricious exercise of discretion."

9 *Hickey v. District Court*, 105 Nev. 729, 731, 782 P.2d 1336  
10 (1989), citing, *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev.  
11 601, 637 P.2d 534 (1981). See also, *Barnes v. District Court*,  
12 103 Nev. 679, 682, 748 P.2d 483 (1987). In *Koza v. District*  
13 *Court*, 99 Nev. 535, 541, 665 P.2d 244 (1983), this Court  
14 recognized jurisdiction to grant a writ of mandamus when the  
15 petitioner is able to show that the lower tribunal has acted  
16 arbitrarily or capriciously. In *Russell v. Thompson*, 96 Nev.  
17 830, 619 P.2d 537 (1980), the Court noted that while mandamus may  
18 not be used to review discretionary acts of a trial court, it  
19 will lie to correct judicial abuses of discretion. Moreover,  
20 where circumstances exist under which a trial court's discretion  
21 can be exercised in only one way, mandamus may be invoked. *Morse*  
22 *v. District Court*, 65 Nev. 275, 280, 195 P.2d 199 (1948).

23 The instant Petition challenges an order issued by Judge  
24 Steinheimer denying a motion to withdraw as counsel. Further,  
25 that order purports to give guidance to defense counsel on how to  
26

1 resolve their ethical concerns which fails to address (other than  
2 to acknowledge) counsels' concerns and which relies on authority  
3 that can be distinguished from the instant case. Moreover, the  
4 order denying the motion to withdraw constitutes a judicial abuse  
5 of discretion which can be reviewed by way of writ of mandamus.  
6 *Russell v. Thompson, supra.* Thus the instant petition for writ  
7 of mandamus is properly before this Court and properly seeks this  
8 Court's review of the proceedings below and seeks this Court's  
9 order reversing Judge Steinheimer's Order Under Seal.

10 **B.**

11 The Order Under Seal is the subject matter of this Petition.  
12 But because it is under seal Petitioner cannot discuss its  
13 contents, the authorities cited, or the district court's analysis  
14 in this Petition without violating the Order. Similarly, the  
15 transcript of the in-camera hearing is under seal. Petitioner  
16 cannot cite to the contents thereof without violating the  
17 district court's order. (Indeed, counsel for the Petitioner does  
18 not even have a copy of that portion of the transcript because it  
19 was filed under seal).

20 Accordingly, Petitioner is filing together with this  
21 Petition a motion designed to have the Order Under Seal and the  
22 sealed portion of the transcript of the hearing on the motion to  
23 withdraw ordered up by this Court for its review. Additionally,  
24 the motion requests that this Court direct the district court to  
25 provide Petitioner's counsel *only*, a copy of the sealed  
26

1 transcript. Finally, the motion requests authorization to file  
2 in this Court in-camera points and authorities in support of this  
3 Petition (and against the reasoning in the Order Under Seal), and  
4 seeks guidance from the Court on the best procedures to  
5 accomplish this task while keeping the sealed portions of the  
6 record sealed and out of public view.

7 CONCLUSION

8 It is respectfully requested that given the serious issues  
9 raised in this Petition, this Court should grant the Petition and  
10 issue the requested writ.

11 Additionally, it is respectfully submitted, that in order to  
12 give this Court an opportunity to fully review what took place  
13 below, a stay of the proceedings below is warranted and must be  
14 issued. Not even the initial steps of jury selection can be  
15 accomplished under the procedures suggested by Judge Steinheimer  
16 in her Order Under Seal.

17 It is respectfully suggested that this Court needs the Order  
18 Under Seal filed on August 30, 1999, as well as the sealed

19 ////

20 ////

21 ////

22 ////

23 ////

24 ////

25 ////

1 portion of transcript of the hearing held on August 26, 1999, in  
2 order for Petitioner to be able to adequately explain why this is  
3 so.

4 RESPECTFULLY SUBMITTED this 22 day of September, 1999

5 MICHAEL R. SPECCHIO  
6 Washoe County Public Defender

7 By: 

8 JOHN REESE PETTY  
9 Chief Deputy  
10 State Bar Number 00010  
11 P.O. Box 30083  
12 Reno, Nevada 89520

13 (775) 328-3475  
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RPD 019114-98

1 Case No. CR98-0516

JUDICIAL CLERK  
J. Berchem  
BY \_\_\_\_\_  
DEPUTY

2 Dept. No. 4

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

INFORMATION

12 SIAOSI VANISI,

also known as

13 "PE",

also known as

14 "GEORGE",

15 Defendant.

16 \_\_\_\_\_/

17 RICHARD A. GAMMICK, District Attorney within and for

18 the County of Washoe, State of Nevada, in the name and by the

19 authority of the State of Nevada, informs the above entitled

20 Court that SIAOSI VANISI, also known as "PE", also known as

21 "GEORGE", the defendant above named, has committed the crimes of:

22 COUNT I. MURDER IN THE FIRST DEGREE, a violation of23 NRS 200.010 and NRS 200.030 and NRS 193.165, a felony, in the

24 manner following:

25 That the said defendant on the 13th day of January A.D.

26 1998, or thereabout, and before the filing of this Information,

1 at and within the County of Washoe, State of Nevada, did  
2 willfully, unlawfully, and with malice aforethought,  
3 deliberation, and premeditation, kill and murder SERGEANT GEORGE  
4 SULLIVAN, a human being, by means of repeated blows to the head  
5 and face with a hatchet, and/or other implement(s), and/or other  
6 blunt force trauma inflicted to the head and upper torso thereby  
7 inflicting mortal injuries upon the said SERGEANT GEORGE SULLIVAN  
8 from which he died on January 13, 1998; or

9 That the said defendant during the course of, and in  
10 furtherance of an armed robbery, did willfully and unlawfully  
11 murder SERGEANT GEORGE SULLIVAN in that the said defendant on or  
12 about January 13, 1998, did kill and murder SERGEANT GEORGE  
13 SULLIVAN, a human being, in the perpetration and/or the  
14 furtherance of an armed robbery at the University of Nevada,  
15 Reno, at or near the information kiosk, with the use of a deadly  
16 weapon, to wit, a hatchet, and/or other implement(s); or

17 That the said defendant on or about January 13, 1998,  
18 did kill and murder SERGEANT GEORGE SULLIVAN, a human being, by  
19 lying in wait, in that the said defendant did watch, wait and  
20 conceal himself from SERGEANT GEORGE SULLIVAN, with the intention  
21 of killing SERGEANT GEORGE SULLIVAN, in that he hid and waited  
22 until SERGEANT GEORGE SULLIVAN completed a traffic stop, then  
23 observed and followed SERGEANT GEORGE SULLIVAN to a location  
24 where he was alone and then ambushed SERGEANT GEORGE SULLIVAN  
25 inflicting mortal injuries to his person from which he died on  
26 January 13, 1998.

1           COUNT II. ROBBERY WITH THE USE OF A DEADLY WEAPON, a  
2 violation of NRS 200.380 and NRS 193.165, a felony, in the manner  
3 following:

4           That the said defendant on the 13th day of January A.D.  
5 1998, or thereabout, and before the filing of this Information,  
6 at and within the County of Washoe, State of Nevada, did  
7 willfully and unlawfully take personal property, to wit: a Glock  
8 .45 caliber handgun; Glock "magazines"; a flashlight; and  
9 handcuffs from the person of SERGEANT GEORGE SULLIVAN, at or near  
10 the information kiosk located at the University of Nevada, Reno  
11 campus, Washoe County, Nevada, against his will, and by means of  
12 force or violence to his person and with the use of a hatchet,  
13 and/or other implement(s), which the said defendant used to  
14 strike SERGEANT GEORGE SULLIVAN repeatedly in the head and face,  
15 and/or other blunt force trauma inflicted to the head and upper  
16 torso.

17           COUNT III. ROBBERY WITH THE USE OF A FIREARM, a  
18 violation of NRS 200.380 and NRS 193.165, a felony, in the manner  
19 following:

20           That the said defendant on the 13th day of January A.D.  
21 1998, or thereabout, and before the filing of this Information,  
22 at and within the County of Washoe, State of Nevada, did  
23 willfully and unlawfully take personal property, to wit: U.S.  
24 currency from the person of PATRICIA MISITO, the clerk at the 7-  
25 11 Store located at 710 Baring Boulevard, Washoe County, Nevada,  
26 against her will, and by means of force or violence or fear of

1 immediate or future injury to her person and with the use of a  
2 large caliber handgun which the said defendant displayed to the  
3 victim and demanded money.

4 COUNT IV. ROBBERY WITH THE USE OF A FIREARM, a  
5 violation of NRS 200.380 and NRS 193.165, a felony, in the manner  
6 following:

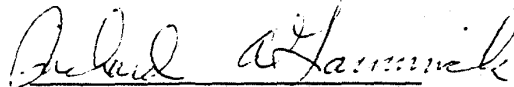
7 That the said defendant on the 13th day of January A.D.  
8 1998, or thereabout, and before the filing of this Information,  
9 at and within the County of Washoe, State of Nevada, did  
10 willfully and unlawfully take personal property, to wit: U.S.  
11 currency from DIANA LYNN SHOUSE, the clerk at said establishment,  
12 at the Jackson Food Mart located at 2595 Clearacre Lane, Washoe  
13 County, Nevada, against her will, and by means of force or  
14 violence or fear of immediate or future injury to her person and  
15 with the use of a large caliber handgun which the said defendant  
16 displayed to the victim and demanded money.

17 COUNT V. GRAND LARCENY, a violation of NRS 205.220, a  
18 felony, in the manner following:

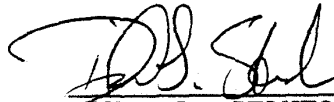
19 That the said defendant on the 13th day of January A.D.  
20 1998, or thereabout, and before the filing of this Information,  
21 at and within the County of Washoe, State of Nevada, did  
22 willfully and unlawfully steal, take and drive away the personal  
23 property of LOUIS D. HILL, to wit: a certain black four door  
24 1993 Toyota Camry bearing Nevada license plate 029 HPY, with the  
25 intent then and there to permanently deprive the owner thereof.

26 ///

1 All of which is contrary to the form of the Statute in  
2 such case made and provided, and against the peace and dignity of  
3 the State of Nevada.



RICHARD A. GAMMICK  
District Attorney  
Washoe County, Nevada



DAVID L. STANTON  
Chief Deputy District Attorney

1           The following are the names and addresses of such  
2 witnesses as are known to me at the time of the filing of the  
3 within Information:  
4

5 SALT LAKE COUNTY SHERIFF'S DEPARTMENT

6 DETECTIVE BRENT ADAMSON  
7 INVESTIGATOR JEFF ITAMI  
8 GARY LUCIER  
9 JERRY TOWNSEND

10 RENO POLICE DEPARTMENT

11 DETECTIVE GREG BALLEW  
12 DETECTIVE JOE DEPCZYNSKI  
13 DETECTIVE RON DREHER  
14 DETECTIVE JOHN DOUGLAS  
15 DETECTIVE JIM DUNCAN  
16 DETECTIVE DAVE JENKINS  
17 DETECTIVE MOHAMAD RAFAQAT

18 UNIVERSITY OF NEVADA POLICE DEPARTMENT

19 SERGEANT LOUIS LEPERA  
20 OFFICER CARL SMITH

21 WASHOE COUNTY SHERIFF'S OFFICE CRIME LAB

22 TONI LEAL  
23 WILLIE STEVENSON

24 SCOTT ALBIN, 1555 Sky Valley Drive, Apartment C-104, Reno, Nevada

25 CAROL DIANA ARROYO, 5785 Conti Circle, Sun Valley, Nevada

26 MATHEW DONALD BANTA, Nye Hall, Room #863, Reno, Nevada

KALEB LEE BARTLEHEIM, 5034 Pleasant View Drive, Sparks, Nevada

LEMONT BONNER, University Inn, Room #729, Reno, Nevada


GUSTAVO MARTIN CERON, 943 Bell Street, Apartment #2, Reno, Nevada

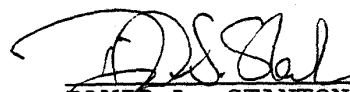
ANDREW GUY "DREW" CIOCCA, 1316 Buena Vista Avenue, Apartment B,  
Reno, Nevada

ELLEN G.I. CLARK, MD, Forensic Pathologist

1 PRISCILLA LUPE ENDEMANN, 930 Manhattan, Apartment #3, Reno,  
Nevada  
2 JESSIE JAMES GARLAND, JR., 805 Kuenzli, Apartment #225, Reno,  
3 Nevada  
4 CHAITRA MICHELLE HANKE, 2860 Brittania Curt, Reno, Nevada  
5 LOUIS D. HILL, 6075 Bankside Drive, Reno, Nevada  
6 NATHAN DOUGLAS HUNT, 345 Ralston, Apartment G, Reno, Nevada  
7 MAKALETA KAVAPALU  
8 DAVID KINIKINI, 1665 South Riverside Drive, Salt Lake City, Utah  
9 VAINGA IMONA KINIKINI, 1665 South Riverside Drive, Salt Lake  
City, Utah  
10 NIA KOFUTUA  
11 GABRIEL PHILLIP KNOX, 835 Evans Avenue (S.A.E. Fraternity House,  
12 Reno, Nevada  
13 CORINA SALOTE LOUIS, 1098 North Rock Boulevard, Apartment A,  
Sparks, Nevada  
14 MARIA LOSA LOUIS, 1098 North Rock Boulevard, Apartment A, Sparks,  
15 Nevada  
16 DANIELLE MALLEY  
17 BRENDA MARTINEZ, 720 Robinhood Drive, #218, Reno, Nevada  
18 MELE MAVENI  
19 PATRICIA MARY MISITO, 472 Emerson Way, Sparks, Nevada  
20 MANAMOUI PEAUA, 1645 Sterling Way, Reno, Nevada  
21 RENEE NANCY PEAUA, 1645 Sterling Way, Reno, Nevada  
22 SHOMARI KAMU ROBERTS, 1966 Bishop Street, Reno, Nevada  
23 DIANA LYNN SHOUSE, 7900 North Virginia Street, #121, Reno, Nevada  
24 GAR SOWLE  
25 SATEKI TAUKIEUVEA, 230 Booth Street, Apartment A, Reno, Nevada  
26 ///

1 METUISELA TAUVELI, 1098 Rock Boulevard, Apartment A, Sparks,  
Nevada or 280 East Eighth Avenue, Sun Valley, Nevada  
2 NAMOA STEPHANOTIS TUPOU, 2712 Star Meadows Loop, Reno, Nevada  
3 SIVAKUMAR UTHIRAM, 830 North Center Street, #11, Reno, Nevada  
4 RONALD THOMAS VIETTI  
5 DARLENE GAY WILSON, 850 North Virginia Street, #106, Reno, Nevada  
6 JACK GRANT WOOD, 810 'H' Street, Sparks, Nevada  
7 JULIE MICHELLE WOOD, 810 'H' Street, Sparks, Nevada  
8 JAMES BYONG YIM, 1647 Wedekind Road, #23C, Reno, Nevada  
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18 RICHARD A. GAMMICK  
District Attorney

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22 DAVID L. STANTON  
Chief Deputy District Attorney  
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JUDITH BAILEY, CLERK

BY J. Berchem  
DEPUTY

1 Case No. CR98-0516

2 Dept. No. 4

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

7 IN AND FOR THE COUNTY OF WASHOE.

8 \* \* \*

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

NOTICE OF  
INTENT TO SEEK  
DEATH PENALTY12 SIAOSI VANISI,  
13 also known as  
14 "PE",  
also known as  
"GEORGE",

15 Defendant.

16 \_\_\_\_\_/

17 COMES NOW, the State of Nevada, by and through RICHARD  
18 A. GAMMICK, District Attorney of Washoe County, and DAVID L.  
19 STANTON, Chief Deputy District Attorney, and hereby gives Notice  
20 to the Court, counsel, and the defendant, SIAOSI VANISI, also  
21 known as "PE", also known as "GEORGE", of the following:

22 YOU ARE HEREBY NOTIFIED that the State of Nevada by and  
23 through the Office of the Washoe County District Attorney intends  
24 to seek the death penalty as punishment against SIAOSI VANISI,

25 ///

26 ///

1 also known as "PE", also known as "GEORGE", upon his conviction  
2 for Murder of the First Degree as set forth in Count I.

3 YOU ARE HEREBY FURTHER NOTIFIED that the State intends  
4 to produce and present evidence concerning aggravating  
5 circumstances relevant to the offense, defendant, victim and/or  
6 other matters relevant to conviction and sentence to allow a jury  
7 or panel of three judges to set the penalty for the conviction of  
8 Murder of the First Degree at death. NRS 200.030, NRS 200.033,  
9 NRS 175.552; NRS 175.556, Payne v. Tennessee, 501 U.S. 808, 111  
10 S.Ct. 2597 (1991).

11 In addition to seeking the death penalty against  
12 defendant SIAOSI VANISI, also known as "PE", also known as  
13 "GEORGE", based upon the aggravating nature of the offense  
14 itself, the State intends to present the following aggravating  
15 circumstances as it relates to Count I, NRS 200.033(4a)(7)  
16 (8)(11).

17 The evidence which the State intends to present in  
18 support of one or more of the following statutory aggravating  
19 circumstances pursuant to NRS 200.033 as allowed by NRS 175.552  
20 as it relates to Count I, Murder of the First Degree of Sergeant  
21 GEORGE SULLIVAN includes:

22 1. Evidence that the murder of Sergeant GEORGE  
23 SULLIVAN was committed by the defendant, SIAOSI VANISI, also  
24 known as "PE", also known as "GEORGE", in the commission of or  
25 attempting to commit the crime of Robbery With the Use of a  
26 Deadly Weapon. NRS 200.033(4)(a).

1           2. Evidence that the murder of Sergeant GEORGE  
2 SULLIVAN was committed by the defendant, SIAOSI VANISI, also  
3 known as "PE", also known as "GEORGE", upon a peace officer or  
4 who was killed while engaged in the performance of his official  
5 duty or because of an act performed in his official capacity, and  
6 the defendant knew or reasonably should have known that the  
7 victim was a peace officer. NRS 200.033(7); NRS 289.350.

8           3. Evidence that the murder of Sergeant GEORGE  
9 SULLIVAN was committed by the defendant, SIAOSI VANISI, also  
10 known as "PE", also known as "GEORGE", involved torture or the  
11 mutilation of the victim. NRS 200.033(8); Jones v. State, 113  
12 Nev., Advance Opinion 48 (1997).

13           4. Evidence that the murder of Sergeant GEORGE  
14 SULLIVAN was committed by the defendant, SIAOSI VANISI, also  
15 known as "PE", also known as "GEORGE", upon a person because of  
16 the actual or perceived race, color or national origin of that  
17 person. NRS 200.030(11).

18           The State also intends to present evidence against the  
19 defendant at the penalty hearing pursuant to NRS 175.552, in  
20 addition to the aggravating circumstances outlined above, to  
21 include all relevant character evidence as well as the  
22 circumstances of the particular offenses. NRS 175.552; Flanagan  
23 v. State, 107 Nev. 243, 810 P.2d 759 (1991); Robins v. State, 106  
24 Nev. 611, 798 P.2d 558 (1990); Biondi v. State, 101 Nev. 252, 699  
25 P.2d 1062 (1985); and Allen v. State, 99 Nev. 485, 665 P.2d 238  
26 (1983).

1           The State will rebut any defense allegations claiming  
2 mitigating circumstance(s) as listed in NRS 200.035.

3           If the defendant intends to present any evidence in  
4 support of mitigating circumstances, as allowed by NRS 200.035,  
5 the State should have prior notice pursuant to the Discovery  
6 Order in this case. In any case, the State will address and  
7 rebut any alleged mitigating circumstance(s), the nature of which  
8 may not be known until the presentation of those mitigating  
9 circumstance(s) by the defense. At that time, the State will be  
10 prepared to and will disclose to the defendant and his counsel in  
11 a timely fashion any additional evidence to contradict any claim  
12 of mitigating circumstance(s).

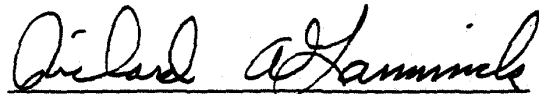
13           The State asserts that the documented aggravating  
14 circumstances are not outweighed by any mitigating  
15 circumstance(s) and, thus, the death penalty is just and  
16 appropriate.

17           Moreover, if additional evidence of aggravating  
18 circumstances as set forth in NRS 200.033 becomes apparent prior  
19 to the commencement of the penalty hearing, notice will be  
20 provided to counsel and the defendant as required by NRS 200.033  
21 and NRS 175.552.

22           Thus, based on the foregoing and upon the conviction of  
23 the defendant, SIAOSI VANISI, also known as "PE", also known as  
24 "GEORGE", for the charge of Murder in the First Degree as set  
25 forth in Count I, it is submitted that all relevant evidence  
26 concerning this Notice is to be presented to the jury or the

1 three judge panel to allow death verdicts to be returned against  
2 the defendant, SIAOSI VANISI, also known as "PE", also known as  
3 "GEORGE", in compliance with the law.

4 Dated this 25<sup>TH</sup> day of FEBRUARY, 1998.

5 

6 RICHARD A. GAMMICK  
7 District Attorney  
8 Washoe County, Nevada

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10 DAVID L. STANTON  
11 Chief Deputy District Attorney  
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I personally served a true copy of the foregoing document, by delivering said document to:

Mike Specchio  
Washoe County Public Defender  
One South Sierra  
Reno, Nevada

Walter Fey  
Deputy Public Defender  
One South Sierra  
Reno, Nevada

DATED this 26<sup>th</sup> day of February, 1998.

Sarah H. Johnson

1 1670  
2 MICHAEL R. SPECCHIO  
3 BAR# 1017  
4 WASHOE COUNTY PUBLIC DEFENDER  
5 P.O. BOX 30083  
6 RENO NV 89520-3083  
7 (775) 328-3464  
8 ATTORNEY FOR: DEFENDANT

FILED  
99 AUG 12 A9:47

AP. CLERK  
BY T. White

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

10 IN AND FOR THE COUNTY OF WASHOE

11 THE STATE OF NEVADA,  
12 Plaintiff,

13 vs.

Case No. CR98-0516

14 SIAOSI VANISI,

Dept. No. 4

15 Defendant.

16 UNDER SEAL

17 EX-PARTE MOTION TO RECONSIDER SELF-REPRESENTATION

18 COMES NOW the Defendant, by and through counsel, STEPHEN  
19 GREGORY and JEREMY BOSLER, and moves this Court to reconsider  
20  
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25 ///

26 ///

1 It's Order denying the Defendant's request to represent himself  
2 in these proceedings. This motion is based on the following  
3 points and authorities.

4 DATED this \_\_\_\_\_ day of August, 1999.

5 MICHAEL R. SPECCHIO  
6 Washoe County Public Defender

7 By: \_\_\_\_\_  
8 STEPHEN GREGORY  
9 Chief Deputy Public Defender

10 MICHAEL R. SPECCHIO  
11 Washoe County Public Defender

12 By: \_\_\_\_\_  
13 JEREMY BOSLER  
14 Deputy Public Defender

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1       The Defendant requests an in-camera hearing to discuss  
2 with the Court privileged communications between the Defendant  
3 and his counsel, as soon as possible to prevent any delay to  
4 the start of the trial set for September 7, 1999.

5               DATED this \_\_\_\_\_ day of August, 1999.

6                               MICHAEL R. SPECCHIO  
7                               Washoe County Public Defender

8                               By: \_\_\_\_\_  
9                                       STEPHEN GREGORY  
                                     Chief Deputy Public Defender

10                              MICHAEL R. SPECCHIO  
11                              Washoe County Public Defender

12                              By: \_\_\_\_\_  
13                                       JEREMY BOSLER  
14                                       Deputy Public Defender

FILED

AUG 12 1999

AMT. CLERK, CLERK  
By:                       
ADMIN. ASST

1 Code 3370

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

\*\*\*\*\*

STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR98-0516

SIAOSI VANISI,

Dept. No. 4

Defendant.

ORDER

The Court has been notified that the Defendant has filed an Ex Parte Motion to Reconsider Self-Representation. The Court has not authorized ex parte communication nor has the Court authorized the filing of a Motion for Reconsideration. Absent specific statutory authority or the granting of a motion for leave to file a motion under seal there is no provision in the State of Nevada to allow the filing of a Motion such as has been filed by counsel for the Defendant.

Further, the Court has reviewed the above listed Motion. There is nothing in the content of the Motion that requires the Motion to be filed under seal.

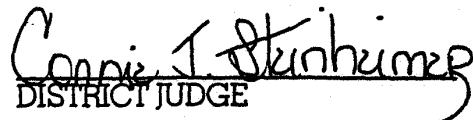
The Court hereby finds that the Motion was inappropriately sealed.

IT IS HEREBY ORDERED that the Clerk of the Court shall unseal the Motion for Self Representation.

1 IT IS HEREBY FURTHER ORDERED that the Defendant's counsel shall serve  
2 opposing counsel with the said Motion.

3 IT IS HEREBY FURTHER ORDERED that the State shall have five (5) days within  
4 which to answer the said Motion, and the Defendant shall have three (3) days to  
5 respond to the State's Answer. Subsequently, either party may submit the Motion for  
6 reconsideration and motion for hearing to the Court for a decision.

7 DATED this 12 day of August, 1999.

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10 DISTRICT JUDGE  
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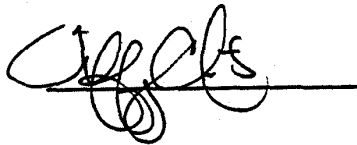
CERTIFICATE OF MAILING

Case No. CR98-0516

Pursuant to NRCP 5 (b), I certify that I am an employee of JUDGE CONNIE  
STEINHEIMER, and that on the 12 day of August, 1999, I delivered a true copy of  
the attached document, addressed to:

Richard Gammick,  
Washoe County District Attorney  
David Stanton,  
Deputy District Attorney  
Via Hand-Delivery

Steven Gregory,  
Jeremy Bosler,  
Deputies Public Defender  
Via Hand-Delivery



FILED

CODE 3370

AUG 18 1999

AMY H. [Signature]  
By: [Signature]  
ADMIN. ASST.IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\*\*\*\*\*

STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR98-0516

SIAOSI VANISI,

Dept. No. 4

Defendant.

ORDER

On August 12, 1999, an Under Seal, Ex-Parte Motion to Reconsider Self-Representation was filed by the Defendant, Siaoisi Vanisi, by and through counsel, Chief Deputy Public Defender, Stephen Gregory, and Deputy Public Defender, Jeremy Bosler. On August 12, 1999, this Court issued an Order unsealing the Motion and further ordering that the Motion should be served on opposing counsel and that opposing counsel would have five (5) days to answer and then Defendant would have three (3) days to respond. On August 16, 1999, a Response to Under Seal Ex-Parte Motion to Reconsider Self Representation was filed by counsel for the State, by and through Richard A. Gammick, Washoe County District Attorney, and David Stanton, Chief Deputy District Attorney. On August 17, 1999, counsel for the Defendant filed a Reply to Response to Motion to Reconsider Self-Representation (Request for Hearing).

1 After reviewing all of the pleadings on file, supporting documents, testimony presented  
2 in open court, as well as the current motions, this Court finds that there is no error of fact or law  
3 which would provide the basis for a reconsideration of its Order issued August 11, 1999,  
4 deciding the motion for self representation. If counsel wishes to make a separate motion on a  
5 related issue and request a hearing, counsel should do so, and articulate points and authorities to  
6 support said motion.

7 Based on the foregoing, and with good cause appearing,

8 IT IS HEREBY ORDERED that Defendant Siao Si Vanisi's Motion to Reconsider Self-  
9 Representation is hereby DENIED.

10 DATED this 18 day of August, 1999.

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13 Connie J. Steinheimer  
14 DISTRICT JUDGE  
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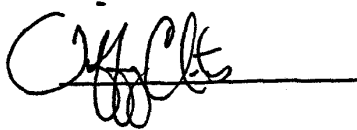
CERTIFICATE OF MAILING

Case No. CR98-0516

Pursuant to NRCP 5 (b), I certify that I am an employee of JUDGE CONNIE  
STEINHEIMER, and that on the 18 day of August, 1999, I personally hand delivered a true  
copy of the attached document, addressed to:

Richard Gammick  
David Stanton, Deputy  
Washoe County District Attorney

Steve Gregory, Deputy  
Jeremy Bosler, Deputy  
Washoe County Public Defender's Office





**FILED**

AUG 18 1999

AMY HARVEY, CLERK

By: P. Meacham DEPUTY

1 1670  
2 MICHAEL R. SPECCHIO  
3 BAR# 1017  
4 WASHOE COUNTY PUBLIC DEFENDER  
5 P.O. BOX 30083  
6 RENO NV 89520-3083  
7 (775) 328-3464  
8 ATTORNEY FOR: DEFENDANT

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10  
11 IN AND FOR THE COUNTY OF WASHOE  
12

13 THE STATE OF NEVADA,  
14 Plaintiff,  
15 vs.

16 SIAOSI VANISI,

17 Defendant.

Case No. CR98-0516

Dept. No. 4

18 EX-PARTE (NEVADA SUPREME COURT RULE 172) MOTION TO WITHDRAW

19 COMES NOW the Defendant, by and through his counsel,  
20 STEPHEN D. GREGORY, and JEREMY BOSLER, and moves to withdraw as  
21 counsel for the Defendant. This Motion to Withdraw is  
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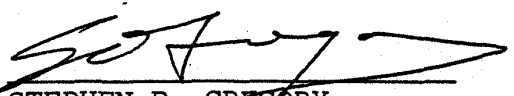
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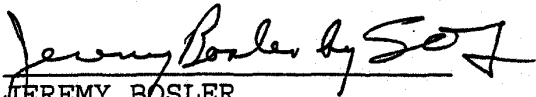
1 supported by the following points and authorities herein, an  
2 Affidavit of Counsel (attached hereto as Exhibit "A"), and Rule  
3 172 on NSCR (attached hereto as Exhibit "B").

4 DATED this 18<sup>th</sup> day of August, 1999.

5 MICHAEL R. SPECCHIO  
6 Washoe County Public Defender

7  
8 By:   
9 STEPHEN D. GREGORY  
Chief Deputy Public Defender

10  
11 MICHAEL R. SPECCHIO  
12 Washoe County Public Defender

13  
14 By:   
15 JEREMY BOSLER  
16 Deputy Public Defender  
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1 POINTS AND AUTHORITIES IN SUPPORT OF EX-PARTE MOTION TO  
2 WITHDRAW AS COUNSEL

3 Nevada Supreme Court Rule 166 reads as follows:

4 **Rule 166. Declining or terminating representation.**

5 1. Except as stated in subsection 3, a lawyer shall not  
6 represent a client or, where representation has  
7 commenced, shall withdraw from the representation of a  
8 client if:

9 (a) the representation will result in violation of  
10 the rules of professional conduct or other law;

11 (b) the lawyer's physical or mental condition  
12 materially impairs the lawyer's ability to  
13 represent the client; or

14 (c) the lawyer is discharged.

15  
16 2. Except as stated in subsection 3, a lawyer may  
17 withdraw from representing a client if withdrawal can  
18 be accomplished without material adverse effect on the  
19 interest of the client, or if:

20 (a) the client persists in a course of action  
21 involving the lawyer's services that the lawyer  
22 reasonably believes is criminal or fraudulent;

23 (b) the client has used the lawyer's services to  
24 perpetrate a crime or fraud;

25 (c) a client insists upon pursuing an objective that  
26 the lawyer considers repugnant or imprudent;

1 (d) the client fails substantially to fulfill an  
2 obligation to the lawyer regarding the lawyer's  
3 services and has been given reasonable warning  
4 that the lawyer will withdraw unless the  
5 obligation is fulfilled;

6 (e) the representation will result in an  
7 unreasonable financial burden on the lawyer or  
8 has been rendered unreasonably difficult by the  
9 client; or

10 (f) other good cause for withdrawal exists.

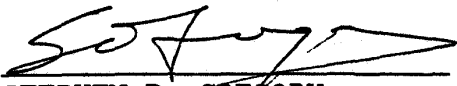
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12 X 3. When ordered to do so by a tribunal, a lawyer shall  
13 continue representation notwithstanding good cause for  
14 terminating the representation.

15 4. Upon termination of representation, a lawyer shall  
16 take steps to the extent reasonably practicable to  
17 protect a client's interests, such as giving  
18 reasonable notice to the client, allowing time for  
19 employment of other counsel, surrendering papers and  
20 property to which the client is entitled and refunding  
21 any advance payment of fee that has not been earned.  
22 The lawyer may retain papers relating to the client to  
23 the extent permitted by other law. (added 1-27-86,  
24 eff. 3-28-86.)

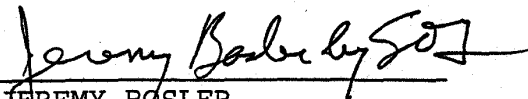
1 Counsel conducted a telephonic conversation with counsel  
2 for the State Bar of Nevada concerning a hypothetical  
3 representation of a defendant who insists on counsel proffering  
4 a defense that violates Rule 166 of the Nevada Supreme Court.  
5 Counsel was advised by the State Bar to immediately submit a  
6 motion to withdraw as counsel. Furthermore, the State Bar  
7 advised counsel to comply with Supreme Court Rule 172 (attached  
8 hereto as Exhibit "B") as soon as the Court deems it  
9 appropriate to inquire into the matters covered by Rule 172.

10 DATED this 18<sup>th</sup> day of August, 1999.

11 MICHAEL R. SPECCHIO  
12 Washoe County Public Defender

13  
14 By:   
15 STEPHEN D. GREGORY  
16 Chief Deputy Public Defender

17 MICHAEL R. SPECCHIO  
18 Washoe County Public Defender

19  
20 By:   
21 JEREMY BOSLER  
22 Deputy Public Defender  
23  
24  
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1 AFFIDAVIT OF COUNSEL

2 STATE OF NEVADA )  
3 ) ss  
4 County of Washoe )

5 I, STEPHEN D. GREGORY , do hereby affirm that the  
6 assertions of this affidavit are true:

- 7 1. That I am a duly licensed attorney assigned to  
8 represent the Defendant, SIAOSI VANISI;  
9 2. That I have suggested a defense to the Defendant in  
10 February, 1999, that the Defendant categorically  
11 refuses to allow me to represent to the Court and  
12 Jury since March, 1999;  
13 3. That this defense is supported by the evidence;  
14 4. That this defense does not violate the prohibitions  
15 embodied in Nevada Supreme Court Rule 166;  
16 5. That the Defendant insists on a defense that is not  
17 supported by the evidence;  
18 6. That counsel has been advised by counsel for the  
19 State Bar that the presentation of the Defendant's  
20 defense will result in a violation of Supreme Court  
21 Rule 166;

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1 7. That counsel will, according to the State Bar,  
2 violate Rule 172 of the Supreme Court if counsel is  
3 ordered to present the Defendant's theory of the  
4 case;

5 8. FURTHER AFFIANT SAYETH NOT.

6 DATED this 18<sup>th</sup> day of August, 1999.

7  
8   
9 STEPHEN D. GREGORY

10 SUBSCRIBED and SWORN to this 18<sup>th</sup> day of August, 1999.

11  
12   
13 NOTARY PUBLIC



EXHIBIT "A"

**Rule 172. Candor toward the tribunal.**

1. A lawyer shall not knowingly:
  - (a) make a false statement of material fact or law to a tribunal;
  - (b) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
  - (c) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
  - (d) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.
2. The duties stated in subsection 1 continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 156.
3. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.
4. In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse. (Added 1-27-86, eff. 3-28-86.)

*Strickland* X  
**Editor's Note.** — Former Rule 172 was repealed effective March 28, 1986.



**FILED**

AUG 24 1999

AMY HARVEY, CLERK

By: Meacham DEPUTY

1 1665  
2 MICHAEL R. SPECCHIO  
3 BAR# 1017  
4 WASHOE COUNTY PUBLIC DEFENDER :  
5 P.O. BOX 30083  
6 RENO NV 89520-3083  
7 (775) 328-3464  
8 ATTORNEY FOR: DEFENDANT

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

9 THE STATE OF NEVADA,  
10 Plaintiff,

vs.

Case No. CR98-0516

11 SIAOSI VANISI,

Dept. No. 4

12 Defendant.  
13 \_\_\_\_\_/**EX-PARTE REQUEST FOR HEARING**

15 Pursuant to SCR 172(4), counsel for the above-named  
16 Defendant request a hearing in chambers to inform the Court of  
17 all material facts known to counsel in order to enable the  
18 Court to make an informed decision regarding the Motion to  
19 Withdraw filed on August 18, 1999. Since Defendant will not be  
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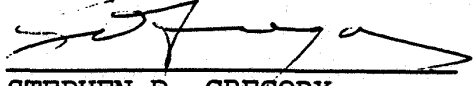
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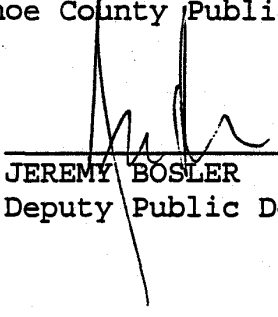
1 present during this hearing, counsel requests that, pursuant to  
2 SCR 250 IVB, this matter be given priority over all other  
3 matters pending before the Court.

4 DATED this 20th day of August, 1999.

5 MICHAEL R. SPECCHIO  
6 Washoe County Public Defender

7  
8 By:   
9 STEPHEN D. GREGORY  
Chief Deputy Public Defender

10  
11 MICHAEL R. SPECCHIO  
12 Washoe County Public Defender

13  
14 By:   
15 JEREMY BOSLER  
16 Deputy Public Defender  
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ORIGINAL

FILED

AUG 24 1999

AMY HARVEY, CLERK

By RLS  
ADMIN. ASST.

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

\*\*\*\*\*

STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR98-0516

SIAOSI VANISI,

Dept. No. 4

Defendant.  
\_\_\_\_\_**ORDER**

The Defendant's counsel, Washoe County Public Defender, Michael R. Specchio, Esq., by and through Chief Deputy Public Defender Stephen Gregory and Deputy Public Defender Jeremy Bosler, on August 24, 1999, moved for an in chambers hearing on a previously filed Ex Parte Motion to Withdraw. This matter has just come to the Court's attention. The Court has served the Washoe County District Attorney this date with defense counsel's Ex Parte Motion to Withdraw and Ex Parte Request for Hearing.

Supreme Court Rule 172 (4) requires an ex parte proceeding where a lawyer shall inform the court of all material facts known to the lawyer which will enable the court to make an informed decision whether or not the facts are adverse and justify

1 the lawyer's withdrawal as counsel. Supreme Court Rule 250 requires that the  
2 Defendant be present and the request be given priority.

3 Good cause appearing, the parties and counsel shall appear at 7:00 a.m. on  
4 the 26th day of August, 1999, to argue whether the hearing should in fact take place  
5 in chambers as requested by Defendant's counsel or ex parte in the Defendant's  
6 presence with a sealed transcript. Any hearing on the matter that the Court allows  
7 will take place immediately upon the conclusion of the above arguments.

8 DATED this 24th day of August, 1999.

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Conrad J. Steinheimer  
DISTRICT JUDGE

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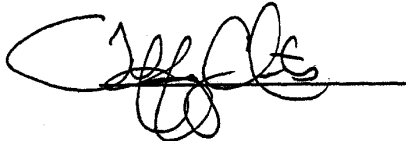
CERTIFICATE OF MAILING

Case No. CR98-0516

Pursuant to NRCP 5 (b), I certify that I am an employee of JUDGE CONNIE  
STEINHEIMER, and that on the 24 day of August, 1999, I deposited in the county  
mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada,  
and sent via facsimile, a true copy of the attached document, addressed to:

VIA FACSIMILE 785-4587  
Richard Gammick  
David Stanton, Deputy  
Washoe County District Attorney  
VIA INTERCOUNTY MAIL

VIA FACSIMILE 328-3596  
Stephen Gregory  
Jeremy Bosler  
Deputies Public Defender  
VIA INTERCOUNTY MAIL

A handwritten signature in black ink, appearing to be "Jeffrey", written over a horizontal line.

Code No. 4185

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA, )

Plaintiff, )

vs. )

SIAOSI VANISI, )

Defendant. )

Case No. CR98-0516

Dept. No. 4

REQUEST FOR HEARING ON EX PARTE MOTION TO WITHDRAW  
AUGUST 26, 1999  
RENO, NEVADA

## APPEARANCES:

For the Plaintiff:

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

For the Defendant:

MICHAEL R. SPECCHIO  
Public Defender  
STEVE GREGORY  
JEREMY BOSLER  
Deputies Public Defender  
One S. Sierra Street  
Reno, Nevada

The Defendant:

SIAOSI VANISI

Reported by:

ERIC V. NELSON, CCR No. 57

SIERRA NEVADA REPORTERS (775) 329-6560

1 RENO, NEVADA, THURSDAY, AUGUST 26, 1999, 7:03 A.M.

2 -oOo-

3 THE COURT: This is the time set for motion to  
4 withdraw from counsel, as counsel. At this time there is a  
5 request to have -- the request is couched in the terms of an  
6 ex parte hearing. I think the defense wants the hearing  
7 pursuant to the rules that would be a sealed proceeding ex  
8 parte, and counsel requested that to be in chambers.  
9 Because of Mr. Vanisi's circumstances, the Court would not  
10 entertain that request. But I might entertain a request to  
11 do it in the courtroom. So I gave everyone notice, and if  
12 anyone has a position to give me, please do so now.

13 MR. GREGORY: Our position is, Your Honor, as  
14 long as it is on the record, we don't really care, as long  
15 as it's in camera.

16 THE COURT: Okay. Thank you. Mr. Stanton.

17 MR. STANTON: Is the Court inquiring whether or  
18 not there is a preference of in camera, in chambers or in  
19 the courtroom at this juncture?

20 THE COURT: No, I'm requesting if you know of  
21 any reason why we should not have an in camera hearing with  
22 defense counsel regarding the substance of the motion.

23 MR. STANTON: Well --

24 MR. GREGORY: Well, I'm going to object.  
25 Mr. Stanton has no standing to even be in this courtroom

1 considering this issue.

2 THE COURT: Thank you, Mr. Gregory. You may be  
3 seated.

4 MR. GREGORY: Thank you.

5 THE COURT: Mr. Stanton.

6 MR. STANTON: Thank you, Your Honor. Reviewing  
7 the documentation and the authority that is apparently  
8 relied on by defense counsel, the State would submit that  
9 the answer to the question doesn't require an ex parte  
10 hearing at all.

11 Specifically there are two pieces of authority  
12 that the State is able to determine that the defense is  
13 relying on, specifically Supreme Court Rule 166 and Supreme  
14 Court Rule 172. Review of both of those authorities I think  
15 answer the question, the request, number one, and number  
16 two, by answering that question, they also answer the  
17 question of whether or not this proceeding again needs to  
18 be, or in this case, again needs to be in camera without the  
19 State present.

20 First of all, citing to Rule 166, subsection 3,  
21 "When ordered to do so by a tribunal, a lawyer shall  
22 continue representation notwithstanding good cause for  
23 terminating the representation."

24 And in subsection -- Supreme Court Rule 172,  
25 subsection 3, I think the answer to the question lies there,



1 "A lawyer may refuse to offer evidence that the lawyer  
2 reasonably believes is false."

3 As I understand it from the motions, that there  
4 is a conflict between counsel and the defendant as to the  
5 type of defense to proffer in this case. If that is  
6 indeed what occurs, I don't think there needs to be any in  
7 camera secret hearing to determine what are the details of  
8 that conflict, save and except for the important issue to  
9 this Court, is there is a conflict. I don't think that is a  
10 unique situation in the annals of criminal justice.

11 The core determination from the State's  
12 perspective is that at this juncture, inside of a month away  
13 from a capital trial, and for the reasons that this Court  
14 outlined at length regarding the defendant's motion to  
15 proceed pro per, this is not the time that if this conflict  
16 existed to then uncork counsel and have either new counsel  
17 appointed, which is obviously going to be one remedy, or  
18 have the defendant proceed pro per. If indeed there is a  
19 conflict, whatever that conflict may be, the defense has to  
20 make the decision within their ethical rules and in  
21 presenting evidence that they know they should not pursuant  
22 to the ethical rules. That's what the State is going to  
23 request.

24 Unless some additional representation, beyond  
25 what's in the written documents, is offered about why this

1 case should be in camera, the State can't see it. I mean,  
2 obviously, the general statement is, well, I'm going to talk  
3 about the theories of defense and the State shouldn't be  
4 privy to that.

5 Well, that's probably true. But I don't think  
6 that's really -- what type of conflict do you need to hear?  
7 Just to say there is a conflict. I think that's the issue.  
8 Thank you, Your Honor.

9 THE COURT: Okay. Mr. Gregory.

10 MR. GREGORY: Your Honor, I'm not going to  
11 address these issues in front of the prosecutor or in the  
12 public courtroom. I'm going to ask this matter be held in  
13 camera.

14 THE COURT: We're talking about now whether or  
15 not it should be held in camera.

16 MR. GREGORY: The Supreme Court Rule 172  
17 requires this Court to hold an ex parte hearing, and that's  
18 what I'm going to ask for. I'm not going to get into an  
19 argument with Mr. Stanton.

20 THE COURT: Although you are inviting me,  
21 Mr. Gregory, to do something that would probably not be in  
22 the best interests of your client, I'm going to decline from  
23 doing it.

24 Mr. Bosler, do you have anything to offer on  
25 the request to seal the hearing?

1 MR. BOSLER: Nothing, Your Honor.

2 THE COURT: Does anyone present have anything  
3 to offer on the request to seal the hearing?

4 MR. HENDERSON: Yes, Your Honor.

5 THE COURT: Do you have counsel?

6 MR. HENDERSON: No, Your Honor. We did not  
7 receive notice of the hearing. We also do not know the  
8 reason for the request for a sealed hearing. I would  
9 request a continuance of this proceeding until I have an  
10 opportunity to be represented by counsel.

11 THE COURT: Well, Mr. Henderson, it's nice to  
12 see you so early in the morning, but you must have had  
13 enough notice to be here yourself. So I don't know why you  
14 didn't have enough notice to get your counsel. But we  
15 haven't made a decision on your request to have  
16 continuances, and so at this stage in the proceeding I'm  
17 going to deny your request. But thank you.

18 MR. STANTON: Your Honor, just for the record,  
19 that was Mike Henderson, a reporter for the Reno Gazette.  
20 Thank you.

21 THE COURT: Thank you, Mr. Stanton.

22 Okay. I previously have received motions from  
23 Mr. Gregory and Mr. Bosler in this case that have been vague  
24 in their content and have allowed for sealing of hearings  
25 and documents based upon their vagueness because I assumed

1 counsel was going down a road that was appropriate to have  
2 an ex parte hearing. In at least one instance my assumption  
3 was incorrect. Counsel did not have a basis to request such  
4 an ex parte hearing.

5 At this time Mr. Stanton on behalf of the State  
6 of Nevada is requesting that counsel make it clear whether  
7 or not an ex parte hearing is essential for the  
8 determination of the hearing. Now my question for defense  
9 counsel is, number one, I do not want you to discuss the  
10 reasons why you filed your motion. If in fact there is a  
11 discussion between the Court and counsel on the basis for --  
12 the actual facts that form the basis for you filing this  
13 motion, the Court agrees that Supreme Court Rule 172  
14 requires that that be ex parte, and because ex parte must be  
15 in camera in this case, that is clear from the Supreme Court  
16 rule. However, Mr. Stanton has argued that no matter what  
17 the conflict between counsel and Mr. Vanisi at this stage in  
18 the proceedings, there is no basis to withdraw as counsel.

19 Now the Court has done some research, and I  
20 understand that there may be a right to put on the record  
21 the disagreement between counsel and Mr. Vanisi, even if it  
22 would not rise to the level of the Court granting the motion  
23 to be relieved. Is that your request, Mr. Gregory?

24 MR. GREGORY: We request an in camera hearing,  
25 Your Honor.

THE COURT: For what purpose, Mr. Gregory?

MR. GREGORY: So that we can disclose certain privileged communications that we have had with our client.

THE COURT: Court is in recess.

(Recess taken.)

THE COURT: The Court has taken a recess considering the statements and comments of counsel. Supreme Court Rule 172 does require that the Court allow for an ex parte proceeding, and the purpose of that is really in this Court's opinion to give counsel an opportunity to put on the record whatever their ethical considerations are. As I understand, this is probably in most cases not a basis for relief as counsel of record, but it is an issue that should be handled with regard to the ethical considerations of counsel. And it's important to the Court for the -- for the Court to be able to manage the proceedings if in fact there is a concern of defense counsel.

For those reasons the Court at this time will allow for a sealed proceeding, it will be on the record, sealed and in camera. Everyone who is not connected with the defense of this case and my staff and the staff serving in the courthouse will be excused from the courtroom.

(Whereupon hearing adjourned to continue in closed proceedings.)

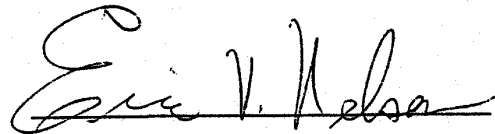
STATE OF NEVADA,     )  
                              )  
COUNTY OF WASHOE.    )

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

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

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

DATED: At Reno, Nevada, this 27th day of  
August, 1999.



ERIC V. NELSON, CCR No. 57

FILED

AUG 30 1999

AMY HARVEY, CLERK

By: MLT  
ADMIN. ASST.1 CODE 3370  
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4  
56 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8

\*\*\*\*\*

9 STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR98-0516

12 SIAOSI VANISI,

Dept. No. 4

13 Defendant.  
14CORRECTED ORDER

15 The Court has filed an Order on this date under seal denying Defendant's Counsel's Ex-  
16 Parte (Nevada Supreme Court Rule 172) Motion to Withdraw. The Court believes that Counsel  
17 for the Defendant may disagree with the Court's findings and conclusions. In order to give  
18 Counsel an opportunity to seek a different opinion or become fully prepared to go forward with  
19 the defense of the Defendant as ordered by this Court in the sealed order, the Defendant's trial is  
20 continued for two weeks.

21 Preliminary jury selection and questionnaire distribution that was to begin this morning  
22 at 10:00 a.m. shall occur Monday, September 13, 1999, at 10:00 a.m. Trial is continued from  
23 September 7, 1999, at 10:00 a.m. to September 20, 1999, at 10:00 a.m.  
24

25 ///

26 ///

1 Defense counsel is informed by this Order that the Court expects Counsel to be fully  
2 prepared to proceed with the Defendant's defense on the above dates absent a stay in the  
3 proceedings from the Nevada Supreme Court.

4 DATED this 30 day of August, 1999.

5  
6 Conrad J. Steinheimer  
DISTRICT JUDGE  
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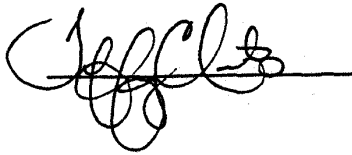
CERTIFICATE OF MAILING

Case No. CR98-0516

Pursuant to NRCP 5 (b), I certify that I am an employee of JUDGE CONNIE  
STEINHEIMER, and that on the 30 day of August, 1999, I hand delivered a true  
copy of the attached document to the following:

Richard Gammick  
David Stanton, Deputy  
Washoe County District Attorney

Stephen Gregory  
Jeremy Bosler  
Deputies Public Defender

A handwritten signature in black ink, appearing to read "Jeff C. Bosler", is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke at the end.

CERTIFICATE OF SERVICE

I certify that I am an employee of the Washoe County Public Defender and that on the 3<sup>rd</sup> day of September, 1999, I served a copy of the foregoing PETITION FOR WRIT OF CERTIORARI OR MANDAMUS AND EMERGENCY REQUEST FOR STAY OF TRIAL by mailing it by first class mail with sufficient postage prepaid to the following address:

FRANKIE SUE DEL PAPA  
Attorney General, State of Nevada  
100 No Carson Street  
Carson City, NV 89701

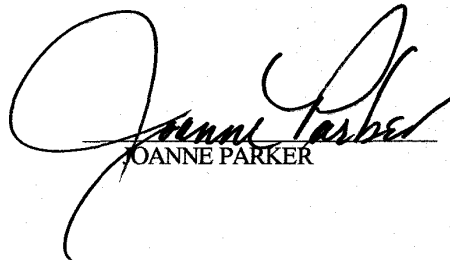
and served a copy by inter-office mail to:

THE HONORABLE CONNIE STEINHEIMER  
JUDGE OF THE SECOND JUDICIAL DISTRICT COURT  
Department Four

And

RICHARD A. GAMMICK  
WASHOE COUNTY DISTRICT ATTORNEY

Dated this 3<sup>rd</sup> day of September, 1999.

  
JOANNE PARKER

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIAOSI VANISI,

No. 34771

Petitioner,

vs.

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

**FILED**

SEP 10 1999

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
CHIEF DEPUTY CLERK

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

ORDER DENYING PETITION FOR WRIT  
OF CERTIORARI OR MANDAMUS

This original petition for a writ of certiorari or mandamus challenges an order of the district court denying defense counsels' ex parte motion to withdraw as counsel for petitioner Siasoi Vanisi. Petitioner has also filed motions requesting: (1) an emergency stay of the proceedings below; (2) permission to file points and authorities in support of this petition under seal; (3) an order directing the district court to transmit to this court under seal certain documents which have been filed under seal in the proceedings below; (4) an order of this court directing the district court to provide petitioner's counsel with a copy of a transcript that has been filed under seal in the proceedings below; and (5) an order of this court providing direction to counsel respecting the appropriate procedure to be followed in prosecuting this petition. The state opposes the motion for an emergency stay.

Having reviewed the documents before this court, we are not persuaded that this court's intervention by way of

extraordinary writ is warranted at this time. Accordingly, we deny the petition. Further, we deny petitioner's request for an emergency stay and the remaining motions filed in this matter.

It is so ORDERED.

Rae, C.J.

Mausin, J.

Shearing, J.

Becker, J.

cc: Hon. Connie J. Steinheimer, District Judge  
Attorney General  
Washoe County District Attorney  
Washoe County Public Defender  
Washoe County Clerk

20  
**FILED**

Code No. 4185

SEP 21 1999

AMY HARVEY  
By: *[Signature]*  
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,

Plaintiff,

vs.

SIAOSI VANISI,

Defendant.

Case No. CR98-0516  
Dept. No. 4

**ORIGINAL**

TRIAL - VOLUME 1  
September 20, 1999  
Reno, Nevada

APPEARANCES:

For the Plaintiff:

RICHARD A. GAMMICK  
District Attorney  
DAVID L. STANTON  
Chief Deputy District Attorney  
75 Court Street  
Reno, Nevada

For the Defendant:

STEPHEN GREGORY  
and JEREMY BOSLER  
Deputies Public Defender  
One South Sierra Street  
Reno, Nevada

The Defendant:  
Reported by:

SIAOSI VANISI  
ERIC V. NELSON, CCR No. 57

SIERRA NEVADA REPORTERS (775) 329-6560

RENO, NEVADA, MONDAY, SEPTEMBER 20, 1999, 10:00 A.M.

-oOo-

MR. BOSLER: Your Honor, we're having difficulty adjusting his chair. So we asked that he sit when you came in because we're trying to figure out a way to hide the stun belt.

THE COURT: Okay. I remember we had some discussions about that last time. How is it today?

MR. GREGORY: It seems to be fine, Your Honor.

THE COURT: Okay, good.

MR. GREGORY: As long as he remains seated.

THE COURT: So you are going to have him remain seated when the jury comes in? How did you want to handle that?

MR. GREGORY: That is all right. He will stand for the jury, Your Honor.

THE COURT: And is it all right when he stands?

MR. GREGORY: I will block him.

THE COURT: Thank you, Mr. Gregory. We'll only need to deal with that when we have the jury in the audience today or maybe into tomorrow.

Preliminarily I'd like to first make sure Mr. Vanisi is aware of what happened outside his presence last week. That was the excusing of the four jurors.

SIERRA NEVADA REPORTERS (775) 329-6560

1                   So, Mr. Vanisi, did your attorneys go over the  
2                   excusing of the four jurors with you?

3                   THE DEFENDANT: Yes.

4                   THE COURT: Okay?

5                   THE DEFENDANT: Yes.

6                   THE COURT: Now, also this morning we have some  
7                   jurors who have called. I think, counsel, you have all seen  
8                   Juror No. 17, Mr. Carsten, is in intensive care.

9                   MR. GAMMICK: Yes, Your Honor. We have that  
10                  one.

11                  THE COURT: Thank you.

12                  MR. BOSLER: Yes, Your Honor.

13                  THE COURT: I just want to make sure you know  
14                  he is not going to be here, obviously.

15                  MR. BOSLER: He's already been marked off my  
16                  list.

17                  THE COURT: I just wanted to let you know what  
18                  I was doing.

19                  MR. STANTON: Your Honor, my understanding is  
20                  that he is in ICU; is that correct?

21                  THE COURT: He is in ICU. You have a copy of  
22                  the statement from the physician, and it looks like he's  
23                  going to be moving to a California facility in the near  
24                  future.

25                  We also have Juror No. 108, Mr. Ramirez. He is

1 suffering from a terminal illness and this morning called  
2 the Jury Commissioner somewhat incoherent, and could not  
3 stand. We requested medical documentation, but I did excuse  
4 his attendance pending the medical identification -- the  
5 medical report, which you can supplement your files with as  
6 soon as we receive it.

7 MR. BOSLER: Thank you, Your Honor.

8 THE COURT: We have Juror No. 119,  
9 Mr. Scrottish, has contacted the Court. He is here but his  
10 business was broken into over the weekend. He's lost all of  
11 his equipment, and the police are doing fingerprints, et  
12 cetera, in his business as we speak. I wanted to let you be  
13 aware of that. I have not excused him from service unless  
14 you all stipulate to his being excused.

15 MR. BOSLER: Your Honor, we'll agree to his  
16 removal based upon the circumstances.

17 THE COURT: Any objection from the State?

18 MR. STANTON: Court's indulgence.

19 THE COURT: Yes.

20 MR. STANTON: Your Honor, we would like to ask  
21 Mr. Scrottish a few additional questions regarding his  
22 hardship before we agree to his excusal.

23 THE COURT: He is physically here. Just so you  
24 know that he is arguing a hardship. We won't be asking him  
25 that unless he is pulled into the initial 36.



1           We also received a telephone call, the Jury  
2 Commissioner did, from an Amanda Barrientos, Juror No. 4.  
3 The telephone call came this morning. She was indicating  
4 that she had child care issues and didn't have a  
5 baby-sitter.

6           The Jury Commissioner said she needed to be  
7 here and advised her I could issue a fine, warrant, hold her  
8 in contempt, and the woman hung up on the Jury Commissioner.  
9 She has not reported. So I just want to let you know that's  
10 why she is physically not here. We don't know if we will  
11 find her in the interim or not.

12           We have not received any other notices of  
13 potential jurors who are not here from the first initial  
14 group who filled out their supplemental questionnaires. As  
15 soon as we find out for sure they are all here, we will take  
16 a roll again, and then we'll go ahead and move forward.

17           Does counsel have any objection with moving  
18 forward with the panel as it appears this morning without  
19 those individuals who have not appeared?

20           MR. STANTON: No objection from the State.

21           MR. BOSLER: No objection, Your Honor.

22           THE COURT: Thank you. Now also, Mr. Vanisi,  
23 in the last trial we talked about the potential for side  
24 bars. That's when the attorneys walk over here and talk to  
25 me either with a potential juror or just with themselves.

1 The court reporter puts it all down on the transcript, and  
2 those transcripts are prepared daily. So you will be able  
3 to see everything that was said. Plus your attorneys will  
4 tell you what is going on. But I just want to make sure you  
5 were aware that was going to happen.

6 It is on the record, but no one in the audience  
7 nor yourself will be able to hear it. Last time you waived  
8 any objection to that. I just wanted to make sure you were  
9 still agreeing to that procedure.

10 MR. BOSLER: We'll stipulate, Your Honor.

11 THE COURT: Are you all right with that,  
12 Mr. Vanisi?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Now, counsel, I understand that you  
15 are not submitting any names for the case in chief, but do  
16 you have witnesses that you are going to be calling if you  
17 get to penalty phase? I know I signed some abstracts to  
18 secure people from out of state for you.

19 MR. BOSLER: Yes, Your Honor, we provided a  
20 list of those people to the State.

21 THE COURT: Okay. But you do not intend to  
22 call any witnesses in your case in chief?

23 MR. BOSLER: No, Your Honor, and we'll have to  
24 have a short little hearing to explain to the Court why.  
25 That's not an issue right at this moment.

1 THE COURT: Well, we might as well hear about  
2 it before we start the jury. Is it going to be quick?

3 MR. BOSLER: Relatively quick, but Mr. Petty  
4 was going to make a special showing to make a record on that  
5 issue.

6 THE COURT: I'll just let you know what I have  
7 done. I am concerned about any potential for the defense  
8 not putting on a defense. And as I indicated in my order, I  
9 gave you some specifics of how you could proceed, and of  
10 course, we went to the Supreme Court. I want to let you  
11 know that I have contacted Rob Bare with the State Bar.

12 Without being able to tell him any specifics,  
13 because of course, the order is under seal, I did ask him to  
14 be prepared to advise either of you during the course of the  
15 trial on hypothetical questions on your ethical  
16 responsibilities with regard to the representation of  
17 Mr. Vanisi if there came a point where you didn't know how  
18 to proceed, my order was too vague or you misunderstood what  
19 I was instructing you to do. And he is available, and the  
20 Court staff is instructed to make those telephone calls for  
21 you during the course of trial if you have any questions and  
22 want to speak to Mr. Bare.

23 MR. GREGORY: Thank you, Your Honor. If the  
24 Court wishes, we were going to wait until after selection to  
25 ask for an in camera hearing, but if the Court wishes, we

1 can have it right now.

2 THE COURT: I guess it depends. Is there  
3 something that would impact this jury selection?

4 MR. GREGORY: No, Your Honor.

5 THE COURT: You are going to participate in the  
6 voir dire process?

7 MR. GREGORY: Yes, Your Honor.

8 MR. BOSLER: Your Honor, may I have one moment?

9 MR. GREGORY: Mr. Bosler does have some  
10 concerns that the Court might find valid. So maybe we  
11 should do that right now, Your Honor.

12 MR. BOSLER: We will be brief, Your Honor.  
13 Will you give us a moment to locate Mr. Petty?

14 THE COURT: Mr. Gammick?

15 MR. GAMMICK: Is that our cue, Your Honor? I  
16 was just getting ready to leave again.

17 THE COURT: I'll tell you. You don't have to  
18 go too far because if it doesn't have to be sealed, I won't  
19 seal it. So I have to hear what they are telling me first  
20 before I decide whether or not it has to be under seal.

21 If it does have to be under seal, we'll do it  
22 under seal. If not, we'll bring everybody back in.

23 MR. GAMMICK: Is the jury outside in the  
24 hallway, Your Honor?

25 THE COURT: No. The jury panel is downstairs

1 still. We didn't bring them up. Mr. Gammick and  
2 Mr. Stanton, and the only other person is Mr. Henderson.  
3 We'll open it up as soon as I can.

4 MR. GAMMICK: We're the only ones here from the  
5 District Attorney's Office at this time, Your Honor.

6 THE COURT: Thank you.

7 THE COURT: We'll take a short recess.

8 (Recess taken at 10:05 a.m.)  
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RENO, NEVADA, MONDAY, SEPTEMBER 20, 1999, 10:24 A.M.

-o0o-

THE COURT: Let the record reflect counsel for the State has returned.

The housekeeping matter has been resolved. We will be proceeding with voir dire this morning and go on with the trial. There's no changes in anything.

Occasionally during the course of the trial, there may have to be a hearing outside your presence to be sure that the record is clear about what's going on. But I'm comfortable moving forward.

Now, we have one other issue and that is the rule of exclusion has been invoked in this case previously. Do you still intend to have the rule of exclusion in place?

MR. GAMMICK: Your Honor, we will have -- I'm going to assume it is going to be invoked, and we will treat it that way. We will have one issue that will come to light in view of that. We have put the defense and the Court on notice that we'll probably be calling Deputy Ellis as a witness in the penalty hearing phase of this.

I talked to Mr. Gregory this morning. I don't believe that he would have any objection to Deputy Ellis going on with his work and being in court and doing what he needs to do because he has nothing to do with the guilt

SIERRA NEVADA REPORTERS (775) 329-6560

1 phase. He was not a percipient witness. This is strictly  
2 during penalty phase.

3 THE COURT: As we had last time, probably  
4 Mrs. Sullivan will be sitting through the trial also?

5 MR. GAMMICK: Yes, that is correct, Your Honor.  
6 Carolyn Sullivan is anticipated for penalty phase, as is  
7 Meghan Sullivan, her daughter. Yes.

8 Just to make sure we cover it, we just ask that  
9 any penalty phase witnesses who are not being called during  
10 the guilt phase not be excluded from the courtroom.

11 THE COURT: And that would apply to any of the  
12 defendant's penalty phase witnesses?

13 MR. GAMMICK: Definitely.

14 THE COURT: Do you agree to that?

15 MR. GREGORY: Yes, Your Honor.

16 THE COURT: Then that will be the order, and  
17 those people who are noticed as penalty phase witnesses may  
18 sit in during the course of the trial. If you have someone  
19 who is a penalty phase witness and they arrive, please let  
20 the bailiffs know. We have Deputy Uptain and Deputy Brokaw,  
21 let them know that these are penalty phase witnesses so that  
22 they are not excluded from sitting in.

23 MR. GREGORY: Yes, Your Honor.

24 MR. BOSLER: Just as another housekeeping  
25 matter, I don't know who is going to do the jury selection,

1 but I believe the last jury selection, the Court, based upon  
2 I believe the motion of both counsel, did not allow  
3 questioning on aggravators, mitigators. We intend to  
4 present questions on those issues to the jury. I don't know  
5 if the State objects to that.

6 That is typical *Morgan vs. Illinois* type  
7 questioning and may lead to *Weatherspoon* type challenges. I  
8 ask the Court to know that because I'm not quite sure how it  
9 went last time. I know that Mr. Specchio had said something  
10 and the State agreed, and then there was no questions on  
11 aggravators, mitigators.

12 THE COURT: Potential aggravators and  
13 mitigators.

14 MR. BOSLER: Potential.

15 THE COURT: We did it in general terms.

16 MR. BOSLER: I'm not going to ask anybody to  
17 commit to anything but only in general terms.

18 THE COURT: So you are going to want to ask  
19 more questions than you did last time?

20 MR. BOSLER: Well, we didn't ask any questions  
21 last time. Yes, I'll want to ask more.

22 THE COURT: So what questions are you going to  
23 want to ask?

24 MR. BOSLER: How they view a murder that had  
25 this aggravator, that aggravator. Will they still be



1 willing to consider penalty less than death, because I  
2 believe *Morgan vs. Illinois* stands for the proposition, if a  
3 person found a first degree murder with four aggravators and  
4 they said, I'll never consider a punishment less than death,  
5 they are *Morgan* excludable. In order to perfect the record  
6 as to that issue, I wanted the give the Court heads up that  
7 I'm going to be asking about those issues.

8 THE COURT: Are you going to get -- is your  
9 intent to ask the specific aggravators that are in this  
10 case?

11 MR. BOSLER: I think they would be meaningless  
12 if I didn't ask the ones that applied in this case.

13 THE COURT: Counsel for the State?

14 MR. STANTON: Your Honor, the State's position,  
15 and it's somewhat of a vague proposition at this point, is  
16 the State believes that the law is that both the State and  
17 defense counsel in a capital murder case get to death/life  
18 and death-qualified jurors. The State agrees with that  
19 proposition.

20 Absent a more specific question from  
21 Mr. Bosler, I don't know if I can intelligently respond to  
22 the statement. If he wants to address the factors, I don't  
23 think it's appropriate that he begin to get into a juror and  
24 get them to commit how they are going to deliberate or vote  
25 based upon aggravators in this case.

1 With that, that's the State's position.

2 THE COURT: Okay. I agree that you have a  
3 right to determine whether or not they will always vote for  
4 the death penalty no matter what. However, I'm not going to  
5 allow individual jurors to be cross-examined as to what they  
6 would do in extensive hypothetical situations.

7 We do have a questionnaire whether or not they  
8 strongly support the death penalty, would ever change their  
9 mind depending on the facts. Certainly any of those  
10 individuals who answered the questionnaire in the manner  
11 that would be as to question number 10, I strongly am in  
12 favor and no matter what, that's what I would do, those  
13 people I think you are going to want to question further,  
14 and I would understand that. But just a cross-examination  
15 of all 36 people will probably be going beyond what I would  
16 allow you to do.

17 MR. BOSLER: Your Honor, just to perfect the  
18 record, I don't intend to cross-examine anybody hopefully,  
19 because I'm glad to hear what they have to say. I believe  
20 *Morgan vs. Illinois*, and there is some tension with the  
21 Nevada Supreme Court decision, but it stands for the  
22 proposition that each juror has to be willing to consider  
23 the aggravating factors and the mitigating factors before  
24 they are life-qualified. If the Court is not going to allow  
25 me to ask each individual, I would have to ask each person

1 how they feel about those aggravators.

2 THE COURT: You can ask a general question.  
3 You can say: Is anybody unwilling to consider all the  
4 evidence?

5 I mean, you don't have to ask each juror that  
6 individual question. I mean, if you are -- you are not  
7 talking about one individual question. You are talking  
8 about asking every juror four or five questions.

9 I will tell you from the last jury selection,  
10 you are going to have the panel angry at you. They don't  
11 get angry at me, they get angry at the attorneys. I'm  
12 giving you heads up and I'll probably shut it down.

13 If you have a specific reason based on the  
14 questionnaire to ask an individual juror for a specific  
15 reason based on their response and/or if you get a response  
16 from a general question that is addressed to the entire  
17 panel, I certainly will allow you to inquire further.

18 MR. BOSLER: I don't mean to be difficult. But  
19 my intent is to ask each individual juror a series of  
20 questions about how they view both the aggravators that are  
21 alleged in this case, mitigators that may be presented by  
22 the defense, and to see whether they would always vote for  
23 death or always vote for life, which is *Weatherspoon*,  
24 *Morgan*.

25 If the Court is not going to allow that, you

1 can tell me that now. That is fine. If you are only going  
2 to allow me to ask those questions when jurors give me  
3 specific reason to delve into their strong feelings for the  
4 death penalty, they are always in favor of the death  
5 penalty, that is fine. I just need some clarification from  
6 the Court, because my intent is to ask each individual juror  
7 a series of questions about --

8 THE COURT: What is that series? You didn't  
9 give those to me. Do you have those in writing so I can see  
10 them?

11 MR. BOSLER: It would be about all the  
12 aggravators alleged by the State. That's part of the  
13 record. Mitigators, evidence that could be presented by the  
14 defense.

15 THE COURT: We talked last week and you said  
16 you weren't going to ask any additional questions. My brain  
17 does not work real good when you just start giving me in  
18 vague terms. You are asking me now if I will allow you to  
19 ask all 36 people in the panel a series of questions, and I  
20 need to know how many questions of each person are you  
21 talking about and what exactly are those questions.

22 If you have them written down, it would assist  
23 me to read it very quickly and just realize what exactly you  
24 are asking. I don't want to say I won't allow you to do it  
25 when we're talking in nebulous terms. I want to know

1 exactly what the question is, and then I can tell you.

2 MR. BOSLER: Here is the question, Your Honor.  
3 It would be: In a murder case that you found first degree  
4 murder, and you found that the murder additionally had the  
5 aggravating factor of killing a police officer, would you be  
6 willing to consider a penalty of less than death? And why?

7 And go through all four aggravators listed by  
8 the State in that same manner. And also go through the  
9 mitigators presented about lack of criminal history, any  
10 other --

11 THE COURT: Each juror you are going to ask  
12 then that question four different ways based on the four  
13 aggravators, and then each juror you are going to ask how  
14 many mitigators you might ever think to do?

15 MR. BOSLER: Yes, Your Honor.

16 THE COURT: No, I will not let you do that. I  
17 will allow you to ask the entire panel that. Anyone who  
18 responds negatively to you, says, No, I won't consider it,  
19 then I'll let you inquire further.

20 MR. BOSLER: Then I just make an objection  
21 pursuant to *Morgan*.

22 THE COURT: Objection is overruled pursuant to  
23 Nevada Supreme Court rulings. Furthermore, I believe the  
24 general question to the entire panel of all four questions,  
25 will you consider this and the general question with regard

1 to mitigators, as many mitigating questions as you wanted,  
2 to the general panel in follow-up safeguards the concerns  
3 that you have raised.

4 Okay. We're going to bring the jury panel up  
5 in a few minutes. I'm going to tell counsel now, it is  
6 10:30, we're going to go until 12:30. I ask that you use  
7 the facilities now and be prepared to go straight through  
8 for two hours. Court is in recess.

9 (Recess taken at 10:34 a.m.)

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RENO, NEVADA, MONDAY, SEPTEMBER 20, 1999, 11:00 A.M.

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

THE COURT: Welcome, ladies and gentlemen of the jury panel. You have been here before filling out your questionnaires, and you can see why some of you came at one time and some of you came at another time.

In a few minutes, we're going to proceed with the formal selection of a jury in this case. As soon as we do that, we're going to bring up 35 of you -- 36 of you to sit here. So there will be plenty of room for everyone to sit down at that time.

Now we are going to call the roll before we can proceed in that manner, and we are going to have you all take the oath as jurors again. Before I proceed with that prospect, I do want to give the attorneys an opportunity to reintroduce themselves to you, and we'll begin at this time.

MR. GAMMICK: Thank you, Your Honor.

Good morning, ladies and gentlemen. My name is Richard Gammick. I'm the Washoe County District Attorney, and with me during the course of this trial will be Chief Deputy David Stanton.

MR. BOSLER: Good morning, ladies and

1 gentlemen. My name is Jeremy Bosler, and this is Siaosi  
2 Vanisi, and to his left is Stephen Gregory. Good morning.

3 THE COURT: Thank you. Also assisting you, who  
4 did assist you last week in the filling out of the forms, is  
5 the staff who serve here with me in Department 4, and they  
6 will go ahead and introduce themselves to you now.

7 Mr. ANDERSON: My name is Dane Anderson. I'm  
8 the law clerk for Department 4.

9 DEPUTY BROKAW: I'm Max Brokaw, the bailiff in  
10 Department 4.

11 DEPUTY UPTAIN: Brian Uptain. I'm the deputy  
12 assisting Deputy Brokaw in his bailiff duties.

13 THE CLERK: Good morning. My name is Marcy  
14 Stone. I'm the court clerk for Department 4:

15 THE REPORTER: My name is Eric Nelson, the  
16 court reporter for Department 4.

17 THE COURT: As you may remember, my name is  
18 Connie Steinheimer, and I'm the judge who presides in this  
19 department.

20 I want to tell you all that I understand jury  
21 service is at best inconvenient, and for many of you it is a  
22 hardship. I want you to know that we all appreciate that  
23 and will make your service here as effective and as  
24 efficient as possible.

25 I want to remind you that we have a unique



1 system of government in this country, and it only operates  
2 if we have jurors who are willing to serve. It is a  
3 privilege and a responsibility, I know that. But it is one  
4 that I appreciate your accepting this morning and throughout  
5 the trial. It is the highest service that you can give to  
6 your community.

7 We will be proceeding with the formal selection  
8 of the jury in this case at this time.

9 This is Case No. CR98-0516, State of Nevada  
10 versus Siaosi Vanisi.

11 Counsel, are you ready to proceed?

12 MR. GAMMICK: Ready on behalf of the State,  
13 Your Honor.

14 MR. BOSLER: Ready, Your Honor. Thank you.

15 THE COURT: Thank you. The clerk will now call  
16 the roll of those summoned to serve as prospective jurors.  
17 Please answer "here" or "present" as your name is called.

18 (Roll call taken.)

19 THE COURT: Is Mark W. Phillips in the room?

20 Counsel, I have e-mailed the Jury Commissioner.  
21 He checked in downstairs. So we're looking for him. We  
22 think he's in the building somewhere. At least that's the  
23 message we got, that he checked in. So we'll try to find  
24 him.

25 Anyone else who is present in the room whose

1 name was not called?

2 I think everyone has been accounted for in our  
3 prehearing. Does anyone have any problems moving forward  
4 with the jury as it is now constituted?

5 MR. STANTON: No, Your Honor.

6 MR. BOSLER: My only concern would be if you  
7 start to ask preliminary questions and either Miss  
8 Barrientos, Miss Doiron or Mr. Phillips show up. I'll leave  
9 it to the Court how you want to handle that.

10 THE COURT: I don't think we're going to  
11 find -- based on what we know about Miss Barrientos, she is  
12 probably not going to be here.

13 Miss Doiron, the Jury Commissioner tells me the  
14 home phone number has been disconnected and she is not at  
15 work. So I don't know if we are going to find those people.  
16 We will keep looking. Thank you, Mr. Bosler.

17 MR. BOSLER: Thank you, Your Honor.

18 THE COURT: Mr. Phillips is not going to be  
19 here.

20 Ladies and gentlemen of the jury panel, in a  
21 few minutes, the clerk will reswear you. I want to let you  
22 know that we will move this morning and this afternoon as  
23 quickly as we can, but there are so many of you, it takes a  
24 long time to get you in and out of the courtroom.

25 We're not going to be taking a recess now until

1 12:30. So we're going to go straight through, and we won't  
2 be taking a break until 12:30. Then we will take a lunch  
3 hour, but it will only be one hour. You will be back in  
4 here.

5 Now, the longer it takes you to get here and in  
6 the courtroom and the roll call taken, the longer we're  
7 going to be here in the jury selection process. Ultimately  
8 only 16 of you will have to serve in this case, so it is to  
9 everyone's benefit to move the jury selection along as much  
10 as we can with your being timely and coming back as quickly  
11 as you can and being here to assist us.

12 I know it is hard for so many of you, and the  
13 elevators are slow. So anything we can do to help you, let  
14 us know. But we will try to move this along.

15 Now, today we are going to be spending most of  
16 the day selecting a jury, and that will mean that we'll go  
17 this morning until 12:30. You will come back at 1:30. You  
18 will get one recess in the afternoon, and based on how long  
19 it took you to come and go, it will probably be a half hour  
20 before we let you all go use the facility and come back in.  
21 And then we'll quit at 5:00 o'clock.

22 If we don't have the jury by 5:00 o'clock,  
23 everyone will have to come back tomorrow morning. You will  
24 have to be sworn. You won't to be sworn again, but the roll  
25 call will have to be taken.

1           If we are missing anyone, we run the risk of  
2           having to wait for that person or the sheriff to find that  
3           person. So please check in with the Jury Commissioner if  
4           you have a problem at lunch and you are not getting back on  
5           time. Pick up that phone and call us, because we're going  
6           to be all waiting for you to return.

7           I appreciate your service and your  
8           understanding because there are so many of you in this  
9           particular case.

10           We will proceed now with you all taking your  
11           oath as prospective jurors again. Those of you who are not  
12           standing, please stand and face the court clerk.

13           (Prospective jury panel sworn.)

14           THE COURT: Thank you. Please be seated.

15           The defendant is advised that challenges to  
16           individual jurors must be made before the jury is sworn.  
17           The clerk will now draw the names of the prospective jurors  
18           from the jury list.

19           Ladies and gentlemen of the jury panel, as your  
20           name is called, please step forward and find your seat. We  
21           have nine chairs in the back row, we have eight chairs in  
22           the next two rows, and seven chairs in the fourth row, and  
23           four chairs in the front row. And the way we fill these  
24           rows is we start with the chair furtherest away from you in  
25           that far back corner, the back row, and the bailiff will