

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 8 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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35	1. Petitioner’s Waiver of Appearance (and attached Declaration of Siaosi Vanisi), April 9, 2018.....	AA07366 – AA07371
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36 1. Declaration of Randolph M. Fiedler
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35 State’s Opposition to Motion for Reconsideration
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- 36 1. Transcript of Proceedings – Status Hearing, *Vanisi v. State of Nevada*, Second Judicial District Court of Nevada, Case No. CR98-0516
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- 36 Suggestion of Incompetency and Motion for Evaluation, *State of Nevada v. Vanisi*, Second Judicial District Court of Nevada, Case No. CR98-0516
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35	Transcript of Proceedings – Oral Arguments, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 May 30, 2018	AA07391 – AA07446

38	Transcript of Proceedings – Oral Arguments, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 25, 2019.....	AA08136 – AA08156
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33	201. Billing Records-Thomas Qualls, Esq. Various Dates.....	AA06970 – AA06992
33	214. Memorandum to File from MP March 22, 2002.....	AA06993 – AA07002
33	Transcript of Proceedings - Petition for Post-Conviction (Day Two), <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 December 6, 2013	AA07003 – AA07083

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

12-13	Transcript of Proceedings – Post-Conviction, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 28, 2003.....	AA02576 – AA02582
13	Transcript of Proceedings – Post-Conviction, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 November 22, 2004.....	AA02614 – AA02644
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13	Transcript of Proceedings – Report on Psychiatric Evaluation, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 27, 2005.....	AA02680 – AA02716
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3	Transcript of Proceedings, Trial Volume 5, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 January 15, 1999.....	AA00524 – AA0550
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8	Transcript of Proceedings – Trial Volume 6, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 27, 1999.....	AA01546 – AA01690
8-9	Transcript of Proceedings – Trial Volume 7, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 28, 1999.....	AA01691 – AA01706
9	Transcript of Proceedings – Trial Volume 8, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 September 30, 1999.....	AA01707 – AA01753
9-10	Transcript of Proceedings – Trial Volume 9, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 1, 1999.....	AA01754 – AA01984
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11-12	Transcript of Proceedings – Trial Volume 11, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 5, 1999.....	AA02268 – AA02412
12	Transcript of Proceedings – Trial Volume 12, <i>State of Nevada v. Vanisi</i> , Second Judicial District Court of Nevada, Case No. CR98-0516 October 6, 1999.....	AA2414 – AA02522

CERTIFICATE OF SERVICE

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

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

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1 instructions. We have those coming upstairs. We already
2 requested them.

3 THE COURT: Let's go through them in the order
4 that I have them in. I have not changed this order since
5 they were provided by the State. It may not be the order
6 they are actually given in.

7 MR. STANTON: It has been over a year, several
8 months since -- can I take off my jacket while we go through
9 these?

10 THE COURT: Certainly.

11 MR. GREGORY: Mr. Stanton indicated he
12 intentionally mixes up our stuff when he gives it to us.

13 THE COURT: Let the record reflect Mr. Gregory is
14 smiling.

15 MR. STANTON: Thank you, Your Honor.

16 THE COURT: Okay. I have "Ladies and gentlemen of
17 the jury."

18 MR. BOSLER: Judge, is it okay if Mr. Vanisi has a
19 hand free so he can write during today's proceedings?

20 THE COURT: Yes.

21 MR. BOSLER: Thank you.

22 THE COURT: Okay, ready? We have the first one,
23 "Ladies and gentlemen of the jury."

24 Then we have the instruction that starts, "The
25 defendant in this matter," which looks to be a restatement

1 of the Information.

2 "An Information is a formal method."

3 "If in these instructions any rule, direction, or
4 idea."

5 "If during this trial I have said or done
6 anything."

7 "Although you were to consider only the evidence
8 in this case in reaching a verdict."

9 "It is the duty of the attorneys on each side."

10 "Nothing counsel say."

11 "The penalty provided by law."

12 "Neither the prosecution nor the defense is
13 required."

14 "There are two types of evidence from which a jury
15 may reach a verdict."

16 "To the jury alone belongs the duty of weighing."

17 "A person is qualified as an expert."

18 "In every crime there must exist a union."

19 "Intent may be proved by circumstantial evidence."

20 MR. BOSLER: Your Honor?

21 THE COURT: Yes.

22 MR. BOSLER: We would interpose an objection to
23 the second segment, "Intent can be established by any other
24 means." Essentially that minimizes the State's burden of
25 proof. We don't object to the rest of the instruction.

1 MR. GAMMICK: The intent instruction?

2 MR. BOSLER: Just the second sentence. It's
3 normally given, and I always make an objection.

4 THE COURT: Counsel for the State?

5 MR. STANTON: In response to Mr. Bosler?

6 THE COURT: Yes.

7 MR. STANTON: Your Honor, this is a pattern
8 instruction, number one. Number two, it is true as a
9 practical matter. Number three, it's been approved by the
10 Nevada Supreme Court on numerous occasions.

11 THE COURT: Okay. I'll make a ruling on what we
12 are going to keep after I hear the objections.

13 "Every person charged with the commission of a
14 crime."

15 "The burden rests upon the prosecution to
16 establish every element."

17 "A reasonable doubt is one based on reason."

18 MR. BOSLER: We submitted an alternating
19 instruction, so you know.

20 THE COURT: I do have some here. Is the
21 alternating one "The State has the burden of proving"? Is
22 that the one you want me to use?

23 MR. BOSLER: Yes, Your Honor. I believe there
24 should be a citation attached to the Court's copy.

25 THE COURT: Actually, the other three all have

1 citations, but that one doesn't.

2 MR. GREGORY: It did not, Your Honor.

3 THE COURT: Is there a citation I should add?

4 MR. GREGORY: Your Honor, this --

5 MR. GAMMICK: I was just going to say, that
6 instruction, Your Honor, came up during this last
7 legislature and it comes out of some language out of the, I
8 believe a case out of the United States Supreme Court
9 originally out of Arizona.

10 However, our Supreme Court has been very emphatic
11 that the instruction we give is the only instruction to be
12 given in this state. The legislature said that. The
13 Supreme Court said that. They did not adopt the proffered
14 instruction that has been given to the Court by the defense
15 today.

16 I don't believe there is any option but to give
17 the one that is in the package we submitted to the Court.

18 THE COURT: Mr. Gregory, did you want to say
19 something?

20 MR. GREGORY: Similar to what he said, although I
21 thought it was a Louisiana case. Mr. Petty would have the
22 exact case. And I apologize to the Court, I wasn't able to
23 see him during the break.

24 MR. BOSLER: We can provide the citation later,
25 Your Honor. It is taken from a U.S. Supreme Court case. We

1 agree, although the statute says that a certain instruction
2 should be given, we don't think it's a proper instruction
3 and we will keep objecting until someone hopefully
4 eventually listens.

5 MR. STANTON: Mr. Gammick spoke because of his
6 experience down at the legislature, Your Honor, relative to
7 the instruction. I have some authority to cite to the Court
8 regarding, and some argument regarding the definition of
9 reasonable doubt in the instructions in Nevada.

10 THE COURT: Okay. Go ahead.

11 MR. STANTON: The specific statute is NRS 175.211.
12 In addition, I think it's been the Washoe County Public
13 Defender's office has, in my review of the appellate records
14 that have gone down in murder cases from this county, has
15 consistently usually at least once a year proffered a
16 challenge to the statutory reasonable doubt instruction.

17 There are several Nevada Supreme Court cases that
18 have addressed suggested alternatives to the reasonable
19 doubt instruction. And as Mr. Gammick has said, the Supreme
20 Court of our state has consistently rejected those.

21 The ones that I have string cited in chronological
22 order would be the case of Gary versus State, 112 -- I have
23 the Nevada Advanced Opinion, decided December 20, 1996.

24 Also Evans v. State, once again 112 Nevada,
25 decided in October of 1996. Also Parker v. State, and

1 Canape, C-a-n-a-p-e, at 109 Nevada 864; Parker being 109
2 Nevada 383.

3 In addition, the Ninth Circuit Court of Appeals
4 heard in 1987 a challenge to the Nevada reasonable doubt
5 instruction in Darnell, D-a-r-n-e-l-l, v. Swinney,
6 S-w-i-n-n-e-y, 823 F2d 299, and upheld it on federal
7 constitutional principles.

8 In addition, the United States Supreme Court in
9 1998 rejected an attempt to have the reasonable doubt
10 instruction declared unconstitutional, once again on federal
11 constitutional principles. That case is Ramierez,
12 R-a-m-i-e-r-e-z, versus Hatcher, H-a-t-c-h-e-r. At the time
13 I wrote the notes it was not published in West, but it was a
14 1998 cert denial under that name.

15 That would be the authority.

16 THE COURT: Okay. I ask the clerk to mark "The
17 State has the burden of proving the defendant guilty beyond
18 a reasonable doubt" instruction offered by the defense as
19 Defendant's Offered Instruction A. I am going to refuse it
20 at this time. I will be giving the instruction as provided
21 by the State.

22 "Murder is the unlawful killing of a human being."
23 Is that the one?

24 MR. GAMMICK: Yes, Your Honor, this is one of
25 them. We have one more, too.

1 THE COURT: Thank you.

2 MR. GAMMICK: This is the other one that we asked
3 to be typed that further defines first and second degree.

4 THE COURT: Okay. Mr. Bosler, have you seen -- or
5 Mr. Gregory; I see that Mr. Bosler has them -- the new
6 instruction, "Murder is the unlawful killing of a human
7 being," with the second paragraph, "Murder is further
8 divided into murder in the first degree and murder in the
9 second degree." Do you have that instruction now?

10 MR. BOSLER: We just have been handed that
11 instruction. If I may have a moment, Your Honor?

12 THE COURT: Certainly.

13 MR. BOSLER: Your Honor, I think it's an accurate
14 statement of the law in Nevada at this point, but we have
15 offered a second instruction I think that maybe gives the
16 jury a little more guidance. That's the instruction that
17 begins "Willfulness, malice, premeditation may exist without
18 that cool purpose contemplated," and if so will result in
19 second degree murder, not first.

20 We offer that to the Court as a more appropriate
21 way to describe the difference between first and second
22 degree murder. The way the instructions are given now, the
23 way the statute reads, it's essentially unguided discretion
24 to the jurors to determine what second degree murder is.
25 It's all other murders. Without that guided decision-making

1 process, I think it would deprive Mr. Vanisi of his due
2 process rights.

3 We offer the instruction that is State v. Brown,
4 836 Southwest 2d at 530 at this point. And it's the
5 instruction that begins "Willfulness."

6 THE COURT: Okay. Mr. Gammick?

7 MR. GAMMICK: Your Honor, this introduces some new
8 language that I have never seen addressed by the Nevada
9 Supreme Court or anywhere in Nevada law. That is "without
10 that cool purpose contemplated."

11 I am not even sure what that stands for. If that
12 is talking about the absence of premeditation, deliberation,
13 that's part of the definition in this case because in this
14 case, as you are aware, he's charged with three alternative
15 theories of first degree murder. The cool purpose may go
16 to, if that's what it means, premeditation and deliberation,
17 it does not cover lying in wait nor in the course of a
18 robbery.

19 I have some real difficulty trying to apply this
20 to this case. I think it's confusing. I don't think it's
21 going to serve a useful purpose considering the rest of the
22 instructions.

23 THE COURT: You cite the same case for another
24 instruction that you provided me with, which is "Deliberate
25 means formed or arrived at or determined upon as a result of

1 careful thought and weighing considerations for or against
2 the proposed course of action."

3 Is that out of that same case?

4 MR. BOSLER: Yes, Your Honor, it's the same
5 citation. That instruction will be offered as an
6 alternative to the "instantaneous thoughts of the mind"
7 instruction, which we believe is improper. It doesn't --
8 essentially it says that every case is premeditated because
9 premeditation can happen as quickly as instantaneous
10 thoughts of the mind.

11 We think that instruction does away with other
12 degrees of murder and needs to be elaborated upon to give a
13 jury guidance in how to look at the killing. And the reason
14 we offer that, not at this point, but as an alternative to
15 the instantaneous thoughts of the mind instruction.

16 MR. GAMMICK: Well, that may work in Tennessee,
17 Your Honor, but in the State of Nevada, as is cited in the
18 instruction itself in Powell v. State, 108 Nevada 700; and
19 Kazalyn v. State, 108 Nevada 67, and in other cases, the
20 Nevada Supreme Court has upheld this on numerous occasions
21 as being the proper instruction to give in this state.

22 In Tennessee this "cool purpose" may fly, but I
23 suggest maybe we go with the Nevada Supreme Court and the
24 language they upheld on numerous occasions.

25 MR. BOSLER: Your Honor, I don't mean to have the

1 last word, but knowing that this case is charged in
2 alternate theories, it probably is proper to confine this
3 language to just the premeditated deliberate murder, not the
4 felony murder or the lying in wait murder.

5 We offer an amendment as "Any murder that alleges
6 premeditation, deliberation," and add the balance of that
7 instruction. Because I don't think it would apply
8 accurately to the lying in wait or the felony murder rule.

9 MR. STANTON: Your Honor, on top of all that, I
10 have an argument or a series of authorities and specific
11 quotations from Nevada Supreme Court opinions that deal with
12 premeditation and deliberation, which I see are two
13 additional proposed jury instructions by defense counsel.

14 When I first received defense counsel's proposed
15 instructions today, I wanted to make sure I put that on the
16 record; we had not received those instructions until just
17 after our break this morning. I thought the instruction,
18 the defense proposed instruction starting with "willfulness"
19 was indeed a term or an instruction where they wanted to
20 seek additional explanation or instruction on that term.

21 If the Court would allow me, I have a quote from a
22 Nevada Supreme Court case called Greene, G-r-e-e-n-e, v.
23 State, found at 113 Nevada 157, a 1997 case. I'll skip
24 through the citations. But quoting from that decision our
25 court said, "In Powell this Court reiterated that

1 premeditation and deliberation constitute a single term and
2 not separate elements requiring separate thought processes."
3 Citation is omitted. "After reviewing the law in other
4 jurisdictions, this Court further concluded that the terms
5 'premeditated, deliberate, and willful' are a single phrase,
6 meaning simply that the act or intent to commit the act and
7 attendant death is a result of that act."

8 That citation or quotation comes, or the string
9 citation within the quote is citing to Powell v. State, 108
10 Nevada 700, at page 709.

11 I think that and a couple other cases that I have
12 lifted specifically for premeditation and deliberation
13 encompasses what at least our Supreme Court has said about
14 the meanings and the interactions between those three key
15 terms: Premeditated, deliberate and willful.

16 MR. BOSLER: Your Honor, it is our instruction. I
17 don't disagree with Mr. Stanton. The Nevada Supreme Court
18 has seemed to say, although the legislature put down three
19 different words, they all mean the same thing. We think
20 that flies in the face of basic statutory construction and,
21 in a sense, again doesn't guide the jury in how to interpret
22 the statute. That in turn deprives Mr. Vanisi of his due
23 process rights.

24 For that reason, we're offering separate
25 definitions for the three separate words that are placed in

1 the statute.

2 THE COURT: Okay. I have marked your instruction,
3 "Willfulness, malice and premeditation may exist without
4 that cool purpose contemplated" as Defendant's Offered
5 Instruction B.

6 I've marked "Deliberate means formed or arrived at
7 or determined upon as a result of careful thought" as
8 Defendant's Offered Instruction C.

9 Now, the one that you gave me, the defense gave me
10 called "Premeditation is a design, a determination to kill,"
11 that seems like -- I didn't see any variation in that from
12 what is frequently given.

13 Is there some variation in that instruction?

14 MR. BOSLER: Let me see, Your Honor.

15 MR. STANTON: Line five and six, I believe, is the
16 distinction between the pattern instruction.

17 THE COURT: "Premeditation need not be for a day,
18 an hour, or even a minute"?

19 MR. STANTON: No, Your Honor. "The very nature of
20 deliberation requires time to reflect, a lack of impulse,
21 and a cool purpose." I'm sorry, I'm reading from the other
22 instruction.

23 THE COURT: They gave me a set of three.

24 MR. STANTON: You're reading from "Premeditation
25 is a design"?

1 THE COURT: Yes, that's the one that looks very
2 familiar. I didn't see anything different in it. I want
3 you all to look at that and tell me if you think there is
4 something.

5 MR. STANTON: State would agree with the Court's
6 assessment.

7 THE COURT: So, do you still want that one in here
8 somewhere?

9 MR. BOSLER: Your Honor, may I have a moment?

10 THE COURT: Yes. You had a sticky on it that says
11 State versus Brown as the authority. That's why I asked you
12 if these were all from the same case. That looked like the
13 stock instruction I have seen on numerous occasions.

14 MR. BOSLER: I think the distinction is in the
15 first paragraph, Your Honor, lines one through three. It
16 implies a design, not merely successive thoughts of the
17 mind. In that sense, it's a further -- if I may have a
18 moment?

19 THE COURT: Yes.

20 MR. BOSLER: Your Honor, it does appear that the
21 instruction we have is a copy of the State's offered
22 instruction. It begins with the words "Unless felony murder
23 applies."

24 I believe there is another instruction our office
25 will offer with respect to premeditation. I don't think we

1 have it here. I don't think this is a correct offer.

2 THE COURT: You don't want to offer that at this
3 time?

4 MR. BOSLER: No.

5 THE COURT: I'll put that aside.

6 At this time I'm going to deny your Offered
7 Instructions B and C.

8 MR. BOSLER: Thank you, Your Honor.

9 THE COURT: Now we are back to the "Murder is the
10 unlawful killing of a human being with malice aforethought."

11 "As it applies to this case, murder in the first
12 degree is," and then three, A, B, C. That is the one that
13 Mr. Gammick just gave us.

14 MR. BOSLER: Yes, Your Honor.

15 THE COURT: Now, the next one I have in my packet
16 is "Murder is the unlawful killing of a human being," and
17 that is the one you want pulled; is that correct?

18 MR. GAMMICK: That should be the one. It's the
19 short single paragraph.

20 THE COURT: Yes. "NRS 200.020 defines malice,
21 express or implied, as follows."

22 "Malice aforethought as used in the definition of
23 murder means."

24 "The nature and extent of the injuries coupled
25 with repeated blows may constitute evidence of willfulness."

1 "Unless felony murder applies."

2 "Intent to kill as well as premeditation."

3 Now, do we really need that one and "The nature
4 and extent of the injuries"?

5 MR. STANTON: No, Your Honor. I think to some
6 extent it is duplicitous.

7 THE COURT: Should we take out "The nature and
8 extent of the injuries"? Or do you want to leave that one
9 and take out the other? You offered them.

10 MR. STANTON: Under the facts -- may I have the
11 Court's indulgence one moment?

12 THE COURT: Yes.

13 MR. STANTON: Your Honor, the State's preference
14 would be "The nature and extent of the injuries"
15 instruction.

16 THE COURT: Okay.

17 MR. STANTON: To keep, Your Honor.

18 THE COURT: We will take out "Intent to kill as
19 well as premeditation"?

20 MR. STANTON: Yes, Your Honor.

21 THE COURT: "Whenever death occurs during the
22 perpetration of certain felonies."

23 "All verdicts in this case must be unanimous."

24 "Robbery is the unlawful taking of personal
25 property."

1 "Grand larceny consists of the unlawful stealing,
2 taking, carrying away."

3 "A deadly weapon is an object, instrument, or
4 weapon which is used in such a manner."

5 MR. BOSLER: We would object to the fourth line of
6 that, Your Honor.

7 THE COURT: I'm sorry?

8 MR. BOSLER: We object to line four. I think
9 that's the jury's decision.

10 THE COURT: Counsel?

11 MR. STANTON: Your Honor, the line says "A hatchet
12 is capable of being used as a deadly weapon." It does not
13 make the decision for the jury.

14 THE COURT: No, but I don't think it's necessary.
15 I'm going to ask that you delete it.

16 MR. STANTON: Okay.

17 THE COURT: I think it's not something that is so
18 unique that they can't decide for themselves whether or not
19 it's capable of producing or likely to produce.

20 "Each count charges a separate and distinct
21 offense."

22 "It is your duty as jurors to consult with one
23 another."

24 "Upon retiring to the jury room you will select."
25 Then we have proposed verdict forms.

1 MR. STANTON: Your Honor, prior to that, after the
2 deadly weapon instruction that the Court asked the State to
3 remove the second line, the next instruction I have after
4 that is "If you find the defendant guilty."

5 THE COURT: I don't have it.

6 MR. STANTON: Don't have it? Does defense counsel
7 have that?

8 MR. BOSLER: Yes.

9 MR. STANTON: Your Honor, this is an instruction
10 that instructs the jury that they must make a determination
11 regarding the deadly weapon.

12 THE COURT: Okay.

13 MR. STANTON: On both the murder and robbery
14 offenses. I think that comports with the special verdict
15 forms.

16 THE COURT: Okay. Have counsel had an opportunity
17 to see that?

18 MR. BOSLER: Yes.

19 THE COURT: It was in your packet?

20 MR. BOSLER: Yes, Your Honor.

21 THE COURT: Okay. Then we have, we go to the
22 verdict forms. Okay?

23 MR. STANTON: Yes, Your Honor. In the verdict
24 forms the first one should be guilty of murder, and then a
25 second page which is two interrogatories of first and

1 second, and then whether there is a deadly weapon. The next
2 form would be the not guilty of Count I.

3 And the next jury instruction would be the robbery
4 Count II, with the guilty of robbery and the interrogatory
5 of the deadly weapon. Next one would be not guilty, Count
6 II.

7 Next would be guilty of Count III, robbery with
8 the interrogatory of the deadly weapon. And the next one
9 would be not guilty of Count III.

10 Next verdict form would be guilty of Count IV,
11 robbery, with the interrogatory of the deadly weapon. The
12 next verdict form is not guilty of Count IV.

13 And then we would have guilty of Count V, grand
14 larceny; and then not guilty of Count V.

15 THE COURT: Counsel, do you have additional
16 instructions to offer with regard to the verdicts?

17 MR. BOSLER: Your Honor, I have to apologize. I
18 know, I think your order was a little bit different than
19 mine. I would like to bring the Court back to the
20 instruction that begins "The crime of murder in the first
21 degree includes the lesser crime of second degree murder."

22 THE COURT: No, I don't have that in this packet,
23 I don't think. I didn't read it off just now.

24 MR. BOSLER: May I have a moment, Your Honor?

25 THE COURT: Do you want me to look at it?

1 MR. BOSLER: At this point, Your Honor, no, I
2 don't think so. That's fine.

3 THE COURT: You don't think it needs to be in
4 there?

5 MR. BOSLER: No.

6 THE COURT: Okay. Any others?

7 MR. BOSLER: I think that takes care of all the --
8 is that all four instructions, three instructions offered by
9 the defense today?

10 THE COURT: Yes. You withdrew one and then -- I
11 think that there were four. You withdrew one and marked
12 three.

13 MR. BOSLER: Just want to make that clear. That's
14 fine.

15 THE COURT: Now, do you have any verdict forms?
16 You don't have any additional verdict forms either?

17 MR. BOSLER: No, Your Honor, we are not offering
18 any lesser offense.

19 THE COURT: You are not offering a lesser
20 included?

21 MR. BOSLER: No.

22 THE COURT: If Mr. Vanisi chooses not to testify,
23 which we will deal with in a few minutes, but if he does
24 choose not to testify, do you want an instruction given?

25 MR. GREGORY: Well, Your Honor --

1 MR. BOSLER: We will have to reach that point
2 after the State is finished and Mr. Vanisi exercises his
3 right to either testify or not testify. If he does, then we
4 will offer that instruction.

5 THE COURT: Do you have that one? I would like to
6 see the original.

7 MR. BOSLER: I can provide that one this
8 afternoon.

9 MR. GREGORY: There may be other specials after we
10 conclude our case in chief. I don't want to mark or commit
11 to these at all at this point.

12 MR. BOSLER: Depending on what Mr. Vanisi's
13 testimony may be, we may want to offer instructions,
14 depending on those facts. That's not something we can offer
15 to the Court at this point.

16 THE COURT: I won't be too concerned if you feel
17 uncomfortable offering them to the Court now, obviously, in
18 open court with counsel for both sides present. However, I
19 do assume that you know what you are going to offer and they
20 have been prepared, so there won't be a delay in having them
21 prepared.

22 MR. GREGORY: We are not going to delay in
23 submitting them to the Court at all, Your Honor.

24 THE COURT: Now, do you have any objections to the
25 packet other than those that you have expressed thus far?

1 MR. BOSLER: None other than the objections
2 previously stated, Your Honor.

3 THE COURT: Mr. Stanton, do you have any objection
4 to the packet as proposed at this point?

5 MR. STANTON: No, Your Honor.

6 THE COURT: Do you have any additional
7 instructions to offer at this time? I will give you another
8 opportunity to offer additional instructions.

9 MR. BOSLER: Thank you, Your Honor.

10 THE COURT: Do you have any more to offer now?

11 MR. BOSLER: Not at the moment, Your Honor.

12 THE COURT: Mr. Stanton, any more to offer now?

13 MR. STANTON: No, Your Honor.

14 THE COURT: The instruction you think you are
15 going to want to find, Mr. Bosler, that you believe you got
16 the wrong one, what is that instruction about?

17 MR. BOSLER: It is an alternative instruction to
18 the "instantaneous thoughts of the mind" instruction that
19 has been approved by Nevada law.

20 THE COURT: It's an alternative to the one you
21 actually brought over?

22 MR. BOSLER: Yes.

23 THE COURT: I thought it was sort of strange.
24 Now, let's just talk about some logistics while I have you
25 all here. It looks like we have some witnesses from Utah

1 coming on Monday morning. I think currently we are set for
2 nine a.m. Monday morning.

3 And as I, I think I remember yesterday you all
4 thought that those witnesses would take approximately
5 two-and-a-half hours.

6 MR. STANTON: That's correct, Your Honor.

7 THE COURT: So with a break, which we kind of have
8 to do if we are going to start at nine, that puts us into
9 noon with the State resting its case?

10 MR. STANTON: I believe we may even rest our case
11 at 11.

12 THE COURT: Okay. That would mean that, that
13 would be the opportunity for the defense to make an opening
14 statement and present a case, if you -- whatever you are
15 going to do.

16 Do you anticipate you will be making an opening
17 statement?

18 MR. GREGORY: Your Honor, I won't know until
19 Monday. I'm not trying to be coy.

20 THE COURT: Okay. I'm trying to figure out the
21 schedule here in terms of the breaks.

22 MR. GREGORY: No, and I understand the Court's
23 concern.

24 THE COURT: Do you wish that I wait until Monday
25 to canvass your client?

1 MR. GREGORY: Yes, Your Honor.

2 THE COURT: Okay. Then what we'll probably do is,
3 I won't worry about canvassing your client in the morning
4 until the State rests. The State will rest; we'll send the
5 jury out. We will do the preliminary canvass.

6 And then as I indicated to counsel when you were
7 all talking about an administrative matter up here, that
8 there is going to have to be an in camera canvass that takes
9 place. That could take place also on Monday morning.

10 Depending on the determination from both of those
11 canvasses, you will be able to tell me at that point what
12 your opening statement will be?

13 MR. GREGORY: That's correct, Your Honor.

14 THE COURT: Let's, to kind of give me a sense, if
15 -- I'm not asking you to commit or say this is what is going
16 to happen, so I can get a sense of how long it might take.
17 If you were to make an opening statement and/or if your
18 client decides to testify or put on a defense, are we
19 looking at going to the jury on Monday anyway?

20 MR. GREGORY: I believe so, Your Honor.

21 THE COURT: It may be a situation where we might
22 keep the jury through the lunch hour and feed them? Rather
23 than send them out for an hour-and-a-half?

24 MR. GREGORY: That would be entirely up to the
25 Court.

1 THE COURT: In terms of time?

2 MR. GREGORY: Yes, Your Honor.

3 THE COURT: All right. That gives me an idea.
4 What we will do is, we will, when we take our recess after
5 the State rests, without the jury, we will do the
6 preliminary canvass of Mr. Vanisi about his constitutional
7 right to testify or not. And depending on what comes from
8 that, then we will have the in camera hearing. Then you all
9 can notify us back on the record in front of everyone
10 exactly what is going to happen in terms of the timing.

11 MR. GREGORY: Thank you, Your Honor.

12 THE COURT: Now, in terms of the instructions,
13 though, when were you going to try to get those to me?

14 MR. BOSLER: The one additional instruction I will
15 attempt to have to the Court within a half hour and also a
16 copy to the District Attorney's office. I thought it would
17 have been with the packets that were provided by my
18 secretary from Mr. Petty. I never spoke to him directly. I
19 think it's already drawn up. I think we need to have it
20 copied and distributed.

21 THE COURT: Okay. Because we are going to have to
22 put the finalization of the jury instructions on the record
23 and because you all will make arrangements in how to plan
24 your lives accordingly, I think we should tentatively plan
25 on closing arguments, if there is no evidence to be

1 presented by the defense, at 1:00.

2 So what will happen is, we will recess whenever we
3 get through with the State's witnesses. We will do the
4 finalization of the jury instructions and the admonition of
5 the defendant on his constitutional right to testify. We
6 will deal with all of that.

7 Even if it's 11:30 or 11:15 at that point and we
8 are ready to go to the jury, we will wait and do your
9 closing arguments to the jury beginning at one p.m. We will
10 give a little window there for you to, on both sides, to get
11 organized.

12 So I'm kind of thinking that's the way it will go,
13 rather than try to argue the instructions and get them all
14 finalized and start argument at 11:30 and keep the jury
15 through the lunch hour. I would rather send them, let them
16 go to lunch, have them come back and we'll start closing
17 arguments at 1:00. If that's the way it goes. It may be
18 much later in the day. There's no guarantees; I understand
19 that.

20 MR. GREGORY: Okay, Your Honor.

21 THE COURT: Anything further?

22 MR. GAMMICK: No.

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

24 THE COURT: Yes.

25 MR. BOSLER: I don't want to seem presumptuous or

1 anything like that. If this case were to reach a penalty
2 phase, I have talked to our investigator about trying to get
3 our witnesses up here early. We are still having difficulty
4 regarding our witnesses as far as avoiding subpoena service
5 and things like that.

6 We believe we will have everybody here on the 4th.
7 My concern, Mr. Vanisi's concern would be that I don't want
8 to put on an hour's worth of testimony with local people
9 here, bring the jurors in for an hour of testimony on a
10 mitigation case. That is a concern, and also the concern
11 that if you put on a full day of aggravation case, maybe on
12 Friday, then the jury has to go through the whole weekend
13 with just that on their mind.

14 I want to offer those ideas to the Court. I don't
15 know how the Court wants to do that, whether the State has
16 out-of-state aggravation witnesses. I know a lot of them
17 are coming from N.S.P. I think we will only have maybe an
18 hour, two-hours' worth of testimony with local witnesses.
19 Other people won't be here, other than on the 4th. We have
20 maybe almost a full day of testimony for people who come up
21 for the 4th. That's a Monday.

22 You know, we were just juggling ideas and numbers
23 when we sent the service and the out-of-state subpoena
24 information to California. My concern is if we start, we
25 have a full-blown aggravation case on Friday, then nothing,

1 then the jury has to think about that over the weekend, it's
2 kind of prejudicial to Mr. Vanisi. I don't have an answer.

3 MR. GREGORY: We are just bringing it to the
4 Court's attention. We don't want to get into a situation
5 where we bifurcate our witnesses or several days after the
6 aggravators are presented. Aggravating circumstances
7 witnesses.

8 THE COURT: Mr. Stanton?

9 MR. STANTON: Your Honor, the State's concern is
10 the delay in the proceedings from the guilt phase to the
11 penalty phase. Now you're talking about a week, a calendar
12 week delay.

13 If the defense is having difficulty in locating
14 those individuals or the difficulty is that they are being
15 reluctant, maybe we believe to a great extent the State
16 could be of some assistance. We have been provided with a
17 list of the names and we have had local law enforcement
18 contacting those individuals since we had the names provided
19 to us.

20 It is the State's understanding that the vast
21 majority of those witnesses are employees of the school
22 district in various different areas in the California area.
23 And I'm confident that we can import to those individuals
24 the necessity of coming up here and timely administration of
25 justice. I'm confident that collectively the defense and

1 the State can have the witnesses up here on Friday, the 1st.

2 THE COURT: Is that the soonest you think they can
3 be here?

4 MR. STANTON: They can be here in the same vein
5 whenever the Court felt it was appropriate. I'm sure those
6 individuals will understand and be up here.

7 THE COURT: Well, I would like them here for a day
8 before they go on the stand, so that counsel have an
9 opportunity to visit with them.

10 MR. STANTON: If the defense is having difficulty,
11 which apparently Mr. Bosler is representing that they are,
12 we apparently were quite successful in contacting the
13 individuals.

14 THE COURT: The reality is, there is a certain
15 amount of difference between being the Public Defender's
16 office and the District Attorney's office.

17 MR. STANTON: That's why I'm offering the
18 suggestion. That is, if the claim of defense counsel is now
19 that their abilities to get these people up here earlier
20 than the 4th have been unsuccessful in part by any of the
21 witnesses, the State is confident that we can accommodate
22 them when the Court wants those witnesses to come up here.

23 MR. BOSLER: Your Honor, it isn't the school
24 district people; the people in San Mateo aren't really the
25 problem. It's other people, witnesses who are not located

1 at the address where most of the teachers are.

2 The second issue is, while I gratefully
3 acknowledge the State's offer of assistance in this matter,
4 however, this is the reality of the situation: These people
5 have been given out-of-state subpoenas that compel their
6 attendance on the 4th. We've done that through all the
7 proper channels and by statute.

8 If the State and we came to an agreement, and
9 these people promised they would come up here on the 1st,
10 the 2nd, the 3rd, and they didn't honor that gentleman's
11 agreement, gentlewoman's agreement, we would be out of
12 witnesses and there would be nothing we can do to compel
13 their attendance.

14 THE COURT: Until the 4th.

15 MR. BOSLER: Until the 4th, and we would be in
16 that same situation. We would be in a very delicate
17 situation, letting people tell us they would come up here,
18 knowing they weren't legally obliged to do so. If they
19 didn't come up, we would be empty-handed. That, of course,
20 has to be a primary concern of ours.

21 I appreciate the State's offer.

22 THE COURT: That's why I thought they needed to be
23 here a day before so you can start your case if you had
24 everybody. So you can talk to them. That's why I said if
25 they can be found and located by law enforcement's efforts,

1 that would certainly facilitate it a little bit.

2 MR. BOSLER: Even then there's nothing that
3 compels them to stay. We can all believe they are going to
4 be good Samaritans and do their civic duty, but we don't
5 have the legal obligation of making them stay here if they
6 wanted to leave.

7 THE COURT: Once they are here, we have me. Once
8 they cross the Nevada state line, I have the authority to
9 order them to stay.

10 MR. BOSLER: If they are served again.

11 THE COURT: That's not a very difficult procedure.
12 I mean, my experience is that they don't leave. If they are
13 under subpoena, they are here, then we don't usually have a
14 problem unless they are going to just take off and we have
15 to arrest them.

16 But it's up to you. It's whatever -- I don't know
17 anything about these witnesses.

18 MR. BOSLER: Without delving into more, at this --

19 THE COURT: I am concerned about waiting a whole
20 week. I think that would be difficult on the jury.

21 MR. STANTON: The State's objection, and it is an
22 objection at this point, of delaying it to the 4th,
23 regardless of what the service of process of the defense has
24 laid on these individuals, is the delay is inappropriate.
25 It's too lengthy.

1 And if for some -- what Mr. Bosler is arguing, I
2 understand his position pragmatically, but it's
3 hypothetical. The same witnesses are going to turn around
4 and give a verbal agreement that they will be up here and
5 then turn around and with somewhat of a precise review of
6 the law saying, "Hey, look, you can't do anything to me
7 because technically I'm only supposed to be up there on the
8 4th."

9 According to the review of the witnesses that
10 we've interviewed, none of those individuals have expressed
11 an opinion or a concern about coming up here and testifying
12 to the point that they would be splitting legal hairs and
13 thumbing their nose at the judicial system in California or
14 Nevada.

15 If it got to the point where counsel said, "Well,
16 we can't have them up until the 4th," the State would be
17 requesting an evidentiary hearing to spell out specifically
18 what they've done and the attempts of the defense counsel,
19 who they have contacted, when they contacted them,
20 specifically what the witnesses' response were to that.

21 Frankly, Your Honor, our contact with them shows
22 that there is no problem.

23 THE COURT: You've gotten a hold of everybody?

24 MR. STANTON: I don't know if it's everybody on
25 the proposed list, but it's almost all of them.

1 MR. GREGORY: I don't think he's suggesting that
2 -- I mean, what motivation do we have to stretch this?

3 MR. STANTON: Motivation is, besides the obvious,
4 it's also the motion that they made pretrial regarding the
5 cooling off period that exists between the guilt phase and
6 the penalty phase. The motion, the defense motion itself
7 speaks to a strategy of delay between the two, because of a
8 perceived right or wrong --

9 MR. GREGORY: All right, as an officer -- sorry.

10 MR. STANTON: True or not, that there is some
11 result that would benefit the defendant by this, quote,
12 cooling off period, which is articulated in their own
13 motion.

14 MR. GREGORY: As an officer of this court, I can
15 assure this Court that is not our intention. We are doing
16 everything we can to try to accommodate this Court and the
17 District Attorney's office.

18 The District Attorney -- Your Honor, I'll offer
19 this. The District Attorney wants to put on their witnesses
20 on Friday. We will be ready to go on Monday. And we are at
21 the disadvantage. Everybody gets to weep all weekend long.

22 MR. STANTON: We would like to put on the penalty
23 phase on Thursday, Your Honor, and have the defense go on
24 Friday.

25 MR. GREGORY: I'm sure that would be their

1 preference. We are not able -- we can put on a few
2 witnesses that I have been able to line up on Friday, but it
3 would be a pitiful display and everybody else would be there
4 on Monday. I don't want to do that. I don't want to
5 bifurcate our witnesses.

6 THE COURT: I understand that. What I would like
7 to -- I'm beyond liking. I am going to order that you get
8 your investigator together with the D.A.'s investigator so
9 your investigator hears what the D.A.'s investigator has in
10 terms of the contact. So that if there is some different
11 phone numbers, different addresses, your investigator can do
12 it.

13 If we actually go to the jury on Monday, I was
14 looking at doing the penalty phase on Wednesday, not
15 Thursday, if we actually go on Monday and get a verdict.

16 Or if we're given a verdict early Thursday that
17 required a penalty hearing, I would want to do it right away
18 as soon as we could. That means I would require the State
19 to have their witnesses here Wednesday, not Thursday, and
20 the defense to be ready on Thursday, so that the jury -- you
21 know, the jury is going to want to deliberate on that
22 awhile, I'm sure, if they get to that point.

23 I would rather they got it on a Wednesday or a
24 Thursday evening than a Friday, or we tied them up a whole
25 other week. Many of the jurors, lots of them have things to

1 do. If we get it done, they all will be more willing to go
2 through the process again.

3 So that's some of my concerns.

4 MR. GREGORY: Judge, we'll do the best we can.

5 MR. STANTON: Your Honor, if the Court orders, as
6 I believe it did, the investigators from the District
7 Attorney's office to get together with the Public Defender's
8 office, that I think will resolve a lot of issues because
9 pursuant to the Court's directive, you're talking about
10 Thursday of next week, we can make any effort to see if
11 there's any problems with the witnesses that we have been
12 able to contact, with them being up -- I presume Mr. Gregory
13 would want them up here no later than Wednesday evening for
14 them to talk with them prior to presentation potentially on
15 Thursday.

16 And if there's any witness that expresses an
17 inability to do that, our investigative staff will provide
18 them with the names and addresses of how we have been able
19 to locate them and those that have indicated a problem
20 there.

21 MR. GREGORY: Do they take blackjacks to the
22 witnesses?

23 THE COURT: I don't know; I guess they just have a
24 way of finding them.

25 MR. GREGORY: Your Honor, we will accept any

1 assistance that the District Attorney has to offer.

2 THE COURT: I did order that your investigator get
3 together with the D.A.'s investigator in terms of location.

4 Anything else?

5 MR. GREGORY: No, Your Honor.

6 MR. STANTON: No, Your Honor.

7 THE COURT: Oh, I have something. The bailiff
8 received a note from Mrs. Bell yesterday, I think, yesterday
9 afternoon. And I really thought I should share this with
10 you. We haven't had a chance outside of the presence of the
11 jury.

12 It says, "Are we going to be able to see the
13 cousin's transcript?"

14 MR. BOSLER: They are all cousins, Your Honor.

15 MR. GREGORY: We will stipulate.

16 THE COURT: It was after -- It was the witness
17 that you used, the State utilized the transcript extensively
18 with.

19 MR. STANTON: That would be Renee Peaua.

20 THE COURT: Yes. It's Renee Peaua. That's when
21 the note was passed. Of course, I have not responded;
22 neither has the bailiff.

23 Do you want me to respond? Do you want to just be
24 forewarned this question has come pre-deliberations? She
25 apparently tore it off just as the jury went into the jury

1 room. It was something she was thinking about as the
2 witness was testifying.

3 MR. GREGORY: Your Honor, my preference is that
4 the Court not respond to it. I think that encourages, we're
5 liable to get a lot of notes following that.

6 MR. GAMMICK: Sitting here listening to what the
7 message says and what the Court is talking about, I believe
8 the juror is probably talking about her police transcript,
9 the one that Mr. Stanton had to keep referring to on
10 numerous occasions.

11 THE COURT: Yes.

12 MR. GAMMICK: Without a stipulation, I don't think
13 it's even proper for us to offer that into evidence.
14 Without that, then the jury is not going to get it. That's
15 pretty simple.

16 THE COURT: I know the answer, Mr. Gammick. I
17 just want to know whether you want me to tell the juror
18 anything.

19 MR. GAMMICK: Go ahead, you're bouncing.

20 MR. STANTON: I disagree with Mr. Gregory.

21 MR. GREGORY: Of course.

22 MR. STANTON: To some extent, to a great extent, I
23 think the juror's question is pursuant to the Court's
24 instructions all along in the trial, if they have any
25 questions or concerns, to bring it to the Court's attention.

1 By not responding to it, I think that flies kind of in the
2 face of what the Court has been instructing them.

3 I don't know, although I certainly agree with
4 Mr. Gregory that someone may perceive that it might be an
5 invitation to ask more questions, but I certainly think it's
6 appropriate that when jurors have questions regarding what's
7 happening in a case that they ask them and the appropriate
8 and correct answer be given to them as opposed to just
9 ignoring it.

10 Then you lead into the problem about, what happens
11 down the road if they have another question or problem?
12 They say: Well, we sent the one note in there and never
13 heard a response. So when this problem happened, I didn't
14 think we could get our questions answered, so I didn't write
15 any.

16 MR. GREGORY: They're asking a question about
17 something that is not in evidence. And it's not going to be
18 offered by the State. I think it will cause confusion, Your
19 Honor.

20 THE COURT: It's the kind of question,
21 Mr. Gregory, I might get during deliberations. If I got it
22 during deliberations, I would propose an answer that is
23 something like: You will be able to see the evidence that
24 has been admitted.

25 MR. GREGORY: That's correct. That's going to

1 imply if we answer it that way that maybe it was admitted.
2 I'm going to ask that at this time -- I'm going to submit
3 it, Your Honor.

4 THE COURT: I know you don't want me to do it.
5 I'm curious, why would it imply that it was admitted if I
6 say you will only be able to see those documents that are
7 admitted into evidence?

8 MR. GREGORY: I didn't understand the Court to
9 frame it that way.

10 THE COURT: That's kind of where I was going while
11 we were talking over each other. But that would be the
12 normal way I would answer the question.

13 I guess, do you see anything in there, any legal
14 reason not to say: You will only be reviewing the
15 documents, any documents that have been admitted into
16 evidence?

17 MR. GREGORY: Not the way the Court has phrased
18 it. If the Court wishes to phrase it that way, Your Honor,
19 again, we will submit it.

20 THE COURT: Mr. Gammick, Mr. Stanton, do either of
21 you see any legal reason why that would be an inappropriate
22 answer?

23 MR. STANTON: No, I believe that's a correct
24 statement of the law.

25 THE COURT: That's what I'll do. What we will do,

1 the way I normally do this and the way, so you all know if
 2 any jury questions come out during the deliberations, is we
 3 save the question, we mark it, the clerk saves it. We
 4 retype the question and my answer and it is saved and made
 5 part of the record. So all the communication is saved with
 6 the jury.

7 MR. GREGORY: Thank you, Your Honor.

8 THE COURT: Anything further?

9 MR. GREGORY: No.

10 THE COURT: Thank you. Court is in recess.

11 (The trial adjourned at 2:15 p.m.)
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STATE OF NEVADA,)
)
COUNTY OF WASHOE.)

WE, DENISE PHIPPS and KAREN YATES, Certified Shorthand Reporters of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

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

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

DATED: At Reno, Nevada, this 24th day of September, 1999.

Denise Phipps
DENISE PHIPPS, CCR No. 234
Karen Yates
KAREN YATES, CCR No. 195

Code No. 4185

FILED

SEP 28 1999

AMY HARVEY
By: *ms Stone*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

--oOo--

THE STATE OF NEVADA,

Plaintiff,

Case No. CR98-0516
Dept. No. 4

-vs-

SIAOSI VANISI,

Defendant.

ORIGINAL

TRIAL - VOLUME 6
September 27, 1999
Reno, Nevada, Nevada

APPEARANCES:

For the Plaintiff:

RICHARD GAMMICK
District Attorney
DAVID STANTON
Chief Deputy District Attorney
75 Court Street
Reno, Nevada

For the Defendant:

STEPHEN GREGORY
and JEREMY BOSLER
Deputies Public Defender
One South Sierra Street
Reno, Nevada

The Defendant:

SIAOSI VANISI

Reported by:

KAREN YATES, CRR No. 195
ERIC V. NELSON, CCR No. 234

SIERRA NEVADA REPORTERS (702) 329-6560

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
DAVID MULI SULIAFU KINIKINI	909	--	--
KEITH STEPHENS	929	--	--
CRAIG MEYER	941	953	--
VAINGA IMOANA KINIKINI	954	--	--

<u>EXHIBITS</u>	<u>Marked for Identification</u>	<u>Admitted into Evidence</u>
33-C and 33-D	--	920
28	--	937
34-A and 34-B	--	946
33-B	--	947
15-C and 15-D	--	986
35	--	992
36	--	992
37	--	994

RENO, NEVADA, MONDAY, SEPTEMBER 27, 1999, 9:15 A.M.

--oOo--

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

THE COURT: Thank you. Please be seated.

Counsel stipulate to the presence of the jury?

MR. STANTON: State would so stipulate.

MR. GREGORY: So stipulated, Your Honor.

THE COURT: Call your next witness.

MR. STANTON: Thank you, Your Honor. The State would next call David Kinikini.

(One witness sworn.)

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

DAVID MULI SULIAFU KINIKINI

called as a witness on behalf of the Plaintiff,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STANTON:

Q Good morning, sir. Could you please state your complete name for the record?

A David Muli Suliafu Kinikini.

Q Could you spell your middle names and your last

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1 name for the court reporter?

2 A M-u-l-i, S-u-l-i-a-f-u, K-i-n-i-k-i-n-i.

3 Q Mr. Kinikini, how old are you, sir?

4 A Twenty-six.

5 Q And where do you reside?

6 A Salt Lake City.

7 Q And do you know Siaosi Vanisi?

8 A Yes.

9 Q How do you know Mr. Vanisi?

10 A Relative of mine.

11 Q I'm sorry?

12 A A cousin of mine.

13 Q And I want to go back to January of 1998,

14 Mr. Kinikini, and ask you some questions about that time

15 frame. Specifically on January 14, 1998, do you recall the

16 address that you were living at?

17 THE COURT: I'm going to stop you for a minute.

18 I'm hearing a high shrill pitched noise. Is that irritating

19 the jury? I don't know where it's coming from.

20 Do you know, Deputy Brokaw?

21 THE COURT: Come on up and see me.

22 (There was a pause in the proceedings.)

23 THE COURT: Okay.

24 THE COURT: You may proceed.

25 MR. STANTON: Thank you, Your Honor.

1 BY MR. STANTON:

2 Q What other names did you know Mr. Vanisi by?

3 A We called him Pe.

4 Q And did you ever hear him called George?

5 A Once in awhile.

6 Q What does George stand for?

7 A George in English is Siaosi, Siaosi in Tongan.

8 Q Do you speak Tongan fluently?

9 A I do.

10 Q The Kinikini family, is it a large family in

11 Salt Lake City?

12 A Yes, it is.

13 Q How many people in the larger Kinikini family

14 reside in Salt Lake City?

15 A About 500 plus.

16 Q Do you play a particular role within the large

17 Kinikini family?

18 A What do you mean?

19 Q Are you a particular -- do people look to you

20 in the Kinikini family as a particular role?

21 A I am the oldest great-grandson.

22 Q Does that have significance in the Tongan

23 culture?

24 A It does.

25 Q What significance would that be?

1 A He kind of carries responsibility of the -- as
2 if he was the older son.

3 Q In January 14, 1998, Mr. Kinikini, do you
4 recall where you were living?

5 A Yes, I do.

6 Q Where was that?

7 A 1665 South Riverside Drive.

8 Q Is that in Salt Lake City?

9 A It's in Salt Lake City.

10 Q What do you do for a living, Mr. Kinikini?

11 A I work with youth corrections.

12 Q And what specifically do you do?

13 A I'm a counselor.

14 Q During the time period of January 14, 1998, who
15 was living with you at your South Riverside Drive home?

16 A A brother of mine, Vainga, and a youth in
17 custody, Jeremiah Talley.

18 Q I would like you to explain, if you would, to
19 this jury, Mr. Kinikini, why your brother, Vainga, and why
20 Jeremiah Talley were living with you in that time period?

21 A My brother had been released from probation in
22 Texas and I thought it would be good that he could return
23 home and stay with me. We can try to get him on his feet
24 again, get him a job. He was released from probation and I
25 went down and brought him back to Salt Lake City.

1 Jeremiah Talley is in State's custody. I took
2 custody of this 15-year-old because he was -- he didn't have
3 a home.

4 Q And do you do that as you testify here today?

5 A Yes, I do.

6 Q How many kids do you have living with you now?

7 A I currently have three juveniles living with
8 me.

9 Q These are all juveniles that the system has
10 adjudicated to be, at least in portions of their lives, in
11 trouble with the law?

12 A Yes.

13 Q Jeremiah Talley was your responsibility?

14 A He was.

15 Q And your brother Vainga, based upon your
16 previous testimony, was that your role with Vainga, to try
17 to straighten out his life?

18 A Yes.

19 Q On the 14th of January, did you have occasion
20 to see the defendant, Siaosi Vanisi, at your home in Salt
21 Lake City?

22 A Yes, he was there.

23 Q Was that a scheduled visit or a surprise?

24 A It was not a scheduled visit.

25 Q And when you first saw him, Mr. Kinikini, what

1 time of day was that?

2 A Approximately early afternoon. I just got off
3 school and I was coming home from school.

4 Q Mr. Kinikini, I want to show you two
5 photographs that have been admitted in evidence, photographs
6 29-A and 29-B. I ask you if you could take a look at the
7 clothing depicted in both those photographs.

8 Do you recognize that clothing?

9 A Yes.

10 Q How do you recognize it?

11 A Pe was wearing those clothes.

12 Q You say Pe was wearing them?

13 A When I first saw him.

14 Q During the course of that day, the 14th of
15 January, did you spend a period of time with the defendant?

16 A Yes, I did.

17 Q And generally, how was he acting and behaving
18 at that time?

19 A Very excited. He could name the majority of
20 our relatives, asking the status of certain cousins our age.
21 Very excited and anxious to visit with them.

22 Q Did there come a time where you, through
23 contact with another relative, became aware that the police
24 were looking for Mr. Vanisi?

25 A Yes.

1 Q Do you remember what time of day that was?

2 A Maybe around 3:00 or 4:00.

3 Q After being told by this relative that the
4 police were looking for the defendant, Siaosi Vanisi, were
5 you ultimately contacted by a detective sergeant from Salt
6 Lake County?

7 A Excuse me?

8 Q After you were advised by the relative that the
9 police were looking for Mr. Vanisi, were you then sometime
10 later contacted by police?

11 A Yes.

12 Q And what did they want to know when they
13 contacted you or met with you physically face-to-face?

14 A They wanted to know where he was. They
15 basically just gave me information on the reason why he was
16 wanted and where he was wanted from.

17 Q And that was from Reno and that he was wanted
18 for the murder of a police officer?

19 A Yes.

20 Q During that time period that you had seen
21 Mr. Vanisi and prior to the police contacting you, had you
22 ever seen Mr. Vanisi with a gun?

23 A Yes.

24 Q And where on Mr. Vanisi's person was that gun?

25 A It was in a pocket of his red coat. We were

1 eating at Arby's and he sat down and I could hear something
2 bump on the table. And just the lining, I could see the
3 shape of some sort of firearm.

4 Q A handgun as opposed to a rifle?

5 A Yes.

6 Q Did you get a close look at the weapon?

7 A No.

8 Q Did that concern you once you knew he had a
9 weapon?

10 A It did.

11 Q Why did it concern you?

12 A It concerned me, safety of the child that I had
13 in custody, the safety of those who were with me, and for
14 his own personal safety.

15 Q At the time that the police contacted you, was
16 Mr. Vanisi in your presence?

17 A No.

18 Q Where was Mr. Vanisi?

19 A He was at the youth rec center with my boy,
20 playing basketball.

21 Q When you say the term "my boy," is that
22 Jeremiah Talley?

23 A Yes.

24 Q The police and you discussed the fact that they
25 needed to take him into custody and you talked to the police

1 officers; is that a fair statement about generally what
2 occurred next?

3 A Yes.

4 Q Were you concerned and did you express your
5 concern to the police about them contacting Mr. Vanisi at
6 the rec center?

7 A I did. I told him there are too many kids
8 there. It was after school. Probably wouldn't be a good
9 idea.

10 Q From that concern, did there become an
11 agreement between you and the police officers what was going
12 to happen after the rec center?

13 A Yes.

14 Q What was that?

15 A They asked where he would be going afterwards.
16 We had plans to meet back at my place. And that's where
17 they were going to come to.

18 Q And indeed, did you go back to your home on
19 Riverside Drive after Mr. Vanisi and Jeremiah Talley left
20 the rec center?

21 A I did. I didn't know when they left the rec
22 center, but I immediately went back home.

23 Q And did Mr. Vanisi arrive at your home?

24 A Yes.

25 Q Did Mr. Talley?

1 A Yes.

2 Q Was there anybody else in your home?

3 A No one else.

4 Q At this point, what was your plan as far as
5 what was going to happen next?

6 A The first thing that was going to happen was
7 that the child that's in my custody, Jerry, I was to get him
8 out as soon as possible.

9 Q And did you do that?

10 A I had him take some trash outside and whispered
11 to him not to come back.

12 Q Did you know where the police were at that
13 point?

14 A I had an idea they were nearby.

15 Q And after Jeremiah left, what did you do?

16 A After Jeremiah left, me and Pe sat in the
17 living room and just talked for quite awhile.

18 Q And after you talked with Mr. Vanisi, was there
19 a telephone call?

20 A There was a few telephone calls.

21 Q Who were the people that were calling your
22 home?

23 A They were the detectives and SWAT team that was
24 outside, asking me to come out.

25 Q And did you go outside?

1 A Not immediately, no.

2 Q How long did you remain in the home?

3 A We sat in the living room for almost an hour
4 looking at family pictures and just kind of catching up on
5 his family, his immediate family.

6 Q You knew what was going to happen once you
7 left, right?

8 A Yes.

9 Q Is that why you stayed in longer?

10 A Yes.

11 Q I'm going to show you a series of photographs.
12 Exhibit 33-C and 33-D, and ask you if you recognize what's
13 contained in those photographs.

14 A Yes.

15 Q And is that the garage portion of your home
16 that you just described?

17 A Yes.

18 Q And does that accurately depict the condition
19 of your home or that area of your home after a series of
20 events that took place over the next couple of hours?

21 A Yes.

22 Q Specifically, Mr. Kinikini, in 33-D, which is a
23 close-up of an automobile, do you know whose automobile that
24 is?

25 A Yes, it's my brother Vainga's car.

1 Q On the front end of this car is a series of
2 burnt rags and the hood being opened. Was this car and
3 those rags in that condition prior to you leaving the home?

4 A Were they in that condition?

5 Q Yes. Were these rags here and was the hood up
6 when you left the home as you just testified?

7 A Yes.

8 Q They were there?

9 A Yes, they were there.

10 Q The condition that --

11 MR. STANTON: I move for 33-C and D in
12 evidence.

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

14 THE COURT: May I see them, please? Okay, they
15 are admitted.

16 (Plaintiff's Exhibit No. 33-C and 33-D
17 admitted.)

18 BY MR. STANTON:

19 Q Mr. Kinikini, in these two photographs the
20 vehicle is burnt. It wasn't in that condition, was it?

21 A Before?

22 Q Yes, before you left the home. I want to go
23 back and ask you a couple of questions. For purposes of
24 this next series of questions, Mr. Kinikini, I want you to
25 presume all my questions deal with the condition of that

1 area of your home when you finally left to meet the police.

2 The vehicle wasn't burnt when you left, was it?

3 A No, it wasn't burnt.

4 Q Was the hood and the rags there?

5 A No.

6 MR. STANTON: Your Honor, may I publish this to
7 the jury?

8 THE COURT: Yes.

9 (The exhibits were displayed to the jury.)

10 BY MR. STANTON:

11 Q 24-C, Mr. Kinikini, is this how Mr. Vanisi
12 looked when you saw him in Salt Lake on the 14th of January?

13 A Yes, it was.

14 Q When you left your home finally and walked
15 outside of your home on Riverside Drive, did you see police?

16 A Yes.

17 Q And approximately how many were there and where
18 were they situated in relationship to your home?

19 A There had to be 20 plus, 30. The roofs of the
20 complex that we live in, along the walls, the vehicles, the
21 other side of the vehicles that were parked in the parking
22 lot. Pretty much surrounding my -- the place I was living.

23 Q And when you left your home, was there anybody
24 else inside your home besides the defendant, Siaosi Vanisi?

25 A No.

1 Q You're certain?

2 A Yes.

3 MR. STANTON: No further questions at this
4 time.

5 THE COURT: Cross-examination?

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

7 THE COURT: Yes.

8 (There was a pause in the proceedings while
9 counsel and the defendant conferred.)

10 MR. GREGORY: Your Honor, may we approach?

11 THE COURT: Yes.

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

14 MR. GREGORY: Your Honor, there are some
15 questions we would like to ask Mr. Kinikini. However, we
16 would like to, after conferring with Mr. Bosler, we tried to
17 figure a way to ask the questions today. And for strategic
18 purposes, we would rather have him back on the penalty
19 phase.

20 I know I already told Mr. Stanton that I
21 thought I could ask those questions, but I don't feel
22 comfortable getting into the area that I want to go into
23 before the penalty phase. That doesn't mean he has to stay
24 in town. He can go back to Salt Lake and go back home.

25 MR. GAMMICK: Your Honor, that has been asked a

1 couple of times now. I am very uncomfortable with us being
2 held responsible for these people, particularly now we are
3 talking out of Salt Lake City.

4 MR. GREGORY: Wait a minute, hold your voice
5 down.

6 MR. GAMMICK: Does the Court have something to
7 say to me?

8 THE COURT: The only reason that I don't think
9 you are responsible for the transportation or the cost, but
10 I think that you are the only one that has the witness unit
11 that can kind of keep in touch with these people to assist.

12 MR. GAMMICK: I understand that. The Court so
13 far ordered them to stay in touch with our victim witness
14 center. The Public Defender's office has investigators.
15 They have subpoena power. These people are here at the
16 court under -- subject to subpoena by the defense. Why they
17 don't go ahead and serve them and then take full
18 responsibility for that, I'm not sure I understand.

19 Now we have Mr. Kinikini, who is -- he's got
20 three jobs. He's got three kids he's taking care of at his
21 house, a busy calendar, and he's still going to school. All
22 I'm saying, if they want him back, serve him and make
23 arrangements for the travel. That's all I'm asking.

24 THE COURT: I understand your concerns. My
25 concern is, if they want somebody for the penalty phase and

1 the person is here, I don't want to have a problem with the
2 person not showing up. That's why I felt it should be the
3 most responsible party for that group of people I know,
4 which is the witness unit.

5 MR. GAMMICK: I understand, but I feel that
6 that's not my job, not out of my budget.

7 THE COURT: You don't want to try the case
8 again, do you?

9 MR. GAMMICK: No, but the Court can order them,
10 defense can serve them, the defense can take care of making
11 travel arrangements.

12 THE COURT: We can't serve him in the
13 courtroom.

14 MR. GAMMICK: They can serve them as soon as
15 they leave court.

16 MR. STANTON: Your Honor --

17 THE COURT: Who are you holding on to now?

18 MR. GAMMICK: We were asked for, I believe -- I
19 know Renee was one witness.

20 MR. STANTON: Mele Mavani.

21 MR. GAMMICK: We chased Renee to Tonga, we
22 chased her to Australia and all over this world. Mele, she
23 is the one you had to sign the warrant on for L.A.

24 Those are my concerns. I don't want them to
25 sit here with the Court thinking we're taking care of this.

1 We are not going to mess with it either.

2 On the other hand, we have had to chase the
3 people all over the place. Now we have out-of-state
4 witnesses that have to be arranged for. I feel defense can
5 take some of that responsibility upon themselves.

6 MR. STANTON: Based upon the history of a
7 couple of witnesses, I talked to Mr. Kinikini last night
8 after his arrival in Reno and discussed with him that there
9 may be a possibility that the defense would want to use him
10 as a witness, because Mr. Specchio previously indicated in
11 the first trial that they wanted to use David Kinikini as a
12 penalty phase witness.

13 Mr. Kinikini expressed to me, as Mr. Gammick
14 just did to you, that he -- that would be an extreme
15 hardship on him. I think that the Court would need to know
16 his situation.

17 I also think that, as Mr. Gregory said, if they
18 want to use him, they need to coordinate with Mr. Kinikini
19 as far as when is the time to get him back in because he
20 certainly, I don't think, can stay in Reno pending the
21 penalty phase.

22 THE COURT: When did he arrive?

23 MR. STANTON: He arrived last evening at
24 approximately 7:00 p.m.

25 THE COURT: Is there a flight that can fly out

1 of Salt Lake at 5:00 or 5:30 and be here at that time?

2 MR. STANTON: I know that they arrived here at
3 7:15 p.m. Salt Lake City is one to two hours ahead of us.
4 I'm not sure what the departure time is. I know there's one
5 flight leaving back to Salt Lake City tonight.

6 THE COURT: It's a whole day he's gone?

7 MR. STANTON: Correct.

8 THE COURT: Twenty-four hours basically.

9 MR. STANTON: Is my understanding. I think
10 Mr. Kinikini needs to express so that everybody understands
11 whether or not he can and would be available, that he be
12 able to speak directly to the Court. I think that's only
13 fair.

14 THE COURT: Okay. Now, with regard to the
15 other two witnesses, have you gotten your investigator
16 together with the other two witnesses yet? Renee and Mele?

17 MR. GREGORY: We talked to Renee and Mele.

18 THE COURT: So, do they have a phone number to
19 keep in touch with?

20 MR. GREGORY: Yes, Your Honor.

21 THE COURT: So that now they are under -- they
22 understand that they have to stay in touch with you?

23 MR. GREGORY: Yes, Your Honor.

24 THE COURT: I think that alleviates your
25 concern with regard to your witness unit.

1 MR. GAMMICK: All I'm trying to do, if the
2 Court wants to order it, I'm not objecting at all. I want
3 to get removed as the middleman here when the defense wants
4 the witnesses. That's all.

5 THE COURT: What we need to do, before
6 Mr. Kinikini can be excused, we need to talk to him about
7 when he can come back.

8 MR. STANTON: If the defense wants to use him,
9 I don't have any objection to the defense asking him
10 questions that may not be directly relevant to the issues
11 now to alleviate the concerns of Mr. Kinikini being called
12 back at the penalty phase.

13 For example, if they want to ask him
14 questions --

15 MR. GREGORY: David, I'm telling you that I had
16 hoped to be able to do that. We are not in a position where
17 we can do that.

18 THE COURT: What I'm going to do is, I will ask
19 that you tell your investigator, Mr. Gammick, to ask
20 Mr. Kinikini to stick around the courthouse downstairs and
21 hold on to him for a little bit. We will get through the
22 rest of the witnesses and then we'll let Mr. Gregory and
23 Mr. Bosler talk to him and see what we can work out after
24 the jury is retired for lunch. We can always have a hearing
25 with Mr. Kinikini back here and explain what's going on.

1 For right now, I would like to hold everybody.

2 MR. GAMMICK: We will do that, Your Honor.

3 THE COURT: Until we can get out of court.

4 MR. STANTON: Can I have a brief moment after
5 we were to go back to the table so I can talk to my
6 investigator so that they can explain to Mr. Kinikini when
7 he gets off the stand what's going on?

8 THE COURT: Right. Okay.

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

11 MR. GREGORY: Thank you. Your Honor, at this
12 time we have no further questions of Mr. Kinikini.

13 MR. GAMMICK: Excuse me, Your Honor. May
14 Mr. Kinikini step down?

15 THE COURT: I would like to go ahead -- the
16 court reporter wasn't plugged in when you indicated what
17 your preference was for continuing to cross-examine
18 Mr. Kinikini.

19 MR. GREGORY: At this time we will have no
20 cross-examination of Mr. Kinikini.

21 THE COURT: Thank you. Mr. Kinikini, you are
22 not excused at this time. But we aren't going to ask any
23 more questions of you right now. I'll have further
24 discussions with you a little bit later this morning. If
25 you can go ahead and step down and the investigator that you

1 have been dealing with will explain everything to you.

2 (The witness stepped down and left the
3 courtroom.)

4 THE COURT: Go ahead and call your next
5 witness.

6 MR. STANTON: The State would next call
7 Detective Keith Stephens.

8 (One witness sworn.)

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

11 KEITH STEPHENS

12 called as a witness on behalf of the Plaintiff,

13 having been first duly sworn,

14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. STANTON:

17 Q Good morning, sir. Could you please state your
18 complete name and spell your last name for the court
19 reporter?

20 A Keith Stephens, S-t-e-p-h-e-n-s.

21 Q Detective, how are you currently employed?

22 A An investigator with the Salt Lake County
23 sheriff's office.

24 Q How long have you been a police officer?

25 A Seventeen-and-a-half years.

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1 Q What is your current duty assignment within
2 that division?

3 A Investigator with the homicide unit.

4 Q And how long have you been an investigator in
5 the homicide unit?

6 A A little more than five years.

7 Q Directing your attention, Detective, back to
8 January of 1998, specifically January 14, did your police
9 agency become involved in what is commonly referred to as an
10 A.T.L.?

11 A Yes, we did.

12 Q What is an A.T.L.? How does your agency
13 normally deal with those?

14 A Generally a teletype that's broadcast
15 throughout law enforcement via computer or other means.
16 This one came via computer.

17 It was a request looking for information and/or
18 a suspect in a crime that was occurring or occurred in Reno,
19 Nevada.

20 Q And when they used the phrase or the acronym
21 "A.T.L.," what does that stand for?

22 A An attempt to locate.

23 Q What was the nature of the crime and the
24 individual's name that this particular A.T.L. that came into
25 your division, what did it say?

1 A It involved a homicide of a police officer in
2 Reno, Nevada, and had a suspect name attached to it.

3 Q The police in your division conducted an
4 investigation regarding that A.T.L.?

5 A Yes. As a course of practice, daily we receive
6 teletypes. We go through the teletypes and seek out
7 information that may be relevant or pertinent to Salt Lake
8 City or our jurisdiction.

9 And this being a bordering state, we looked at
10 it a little closer and did some computer checks to see if
11 that individual ever had been in our jurisdiction or if we
12 have had contact with him.

13 Q You found that the defendant had, or the name
14 of Siaosi Vanisi had been to a location in Salt Lake City?

15 A We found references in Salt Lake City.

16 Q And based upon those, can you describe
17 generally to the ladies and gentlemen of the jury what your
18 police agency did to follow up on those leads?

19 A We went to the reference location and address
20 in Salt Lake City, made contact with the residents there,
21 advised them who we were, what the purpose of our visit was,
22 advised them of the crime and the suspect. Asked them if
23 they knew this individual.

24 They said they had, but it had been quite some
25 time since they had seen him. We left a card and number and

1 said if you do see or hear from him, please contact us.

2 Q Ultimately in this case, you came into contact
3 and became knowledgeable of an individual by the name of
4 David Kinikini; is that correct?

5 A Yes, sir.

6 Q That was not the home that you just testified
7 to?

8 A That was a relative.

9 Q Another relative other than Mr. Kinikini?

10 A Yes.

11 Q Ultimately, was your agency able to contact
12 David Kinikini in reference to confirming that Siaosi Vanisi
13 was indeed in Salt Lake City?

14 A Yes, sir. Mr. Kinikini contacted us by
15 telephone later that afternoon after speaking with his
16 family members and did in fact say that he was in Salt Lake
17 City.

18 Q What was the police perspective and operation
19 from that point forward?

20 A To take him into custody, locate and take into
21 custody.

22 Q The first information that you received about
23 where Mr. Vanisi was didn't lend itself easily to that
24 operation; is that correct?

25 A No. In speaking with Mr. Kinikini, the first

1 location that he was thought to be at was a police athletic
2 club or youth club, playing basketball with Mr. Kinikini's
3 son. There were too many civilians and innocent people
4 there to initiate a police arrest with a violent offender.

5 Q And what was the operational plan at that
6 juncture?

7 A To find him at a less populated location and
8 take him into custody more safely for everyone involved.

9 Q Ultimately did that location flesh out to be
10 David Kinikini's home in Salt Lake City?

11 A Yes, sir, it was.

12 Q And did you arrive at that location?

13 A Yes, I did.

14 Q Do you recall what time of evening you arrived?

15 A It was January. It was dark. Somewhere around
16 5:30, 6:00 p.m., in that general area.

17 Q How many officers or members of your unit were
18 at that location?

19 A Initially three.

20 Q Was Mr. Vanisi present at that time?

21 A Yes, he was.

22 Q And where was he?

23 A He was in the home, the Kinikini residence.

24 Q The police officers that were initially there,
25 did you make some sort of operational plan about how to take

1 Mr. Vanisi in custody at that juncture?

2 A We had spoken with Mr. Kinikini quite a bit and
3 asked him to please evacuate the home, leaving behind
4 Mr. Vanisi. He and his son, teenage son, left the residence
5 upon our request. And as soon as they were safely out of
6 the home, we spoke with them to confirm there were no other
7 persons inside the residence. At that point in time, one
8 detective went to the rear of the home to secure it. Myself
9 and another detective covered the front of the home and just
10 maintained our vigil there to watch for the suspect until a
11 SWAT team could arrive and relieve us from our positions and
12 take over the operation.

13 Q What is a SWAT team?

14 A It's a Special Weapons And Tactic Team that is
15 trained in procedures of safely entering homes, businesses,
16 to take people into custody.

17 Q You say that they are a specially trained unit?

18 A Yes.

19 Q How many SWAT officers were deployed in this
20 situation?

21 A In this situation, it was an apartment complex.
22 So there were numerous apartments we needed to evacuate. So
23 our entire unit, which was comprised of roughly 15
24 individuals, and the Salt Lake City SWAT team also assisted
25 in evacuating neighbors. There were numerous individuals

1 there.

2 Q And early or sometime after your arrival, did
3 you ever have visual contact with the defendant, Mr. Vanisi?

4 A In the time waiting for the SWAT team to
5 arrive, there were several times the windows had been peeked
6 out by an individual in the house.

7 At one point in time, the front door opened and
8 the defendant poked his head out. He was given commands by
9 myself and the detective to give up; that we were the
10 police. Come out with his hands up. Numerous commands
11 similar to that. The door was slammed and he retreated.

12 Q Do you see Mr. Vanisi in court today?

13 A I do, sir.

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

16 A He's wearing a tan jacket and somewhat rust
17 colored tie, dark hair.

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

20 THE COURT: Yes.

21 BY MR. STANTON:

22 Q Detective, at some point the operation of what
23 is occurring transferred from you and your detectives to the
24 SWAT team; is that correct?

25 A That's right. They came in and relieved us

1 from our positions.

2 Q Is that standard protocol under situations such
3 as that?

4 A Yes, it is.

5 Q At any time, were you advised of communications
6 by the defendant inside the home that he claimed other
7 people were in the residence?

8 A Yes. In the interim after we had been moved
9 from our positions around the perimeter of the home, we were
10 still close by, close enough to hear verbal communications
11 with some of the SWAT unit and detectives that were still on
12 the scene. There was verbal communication being yelled from
13 a window to the street. He claimed that he was merely
14 reading the children a book or something of that nature and
15 he didn't want to come out and comply with our wishes to
16 surrender himself.

17 Q And that was inconsistent with what David
18 Kinikini had told you about the condition of the home and
19 who was inside it?

20 A That's correct.

21 Q Ultimately there was a conclusion to these
22 events, correct?

23 A Yes, sir.

24 Q At the conclusion of those events, Detective
25 Stephens, did you have responsibility regarding the

1 collection of evidence?

2 A Yes, sir. After the individual was taken into
3 custody and the house was made safe, we moved into the area
4 and collected evidentiary items.

5 Q I would like to show you a series of
6 photographs. First, photograph 28. Do you recognize what
7 is depicted in that photograph?

8 A This is the firearm that was in the washroom of
9 the apartment.

10 Q Does that truly and accurately depict the
11 condition of that and other objects in that photograph as
12 you observed it after SWAT entry?

13 A Yes, sir, it does.

14 MR. STANTON: Move for 28 in evidence, Your
15 Honor.

16 THE COURT: Counsel?

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

18 THE COURT: Exhibit 28 is admitted.

19 (Plaintiff's Exhibit No. 28 admitted.)

20 BY MR. STANTON:

21 Q In addition, Detective Stephens, in the front
22 right foreground of that photograph is an object. Do you
23 know what that is and could you describe it to the ladies
24 and gentlemen of the jury?

25 A It is a wooden cutting board that is unattached

1 to anything. Just loose.

2 Q And I show you Exhibit 15-A. I ask you if you
3 recognize that, sir.

4 A Yes, sir, I do.

5 Q Is that the same handgun that is depicted in
6 that photograph you previously testified?

7 A Yes, it is.

8 Q Detective Stephens, next showing you two
9 photographs, 32-B and 32-A, and I ask you if you recognize
10 what is depicted in those photographs?

11 A This is an automobile we were directed to that
12 was parked some distance from the Kinikini residence that
13 was covered with a car cover.

14 Q Were you advised, Detective, that that
15 automobile was stolen out of the Reno area and also sought
16 by Reno police?

17 A We were verbally told that and we confirmed
18 with computer check. It was true, indeed.

19 Q Do those photographs accurately depict the
20 condition of the automobile as you found it in Salt Lake
21 City?

22 A Yes, sir.

23 Q Photographs 29-A and 29-B, I ask you if you
24 would take a look at those. Do you recognize what is in
25 those photographs?

1 A Yes, sir.

2 Q And did you actually assist in those
3 photographs being produced in that fashion?

4 A I was in that area, but I did not take the
5 photograph.

6 Q Are you aware of what those items are?

7 A Yes, sir.

8 Q What are they?

9 A The defendant's clothing.

10 Q Is that the clothing that he was wearing at the
11 time he was taken into custody?

12 A I believe some of it was. I believe he had
13 disrobed with some of it during the entire incident, but I'm
14 not sure exactly what.

15 Q Finally, 33-D and 33-C, do you recognize that?

16 A Yes, sir, it's a picture of the garage and the
17 automobile and the fire damage inside and the vehicle that
18 was outside on the carport at the time, the driveway.

19 Q Detective, as best you can, with 33-D, holding
20 it over your right shoulder, could you explain to the ladies
21 and gentlemen the conclusion by your department about what
22 that photograph depicts and how that scene forensically
23 occurred?

24 A There was two items that were ignited in the
25 garage, specifically a couch and the clothing items that

1 were leading into the engine block of the vehicle. Those
2 were ignited and set afire.

3 Q And according to your investigation, did that
4 fire appear to be purposely set by Mr. Vanisi?

5 A Yes, sir, it was.

6 MR. STANTON: Your Honor, at this time, if I
7 could publish Exhibit 28 to the jury?

8 THE COURT: Yes.

9 (The exhibit was displayed to the jury.)

10 MR. STANTON: I have no further questions at
11 this time, Your Honor.

12 THE COURT: Cross-examination?

13 MR. GREGORY: Court's indulgence.

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

16 MR. GREGORY: No questions.

17 THE COURT: You may step down. You will be
18 excused.

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

21 THE COURT: Call your next witness.

22 MR. STANTON: The State would next call Officer
23 Craig Meyer.

24 (One witness sworn.)

25 THE CLERK: Thank you. Please be seated at the

1 witness stand.

2 CRAIG MEYER

3 called as a witness on behalf of the Plaintiff,

4 having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. STANTON:

8 Q Sir, could you state your full name and spell
9 your last name?

10 A Craig Meyer, M-e-y-e-r.

11 Q Sir, how are you currently employed?

12 A With the Salt Lake County Sheriff's office.

13 Q How long have you been in that form of
14 employment?

15 A I have been in law enforcement for 14 years and
16 with the sheriff's office for the past five.

17 Q Directing your attention back to January of
18 1998, specifically January 14 of that year, did you have an
19 occasion to through your normal police functions have an
20 additional assignment relative to a SWAT team?

21 A I did, with the Salt Lake County SWAT team.

22 Q Could you explain to the ladies and gentlemen
23 of this jury briefly what that duty assignment entails and
24 how you operate within that unit?

25 A We are a tactical unit assigned by the office

1 to respond, to deal with fairly serious situations that are
2 often beyond the scope of regular patrol officer
3 responsibility.

4 Q And as part of that, do you receive specialized
5 training and equipment to perform that function?

6 A We do, extensive.

7 Q Specifically I want to direct your attention to
8 once again January 14, 1998. Did you have occasion to be
9 dispatched pursuant to your assignment with the SWAT team to
10 an area within Salt Lake County, Salt Lake City?

11 A I did. Approximately 1800 hours or 6:00
12 o'clock p.m., I was dispatched via pager to the Riverview
13 Apartments on a barricaded suspect situation.

14 Q And were you further advised during the course
15 of your deployment or at the scene, more circumstances about
16 the suspect and what he was wanted for?

17 A I was. En route to those apartment complexes,
18 I was told by dispatch that the suspect was possibly wanted
19 out of Nevada for the homicide of a police officer and that
20 he was in possible possession of a handgun.

21 Q All those are important facts for you in
22 performance of your duties with SWAT?

23 A Yes, they are.

24 Q And do you have specialized or do you have
25 knowledge and experience with weapons?

1 A I do.

2 Q And what is the duty sidearm that you carry
3 with you on your day-to-day business as a peace officer with
4 Salt Lake County?

5 A A Glock 17, nine-millimeter handgun.

6 Q Upon your arrival at what ultimately is the
7 David Kinikini home, could you explain to this jury what the
8 tactical situation was upon your arrival?

9 A The situation upon my arrival was we had by
10 intelligence gathering one male inside a residence, possibly
11 armed, that was refusing to come out at that time.

12 Q What did you or your unit then do relative to
13 approaching that tactical situation?

14 A When I got there, myself and another SWAT
15 officer maintained a containment position near the front
16 door area of the suspect target residence.

17 Q And during that time period, did you ever see
18 the barricaded suspect?

19 A At that time, no, I did not personally.

20 Q During the course of you being in your
21 containment position, did you ever see the barricaded
22 suspect?

23 A Not from my containment position, no.

24 Q At one point or at some juncture, the tactical
25 situation changes; is that correct?

1 A That's correct.

2 Q What changed the tactical situation?

3 A The responsibility of myself and the other SWAT
4 officers at the front --

5 MR. GREGORY: I object as not being responsive
6 to the question.

7 MR. STANTON: I believe he was being precisely
8 responsive.

9 THE COURT: The question was: What changed the
10 tactical situation in terms of his responsibility?

11 MR. STANTON: I believe he's explaining it.
12 But I'll rephrase my question to you.

13 BY MR. STANTON:

14 Q Officer, was there a situation that changed
15 your tactical situation at the residence from one that
16 required a greater urgency?

17 A There was.

18 Q What was that?

19 A The garage was set afire, specifically.

20 Q And at that juncture, what tactically did the
21 SWAT directives from your superiors involve?

22 A At that point, we were given the order to enter
23 the residence, due to the building being on fire.

24 Q At the point, Officer, about entering the
25 residence, how was that accomplished in this case relative

1 to the team that you were on?

2 A That was accomplished by an emergency action
3 team, which was the original containment team. We changed
4 directive at that point due to the urgency of the situation,
5 i.e., being the fire, and placed ourselves at the front door
6 and prepared to enter the building.

7 Q And there is a trained and planned method of
8 entry; is that correct?

9 A That is correct.

10 Q Can you describe that and how that occurred in
11 this case?

12 A In this particular case, there were several
13 SWAT officers in what is called a stick or a line of
14 officers at the front door.

15 The man was to breach the front door with a ram
16 and the team at that point would enter the residence and
17 clear it as safely as possible and determine the whereabouts
18 of the suspect inside.

19 Q I'm going to show you a series of photographs.
20 First set of photographs are 34-A and B. I ask if you
21 recognize those photographs?

22 A I do.

23 Q And what do those photographs depict?

24 A They are photos of me the evening of that
25 situation.

1 Q Is that how you were dressed out as you made
2 entry into the Kinikini home?

3 A That is.

4 Q And they accurately depict your clothing and
5 how you appeared that night?

6 A They do.

7 MR. STANTON: Move for admission at this time,
8 Your Honor.

9 THE COURT: Counsel?

10 MR. GREGORY: We will submit it.

11 THE COURT: May I see them, please?

12 Okay, admitted.

13 (Plaintiff's Exhibit No. 34-A and 34-B
14 admitted.)

15 MR. STANTON: May I publish 34-A and B to the
16 jury?

17 THE COURT: You may.

18 (The exhibits were displayed to the jury.)

19 BY MR. STANTON:

20 Q Officer, if you could pick up your testimony
21 relative to your entry. Could you describe what happens
22 when you and fellow officers made entry into the Kinikini
23 home?

24 A Upon the door being breached with the ram,
25 myself and Deputy Bowman, who were the first two officers in

1 line, made entry across the threshold of the door and were
2 faced with a very narrow, long hallway in front of us and a
3 stairwell that led upstairs to the right.

4 Q Showing you 33-B, do you recognize that
5 photograph?

6 A I do.

7 Q And does that accurately depict the portion of
8 the Kinikini home that you just testified to?

9 A It does.

10 MR. STANTON: Move for its admission at this
11 time.

12 THE COURT: Counsel?

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

14 THE COURT: 33-B is admitted.

15 (Plaintiff's Exhibit No. 33-B admitted.)

16 BY MR. STANTON:

17 Q I hand that photograph to you like that. If
18 you could hold that photograph over your right shoulder for
19 the next portion of your testimony.

20 Could you explain to the ladies and gentlemen
21 of the jury based upon the testimony you just gave, where
22 you entered and where that stairway that you just mentioned
23 was?

24 A As I came through the open door, the front door
25 being here, the partial front door you can see, the stairway

1 is right here. You can see the bottom two steps. It off
2 led to the right to a short landing, to the upstairs portion
3 of the residence.

4 The hallway progressed straight in front of me
5 to the ground level remainder of the residence.

6 Q Could you pick up your testimony from that
7 juncture about what you and your other officers did once you
8 initially made entry past the threshold?

9 A Upon coming through the front door, I
10 noticed -- I was probably several steps inside the door -- I
11 noticed a partial figure of what appeared to be a man a
12 couple doors down on my right. He appeared to be taking a
13 position of cover.

14 Q When you say "a position of cover," what does
15 that mean to you as a police officer and also in your
16 situation that you were involved in at that instant?

17 A In my tactical experience, being able to only
18 see a slight portion, being the right side of his face and
19 his right shoulder and not being able to see his hands at
20 the time, this was of great concern to me.

21 Q What did you do at that juncture?

22 A At this point, Deputy Bowman, who was ahead of
23 me, was continuing down the hall. It became apparent to me
24 he possibly had not seen this partial figure of a man. We
25 were yelling, "Police, police," as we went down the hallway.

1 I in turn was yelling at him to direct his
2 attention towards that doorway.

3 Q What happened next?

4 A Deputy Bowman, it appeared at that point, saw
5 the partial figure and attempted to take a position of cover
6 in what was a bathroom, which was an open door immediately
7 to his right. At that point, I stepped to the left of him.
8 And as I did so, I saw the suspect bring an arm out from
9 that open doorway and raise it parallel up along the side of
10 the wall.

11 Q Was there anything that brought your attention
12 of concern relative to what that arm was doing and what it
13 had in its possession?

14 A Yes, it was holding a gun.

15 Q And did you, when you say a gun, a handgun or
16 rifle?

17 A It was a handgun, black handgun.

18 Q What did you do then, Officer?

19 A At that point I raised my weapon and watched as
20 the suspect pointed that gun and appeared to take aim at me.

21 Q How far were you away from this individual when
22 these events were occurring?

23 A Hmm, probably two to three yards.

24 Q And the individual that had that gun and was
25 raising it in your direction, pointing it at you, do you see

1 that individual in court today?

2 A I do.

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

5 A He is sitting at the defense table wearing a
6 tan, cream-colored jacket, dark hair, kind of a rust-colored
7 tie.

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

10 THE COURT: The record will so reflect.

11 BY MR. STANTON:

12 Q Officer, when you saw that weapon being pointed
13 at you, what did you do next?

14 A Myself and the suspect locked eye contact
15 momentarily. At that point there was no doubt in my mind
16 that he was going to shoot me. So I fired my duty weapon at
17 the only target I could see at the time, which was his right
18 hand and arm, and struck the suspect in the arm.

19 Q How many times did you fire your duty weapon at
20 that juncture?

21 A Four times, I believe.

22 Q What occurred next?

23 A At that point, I was unsure if the team members
24 behind me had seen the suspect in the doorway. And not
25 wanting to lead them further down that fatal funnel, I

1 proceeded to back up while firing the remainder of those
2 four shots; Pushing the team behind me out the open door and
3 up onto the stairwell to a position of cover.

4 Q Can you describe to this jury what occurred
5 generally after your unit had retreated within the dwelling?

6 A After all team members were accounted for and
7 we were all behind positions of cover, the SWAT sergeant
8 proceeded with dialogue with the suspect, who was still
9 inside the residence, in an attempt to get him to give
10 himself up and come outside.

11 Q Did there come a time period when indeed
12 Mr. Vanisi came out to the threshold area of the residence?

13 A He did, after quite some time. He came to the
14 threshold of the doorway.

15 Q How much time had elapsed between the shooting
16 incident you just described and the incident we are now at
17 when Mr. Vanisi comes out to the threshold?

18 A I would guess approximately ten to 15 minutes.

19 Q Could you describe what happens when Mr. Vanisi
20 comes to the threshold of the Kinikini home?

21 A He was given verbal commands by the SWAT
22 sergeant to show his hands, raise his hands, drop down to a
23 kneeling position. The suspect was very non-compliant at
24 that point.

25 And another officer utilized less-than-lethal

1 impact through a bean bag round to take him safely into
2 custody.

3 Q Can you describe how that bean bag round
4 appears and operates, and also how it specifically was
5 implemented against Mr. Vanisi?

6 A The exact method of operation I can't explain.
7 I'm not -- that's not my area of expertise. It is a bean
8 bag projectile that is fired from a 37-millimeter weapon.
9 It is less than lethal. It's an impact tool.

10 Q And were you aware of a cutting board that
11 Mr. Vanisi had on his person during the course of the SWAT
12 operation?

13 A I was.

14 Q Where did you know or see that cutting board to
15 be and how did that represent a concern to you based upon
16 your role in this operation?

17 A It was up underneath his jacket covering the
18 center of mass, vital organ area, such as a police officer's
19 ballistic vest would be.

20 Q And after the bean bag round was deployed,
21 Officer, did you place Mr. Vanisi formally in custody?

22 A Yes, he was taken into custody. I placed
23 handcuffs on the suspect at that time.

24 Q Showing you photographs 29-A and B, does that
25 clothing look familiar to you?

1 A It does.

2 Q Is that the clothing Mr. Vanisi was wearing at
3 the time you placed him into custody after the bean bag
4 incident?

5 A It was. I recognize the orange jacket.

6 MR. STANTON: No further questions.

7 THE COURT: Cross-examination?

8 MR. GREGORY: Court's indulgence.

9 (There was a pause in the proceedings while
10 counsel and the defendant conferred.)

11 MR. GREGORY: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. GREGORY:

14 Q Officer Meyer, Mr. Vanisi didn't fire any
15 rounds at you, did he?

16 A He did not.

17 MR. GREGORY: Nothing further.

18 THE COURT: Anything further?

19 MR. STANTON: No, Your Honor.

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

22 (The witness was excused and left the
23 courtroom.)

24 THE COURT: You may call your next witness.

25 MR. STANTON: The State would next call Vainga

1 Kinikini.

2 (One witness sworn.)

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

5 VAINGA IMOANA KINIKINI

6 called as a witness on behalf of the Plaintiff,

7 having been first duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. STANTON:

11 Q Good morning, sir. Could you please state your
12 name and spell your first and last name?

13 A Vainga Imoana Kinikini.

14 Q If you could slide up as close as you can to
15 the microphone for me. Could you state once again your
16 name?

17 A Vainga Imoana Kinikini.

18 Q How do you spell your middle name?

19 A I-m-o-a-n-a

20 Q Could you spell Vainga for me?

21 A V-a-i-n-g-a.

22 Q Mr. Kinikini, how old are you, sir?

23 A Twenty-five.

24 Q What is your relationship to Mr. Vanisi?

25 A We are distant relatives.

1 THE COURT: I'm going to stop you. Can you
2 pull the microphone down a little? There. Now, push the
3 top part up a little bit.

4 Would you state your name again, please?

5 THE WITNESS: Vainga Imoana Kinikini.

6 THE COURT: Would you state your age again,
7 please?

8 THE WITNESS: I'm 25.

9 THE COURT: Thank you.

10 BY MR. STANTON:

11 Q What is your relationship to the defendant,
12 Siaosi Vanisi?

13 A We are distant relatives.

14 Q Distant relatives?

15 A Yes.

16 Q I want to direct your attention back to January
17 of 1998, Mr. Kinikini. At that time, sir, had you had any
18 previous felony convictions?

19 A Yes.

20 Q And what were those for?

21 A For two counts of aggravated assault with a
22 deadly weapon.

23 Q And you're a very soft-spoken person,
24 Mr. Kinikini. If you can lean your head closer to that
25 microphone. And once again I'll ask you, did you have any

1 felony convictions back in that time period?

2 A Yes.

3 Q What were they for?

4 A Two counts of aggravated assault with a deadly
5 weapon.

6 Q And where did those convictions occur?

7 A In Dallas, Ft. Worth, Texas.

8 Q Were you sentenced from those offenses?

9 A Yes.

10 Q And how much time did you receive?

11 A About four years.

12 Q And did you serve that time?

13 A Yes.

14 Q You are not under any sentence of imprisonment,
15 parole, or probation at this time?

16 A No.

17 Q I want to once again, January 1998, do you
18 remember where you were living during that time period?

19 A I was living with my brother. I don't recall
20 the address.

21 Q Okay. Would it be South Riverside Drive?

22 A Yes, Riverside Drive.

23 Q When you say your brother, what is his name?

24 A David Kinikini.

25 Q Why were you living with your brother, David,

1 at that time period?

2 A I had moved down to straighten up my life, get
3 some guidance, I guess.

4 Q What role was David to play in straightening
5 out your life?

6 A He was more like a role model, older brother.

7 Q Your brother, is he a role model when it comes
8 to living life clean?

9 A Yes.

10 Q Is he a devoutly religious man?

11 A Yes.

12 Q Was there an individual there by the name of
13 Jeremiah Talley?

14 A Yes.

15 Q Who is he?

16 A He is a youth -- he's a proctor kid under the
17 State's custody.

18 Q He was living with your brother, David?

19 A Yes.

20 Q I want to direct your attention, Mr. Kinikini,
21 to the 14th of January. Did you have occasion to see the
22 defendant, Siaosi Vanisi, on that day?

23 A The 14th?

24 Q Yes.

25 A Yeah.

1 Q It would have been a Wednesday?

2 A Okay, yeah.

3 Q And where was the first time that you saw
4 Siaosi Vanisi?

5 A He was at our house.

6 Q And where inside the house did you first see
7 him?

8 A I was in my room.

9 Q What were you doing when you first saw him?

10 A I was sleeping.

11 Q Did you expect to see the defendant at that
12 time?

13 A No.

14 Q Did you recognize him when you first saw him?

15 A No.

16 Q Why is it that he looked different to you when
17 you first woke up from sleep?

18 A He was a lot bigger and he had facial hair,
19 long hair.

20 Q And the last time you had seen him, he didn't
21 look like that?

22 A No.

23 Q How long before that day had it been since you
24 had seen him?

25 A Maybe five, ten years.

1 Q I show you Exhibit 24-C. You've seen that
2 picture before?

3 A Yes.

4 Q Is that how Mr. Vanisi appeared to you that
5 morning?

6 A Yes.

7 Q After you woke up, what did you do?

8 A I answered the door and he was there.

9 Q Okay. Where did you go after you answered the
10 door?

11 A We went into the living room and started
12 watching T.V., talking.

13 Q How did the defendant, Mr. Vanisi, appear to
14 you?

15 A Real excited or real hyper.

16 Q During that initial time period of seeing your
17 cousin, did there come a time where you went outside the
18 home to smoke a cigarette?

19 A Yes.

20 Q While you were outside, Mr. Kinikini, did
21 Mr. Vanisi show you anything?

22 A Just -- just some money.

23 Q And how did the money appear to you? Was it in
24 a billfold?

25 A It was just in a wad.

1 Q And what did the money look like to you, as far
2 as the denominations?

3 A Small bills, twos and fives, ones.

4 Q At the time he shows that to you outside the
5 residence, correct?

6 A Yes.

7 Q You go back into the residence to continue
8 watching television?

9 A Yes.

10 Q At this time, did Mr. Vanisi tell you that he
11 had been involved in some significant criminal activity in
12 Reno?

13 A Yes.

14 Q What did he tell you?

15 A He had committed a murder.

16 Q I'm sorry?

17 A He had committed a murder.

18 Q And when he told you that, did you believe him?

19 A No.

20 Q Did he tell you about right around the same
21 time period that 1998 was a year that he was --

22 MR. GREGORY: I object to the leading form of
23 the question.

24 THE COURT: Sustained.

25 / / /

1 BY MR. STANTON:

2 Q Did there come a time in this conversation when
3 he talked to you about what 1998 meant to him?

4 A That it would be a year to, to find his roots.

5 Q And did he explain that a little bit more?

6 A Just to hang out with the family more and, you
7 know, gather together.

8 Q And when you say gather together, was that
9 within the members of the Tongan community?

10 A That's the members of, yeah, of the Tongan
11 community and relatives.

12 Q Did he talk about something called fahi kesi,
13 f-a-h-i, k-e-s-i?

14 A Yes.

15 Q And sir, do you -- are those terms I just said
16 Tongan?

17 A Yes.

18 Q Do you speak Tongan fluently?

19 A Yes.

20 Q What does fahi kesi mean?

21 A It means to rob a store, a gas station.

22 Q What did Mr. Vanisi say about fahi kesi?

23 MR. GREGORY: Well, Your Honor, I withdraw it.

24 THE COURT: Okay.

25 BY MR. STANTON:

1 Q Do you remember what he said? What did
2 Mr. Vanisi tell you during this time period about that term,
3 that Tongan term?

4 A I don't get the question.

5 Q Okay. Did he tell you about anything else that
6 he had done in Reno besides the murder?

7 A Oh, yeah, the robberies.

8 Q Did he use that Tongan term?

9 A Fahi kesi, yes.

10 Q Now, what does fahi kesi literally mean?

11 MR. GREGORY: I believe that's asked and
12 answered. He just said.

13 MR. STANTON: Your Honor, I'm asking for the
14 literal interpretation, which I believe will be slightly
15 different from what he testified.

16 THE COURT: Based upon that representation,
17 I'll overrule the objection.

18 BY MR. STANTON:

19 Q What does literally fahi kesi mean?

20 A Fahi meaning to break into, or crack; and kesi
21 meaning gas, or gas station.

22 Q When he used that term, what did it mean to
23 you?

24 A Just meant robbery, or robbing anything with
25 gas.

1 Q Did it mean any type of establishment had been
2 robbed?
3 A Yes, a gas station.
4 Q Did there come a time where he showed you a
5 weapon?
6 A Yes.
7 Q Are you familiar with weapons, Mr. Kinikini?
8 A Yes, I am.
9 Q I would like to show you State's Exhibit 15-A.
10 I ask if you recognize this?
11 A Yes, I do.
12 Q Do you recognize that?
13 A Yes.
14 Q Is that the gun that Mr. Vanisi showed you?
15 A Yes.
16 Q What did he tell you when he showed you that
17 gun?
18 A Just said it was a cop's gun.
19 Q Did he tell you what he did to that cop?
20 A Not specifically. He just showed me the gun.
21 That was it.
22 Q Did he use a slang term about a cop?
23 A Po-po.
24 Q Could you say that a little louder?
25 A Po-po.

1 Q What does a po-po mean to you?

2 A It means a police officer.

3 Q At this point did you believe him?

4 A No.

5 Q Do you remember the caliber of the gun that he

6 showed you?

7 A It was -- my first thought it was a Glock .45.

8 Q You had seen .45 calibers before?

9 A Yes.

10 Q You had seen Glocks before?

11 A Yes.

12 Q Did there come a time where Mr. Vanisi talked

13 to you about an incident with a homeboy?

14 A He had one of his homeboys with him and they

15 went out one night and they were looking for somebody to

16 kill.

17 Q And when you -- what does the word "homeboy"

18 mean?

19 A It means a friend or a good partner.

20 Q And did he tell you in relationship to the

21 murder of the police officer when this incident with this

22 homeboy going out looking for somebody occurred?

23 A He said it was like on a Monday night.

24 Q And in relationship to the murder, was it the

25 same day or the day before? A week before? Do you

1 remember?

2 A I don't remember.

3 Q The time that he was talking to you,
4 Mr. Vanisi, did he tell you what type of people him and his
5 homeboy were looking for?

6 A White people.

7 Q And any particular type of white people?

8 A No.

9 Q Do you remember talking to Reno detectives in
10 Salt Lake City?

11 A Yes.

12 Q Would looking at a transcript of that interview
13 help you with your memory of what was said?

14 A Yeah.

15 MR. STANTON: Your Honor, may I approach the
16 witness with his January 23 transcript?

17 THE COURT: Yes, you may.

18 BY MR. STANTON:

19 Q Mr. Kinikini, in the lower right-hand corner is
20 a page number. Actually, sir, if you could turn to page six
21 of that transcript. In the left-hand column is a series of
22 numbers. If you could read line 14 through 24 to yourself
23 and tell me when you're finished reading.

24 Does that help you?

25 A Yes.

1 Q What did Mr. Vanisi tell you that he was
2 looking for that night with his homeboy?

3 A Police officer.

4 Q What kind of police officer?

5 A A white person.

6 Q A white police officer?

7 A Yes.

8 Q And specifically, at line 23 and 24, he wanted
9 to do something to a police officer when he found him. Do
10 you see that at line 24?

11 A He wanted to beat him, beat him up.

12 Q I'm sorry?

13 A He wanted to beat one up.

14 Q What did he say happened with this attempt to
15 find a white police officer when he was out with his friend?

16 A That the person he went with was scared and
17 didn't want to go further.

18 Q And so did anything happen that night,
19 according to Mr. Vanisi?

20 A The kid went home and I think he then went and
21 purchased the knife.

22 Q If you could say that a little louder?

23 A I think he went to the store.

24 Q Did Mr. Vanisi tell you why he went to the
25 store?

1 A I can't remember.

2 Q Okay. If you would turn to the next page, page
3 seven? And if you would read lines 16 through 32 to
4 yourself and then tell me when you're finished reading.

5 MR. GREGORY: Your Honor, may we approach?

6 THE COURT: Yes.

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

9 MR. GREGORY: I apologize to the Court. I need
10 a break. I'm sorry.

11 THE COURT: That's okay. We'll take a break.
12 Thank you.

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

15 THE COURT: Ladies and gentlemen of the jury,
16 this is a good time to take a morning recess. During this
17 recess, remember to stay together in the jury room.
18 Remember also that you must follow the admonition that I've
19 given you at all the breaks.

20 You may not form or express any opinion about
21 the ultimate outcome of this case. You may not discuss this
22 case among yourselves or with anyone else. You may not
23 allow anyone to attempt to influence you in any manner with
24 regard to this case, and you are not to view, listen to or
25 read any news media accounts of this case should there be

1 any.

2 Mr. Kinikini, I may be mispronouncing that, I'm
3 sorry. You may go ahead and step down. We will call you
4 back to the stand. Just leave that there. You will be
5 called back in a few minutes.

6 Ladies and gentlemen of the jury, you may await
7 us in the jury room. The Court is in recess.

8 (A recess was taken at 10:40 a.m.)
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1 RENO, NEVADA, MONDAY, SEPTEMBER 27, 1999, 10:58 A.M.

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3
4 (Whereupon, the following proceedings were held
5 in open court, outside the presence of the
6 jury.)

7 THE COURT: Thank you. Please be seated.

8 I asked for the hearing outside the presence of
9 the jury because I'm trying to logistically work around all
10 your schedules. This is your last witness, isn't it?

11 MR. GAMMICK: As soon as we are complete with
12 this witness, I will confer with the court clerk on
13 exhibits. We intend to rest at that time.

14 THE COURT: Counsel for the defense, have you
15 had an opportunity to talk to your client about the
16 potential for testifying?

17 MR. GREGORY: We have, Your Honor.

18 THE COURT: Has your client made a decision?

19 MR. GREGORY: I believe the Court is going to
20 have to canvass him. I'm not sure what his decision is at
21 this point.

22 THE COURT: Mr. Vanisi? Do you understand that
23 you have a right to testify?

24 THE DEFENDANT: Yes. I would just like a
25 moment just to put some matter on the record. May I have

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1 the Court's indulgence, please?

2 (The defendant conferred with Mr. Gregory.)

3 THE DEFENDANT: Yeah, I just want to make --

4 MR. GREGORY: This is a formal canvass of the
5 defendant; is that correct?

6 THE COURT: Yes, it is.

7 THE DEFENDANT: I want to make a record. Back
8 in June, I filed a motion to dismiss and appoint counsel and
9 argued that motion on June 23. You denied that motion.

10 August 5, I filed a motion to represent myself
11 and had argued and had a *Feretta* canvassing, which I passed
12 that motion, which I passed to represent myself. You denied
13 that motion.

14 On August 18, Gregory and my counsels, my
15 attorneys, they had filed a motion to withdraw from the
16 case. There was an in camera hearing. On August 26 you had
17 denied them from withdrawing the case.

18 At this point, they have done nothing for me.
19 All along I wanted to testify, but my counsel, they have
20 refused to do anything. At this point, I look at this trial
21 and I think, I say to you, Judge, this trial is a joke. I
22 wanted to testify, but it's come to a point where this has
23 gone beyond a point where I have to say, look at it
24 objectively and say this is ridiculous.

25 So that is the record that I want to make. And

1 may I have the Court's indulgence one more time, please?

2 THE COURT: Yes.

3 (The defendant conferred with Mr. Gregory.)

4 THE DEFENDANT: And I made my record. If you
5 have any questions, Your Honor, I will answer them as best I
6 can.

7 THE COURT: Okay. You understand that you have
8 an absolute right to testify?

9 THE DEFENDANT: Yes, I understand.

10 THE COURT: And is it your desire to testify in
11 this trial?

12 THE DEFENDANT: All along I wanted to testify.
13 This is a joke. I am not going to testify.

14 THE COURT: Do you understand, though, that if
15 you are wrong about what you are characterizing as a joke,
16 then your waiver of your right to testify will be permanent?

17 THE DEFENDANT: Whatever your semantics is, I'm
18 going to say to you one more time, I am not going to
19 testify.

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

21 Mr. Stanton, anything else with regard to the
22 canvass that you would request the Court to make?

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

24 (Counsel for the State conferred.)

25 MR. GREGORY: In light of his statement, Your

1 Honor, we are going to ask to go in camera right after the
2 State rests.

3 MR. STANTON: Your Honor, the only thing I
4 would ask in addition is that the Court inquire whether or
5 not Mr. Vanisi has discussed this case and the defense with
6 his counsel so that he can make the decision that he is
7 making now.

8 THE COURT: Well, I think Mr. Vanisi did
9 indicate that he's talked about it with his counsel and his
10 counsel is not doing what he wants them to do.

11 Mr. Vanisi, is that correct? Am I right in
12 what you said?

13 THE DEFENDANT: I don't know if you can make a
14 right out of this. They have refused to do anything for me.

15 THE COURT: You have been talking to them,
16 though?

17 THE DEFENDANT: They have refused, they have
18 refused. We have a communication. They have refused to do
19 what I asked them to do.

20 THE COURT: Did you get a chance to talk to
21 them about your right to testify?

22 THE DEFENDANT: All along I told them that I
23 wanted to testify. I come to this point where I make an
24 observation.

25 THE COURT: So in spite of the fact that you

1 told have them all along that you wanted to testify, when we
2 are at this stage of the proceeding and now it is your
3 chance to testify, you decided that you will not be
4 testifying; is that correct?

5 THE DEFENDANT: Yeah, at this point I make my
6 decision for you, Judge.

7 THE COURT: All right. Thank you. You may be
8 seated.

9 We will call the witness back in and the jury
10 back in. Counsel, while we are waiting on that, are you
11 going to be make making an opening statement?

12 MR. GREGORY: That's part of the subject area I
13 would like to inquire of the Court.

14 THE COURT: Okay.

15 (Vainga Kinikini resumes the witness stand.)

16 THE COURT: Go ahead and get back up on the
17 witness stand. You are still under oath.

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

20 THE COURT: Will counsel stipulate to the
21 presence of the jury?

22 MR. STANTON: State will so stipulate.

23 MR. GREGORY: Defense will so stipulate.

24 THE COURT: You may proceed.

25 BY MR. STANTON:

1 Q Mr. Kinikini, I want to bring you back to where
2 we were just before the morning recess. I asked you to
3 review page seven of that transcript, lines 16 through 32.
4 Have you had an opportunity to review that?

5 A Yes.

6 Q If you could speak up as loud as you can into
7 that microphone?

8 THE COURT: I had turned the microphone off.

9 THE WITNESS: Yes.

10 BY MR. STANTON:

11 Q In talking with Mr. Vanisi in Salt Lake City
12 that morning on the 14th, did he mention to you after his
13 homeboy chickened out the night before, that he went and did
14 something?

15 A He went to a hardware store.

16 Q And what did he get, if anything, there?

17 A He purchased a hatchet.

18 Q If you could --

19 A He purchased a hatchet.

20 Q After he purchased the hatchet, what did he
21 tell you he did then?

22 A That they drove around and were looking for the
23 spot where they would find the white officers, police
24 officers.

25 Q And did Mr. Vanisi specifically say where he

1 was looking to find this officer after he had a hatchet?

2 A It was the university campus, I believe.

3 Q And you stated that he was looking for a
4 particular type of police officer?

5 A Yes.

6 Q What kind?

7 A White officer.

8 Q Mr. Kinikini, I want to now take you somewhat
9 in detail about what Mr. Vanisi tells you about the murder.
10 Did he describe the murder to you?

11 A Yes.

12 Q Did he describe it to you in detail?

13 A Yes.

14 Q What did he tell you about the officer that he
15 ultimately selected? What did he first see the officer
16 doing?

17 A The officer was in the -- he was in the middle
18 of a traffic detaining, he was pulling somebody over.

19 Q And what did he do during the time that the
20 officer had pulled this person over?

21 A He waited around.

22 Q And waited for what?

23 A For the officer.

24 Q To do what?

25 A To be done with his traffic routine.

1 Q Did he tell you how he approached the officer?

2 A He crept up on him.

3 Q And what did that mean to you?

4 A Meaning sneaking up on somebody.

5 Q If you can say that again?

6 A Meaning sneaking up on somebody.

7 Q Did he tell you about how long it was after the
8 stop that he crept up on this police officer?

9 A How long?

10 Q Yes, how much time had gone by from when he saw
11 the traffic stop until when he started creeping up on him?

12 A I can't remember.

13 Q If you turn to page eight of the transcript,
14 and line 14 through 16, if you could read that to yourself?

15 A Okay.

16 Q How much time according to Mr. Vanisi had
17 elapsed from the time when he saw the traffic stop until the
18 time he started creeping up on the police officer?

19 A About ten, 15 minutes.

20 Q And did he tell you what the police officer was
21 doing when he first came up from behind him?

22 A He had his light on. He appeared to be filling
23 out some paperwork.

24 Q And what did Mr. Vanisi tell you that he did
25 when he walked up to that police officer?

- 1 A He walked up and knocked on the window.
- 2 Q Of the patrol vehicle?
- 3 A Yes.
- 4 Q What did Mr. Vanisi say occurred then?
- 5 A The officer asked him if he can help him or
- 6 whatever.
- 7 Q I am -- just go back. What did the police
- 8 officer say to Mr. Vanisi?
- 9 A He said, "Can I help you?" I don't know the
- 10 exact words, but it was something like that.
- 11 Q Okay.
- 12 A And then he said, "What's up?" And he just, he
- 13 just -- he proceeded to what happened.
- 14 Q Okay. And what did he, what did Mr. Vanisi
- 15 tell you he did after saying "What's up?" to the police
- 16 officer?
- 17 A Can I read this?
- 18 Q Sure, if you would, on page eight. If you
- 19 could read lines 20 down to line 35 to yourself?
- 20 A Okay.
- 21 Q What did he say after he said "What's up?" to
- 22 the police officer occurred?
- 23 A He said, "Can I help you?"
- 24 Q And what happened next?
- 25 A Then he just started swinging.

1 Q If you can say it again?

2 A He just started swinging.

3 Q Who started swinging?

4 A George.

5 Q The defendant?

6 A Yes.

7 Q And was he demonstrating to you while he was

8 talking about this?

9 A Yes.

10 Q Could you show the ladies and gentlemen of the

11 jury what he said about how he was swinging?

12 A Show them in action?

13 Q Yes.

14 A Just overhand (indicating).

15 Q Like this (indicating)?

16 A Yes.

17 Q Are you left-handed or right-handed?

18 A I'm left-handed.

19 Q Did he tell you how many times he struck the

20 police officer?

21 A No.

22 Q Did he tell you what the police officer was

23 doing while he was being beaten?

24 A What he was doing? The police officer?

25 Q What was the police officer doing, according to

1 Mr. Vanisi?

2 A They were just wrestling.

3 Q And sometime during this time period, did
4 Mr. Vanisi tell you that he did something to the officer
5 besides beating him?

6 A I think he got a punch in.

7 Q The police officer did?

8 A Yes.

9 Q The police officer got one punch in on
10 Mr. Vanisi?

11 A Yes.

12 Q Did there come a time that Mr. Vanisi told you
13 he did something that indicated to you that the police
14 officer was then unconscious?

15 A He hit him with the hatchet.

16 Q And what did he say the police officer did
17 after he did that?

18 A He just fell down.

19 Q And specifically, do you remember the words
20 that Mr. Vanisi himself used to describe how this beating
21 took place? If you would turn to page 15 of that
22 transcript, line 12 through 13. Do you see that section?

23 A Yes.

24 Q Is that the words he used?

25 A "I was beating his ass."

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

2 A Yes.

3 Q After beating his ass, did he tell you that he
4 then did something besides hit him with a hatchet?

5 A He kicked him over and over.

6 Q And if you would, on page 15 of your
7 transcript, line 23 through 24, do you remember that portion
8 of the conversation?

9 A Yes.

10 Q And does that accurately state, as to lines 23
11 and 24, what Mr. Vanisi told you?

12 A Yes.

13 Q Would you please read lines 23 and 24 to the
14 jury?

15 A He said, "When I knocked him out, I just
16 started kicking him, stomping on his head. It was fun."

17 Q And then the detective asked you again, he
18 said, "He said," meaning Mr. Vanisi said, "it was fun?"
19 What was your response on line 28?

20 A Yeah. He said, "It was great, man."

21 Q Is that the words that Vanisi used?

22 A "It was great."

23 Q At the time that Mr. Vanisi was telling you
24 about the beating of Officer Sullivan and the stomping of
25 his head and the comments, "It was great," and, "It was

1 fun," what was Mr. Vanisi's demeanor? How was he acting?

2 A Real excited.

3 Q Did he show any remorse?

4 A Not at the moment, no.

5 Q At the end of page 15, lines 33 through 38,
6 Mr. Kinikini, there is a comment you state to the detectives
7 about Mr. Vanisi telling you something just before leaving
8 for the rec center. I ask you to read that to yourself.

9 What did Mr. Vanisi tell you a little later on
10 before he left for the rec center that day?

11 A He said, "It feels great, they are not even on
12 to me." He's free.

13 Q And he said something about his feelings about
14 this incident, whether he had any?

15 A He had no feeling at all.

16 Q He said, "I don't feel nothing, man"?

17 A "I don't feel nothing."

18 Q Did Mr. Vanisi indicate to you whether or not
19 he took anything from the officer?

20 A Yes.

21 Q What did he tell you he took?

22 A He took his belt and his gun.

23 Q And he used a particular term or phrase about
24 taking his belt. Do you remember what that was?

25 A He was sporting his belt on the way home.

1 Q "Sporting his belt on the way home?"
2 A Yeah.
3 Q What did that mean to you, "sporting his belt"?
4 A That means to wear it.
5 Q To wear it around his body?
6 A Yes.
7 Q You took "sporting his belt," you took that to
8 mean that after Mr. Vanisi took the gun and belt, he wore it
9 home?
10 A Yes.
11 Q Did there come a time when Mr. Vanisi indicated
12 that he had been wearing a disguise?
13 A Yes.
14 Q Did he describe that disguise to you?
15 A Yeah.
16 Q And what did he tell you the disguise was?
17 A It was a beanie with dreadlocks, fake
18 dreadlocks attached to it.
19 Q And it made him look like a particular
20 nationality?
21 A Yeah.
22 Q What was that?
23 A Jamaican.
24 Q Did he make a comment to you about whether or
25 not that disguise was working?

1 A Yeah, he thought it was working because they
2 thought it was a Jamaican.

3 Q Did he describe to you or make any comments to
4 you about doing any robberies in Reno?

5 A Yes.

6 Q And how was his demeanor when he was talking
7 about the robberies?

8 A He said it was real casual. He went in there
9 and directed traffic and, you know, was real polite to the
10 people.

11 Q Did he ever indicate to you that he watched any
12 T.V. news about the murder?

13 A Yeah, he watched it later on.

14 Q Did you ever see him with any change, coins?

15 A He had a roll of coins that I saw.

16 Q A roll of coins? Did there come a time where
17 you saw a car that he, Mr. Vanisi, pointed out to you?

18 A Yeah. We went over to my cousin's house and
19 him and I stepped across the street and we glanced over and
20 he showed me the car. It was covered.

21 Q Covered with --

22 A With a tarp thing or whatever.

23 Q Showing you 32-A and B. Does that look
24 familiar to you?

25 A Yeah, I didn't see the car, but I saw the gray.

1 Q You didn't see the car, but you saw the gray
2 cover?

3 A Yes.

4 Q Did Mr. Vanisi tell you whether or not or how
5 he got that car?

6 A He said it was a G ride.

7 Q Did that mean to you that it was --

8 A Stolen.

9 Q -- stolen? Did he make any comments to you
10 about his feelings towards white people?

11 A He hated all white people.

12 Q Did he tell you why he hated white people?

13 A He said he just like grew up with them and that
14 he hated them. Is that right? Can I --

15 Q Whatever he told you, the best you can remember
16 it.

17 A That's the best I can remember.

18 Q Did he tell you about some dogs that were
19 nearby after the murder? Did he tell you about that?

20 A He said that the dogs were on to him and that's
21 when he got rid of his beanie.

22 Q What did he tell you about how he got and where
23 he got rid of the wig and beanie?

24 A He said he threw it in a canal that was nearby.

25 Q Did you see anything that appeared to be blood

1 on his clothing?

2 A I saw some spots on his utility boots that he
3 had on.

4 Q Did he tell you what he did with the hatchet?

5 A He took it over to some apartment.

6 Q And how about the belt that he was sporting,
7 what did he say he did with that after wearing it home?

8 A I think it was the same place, the apartment.

9 Q There came a point in time in the conversation
10 with Mr. Vanisi that you believed that he was telling the
11 truth about this murder; is that correct?

12 A Yes.

13 Q What was it that changed your mind from not
14 believing him to believing him?

15 A When I was examining the weapon, I took out the
16 clip and I noticed that the clip had hollow point bullets in
17 it; and to my knowledge, police officers are the only ones
18 who carry that type of bullet.

19 Q Was the gun loaded when you were looking at it?

20 A Yes.

21 Q I ask you to take a look at 15-C. Look in
22 this, inside there.

23 A Yeah.

24 Q Does that look familiar to you?

25 A Yes.

1 Q What is it?

2 A Hollow point bullets.

3 Q Speak up louder, please.

4 A Hollow point bullets.

5 Q Is that what you saw inside the gun when you

6 were looking at it?

7 A Yes.

8 MR. STANTON: Move for 15-C and D into

9 evidence, Your Honor.

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

11 THE COURT: 15-C and D are admitted.

12 (Plaintiff's Exhibit No. 15-C and 15-D

13 admitted.)

14 BY MR. STANTON:

15 Q Mr. Kinikini, do you recall a time during this

16 conversation where Mr. Vanisi was talking about how he felt

17 then and what he was going to do in the future regarding the

18 murder?

19 MR. GREGORY: I believe that's been asked and

20 answered already, Your Honor.

21 MR. STANTON: It hasn't, Your Honor, but I will

22 be more specific if I can have some leeway here.

23 BY MR. STANTON:

24 Q Mr. Kinikini, if you can turn to page 22 of

25 your transcript? Directing your attention, sir, to lines 15

1 through 32. If you can read that to yourself.

2 Do you remember that portion of the
3 conversation?

4 A Yes.

5 Q I would like to begin with the portion of the
6 question read to you by, or the detective gave you and then
7 if you can just read your answer.

8 Before I read the question to you, is what you
9 told the detectives on page 22 --

10 MR. GREGORY: Your Honor, I'm going to ask to
11 approach on this.

12 THE COURT: Okay.

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

15 MR. GREGORY: Judge, this is the whole area
16 with the gang situation. The first part of this questioning
17 begins with him wanting to be Robin Hood.

18 MR. STANTON: No, down here, line 11.

19 MR. GREGORY: No, I understand.

20 THE COURT: Which line are you --

21 MR. GREGORY: I'm talking about line number
22 one. He's talking about 11. But this area up here is the
23 preface for these answers down here, Judge. I have
24 difficulty getting into this subject area. I think it's
25 dangerous ground.

1 The Court already ruled there would be no
2 reference to any gang activity, forming Tongan gangs. I
3 think the prosecutor is trying to guild the lily and he
4 should leave it alone.

5 MR. STANTON: First of all, Your Honor, what I
6 plan to do is read the question that begins on line 11 by
7 Detective Jenkins and have Mr. Kinikini read just his
8 responses down through the highlighted section that I have
9 there. There is no --

10 MR. GREGORY: That's my objection. That is not
11 the whole story. We get into the whole story and get into
12 mistrial material. I think he should just leave it alone.

13 THE COURT: This information really goes to
14 potential penalty, not guilt.

15 MR. STANTON: Well, I think it goes to the
16 defendant's state of mind at the time of the murder.

17 MR. GREGORY: No, this is future conduct. I
18 see that's where it's confusing.

19 THE COURT: Yes, I don't think it's confusing,
20 but I think it goes to penalty phase information because it
21 goes to future conduct.

22 I understand that you want to get the
23 witnesses, use them while they're here, but I don't think it
24 goes to guilt or innocence. This portion says that he
25 doesn't care about anything and how he's free to kill again.

1 MR. STANTON: But I mean, Mr. Gregory's
2 objection is that it deals with gang references. And
3 putting it in context, it doesn't have anything to do with
4 gangs.

5 THE COURT: What is the relevance at this stage
6 of the proceedings?

7 MR. STANTON: The relevance is it goes to his
8 state of mind; his intent that it wasn't self defense, it
9 wasn't accidental, that he wanted to kill and wants to kill
10 again.

11 THE COURT: It doesn't say that. This portion
12 goes to the fact that now that he has guilt, he's free. "I
13 don't care about anything anymore."

14 MR. STANTON: I think it says --

15 THE COURT: It says --

16 MR. STANTON: The question by Detective Jenkins
17 is: "What is your impression about whether he's rational?"
18 which I think also is part of his state of mind. "This guy
19 is not nuts or crazy." He says, "You said he was smart."

20 The answer by Mr. Kinikini is, "He's real, real
21 smart and there's a lot of them -- I mean, a lot of them,
22 the crazies out there that are smart." He said, "He told me
23 straight up, 'I'm 100 percent insane. You know, I don't
24 care about anything anymore. I'm free and this is why I
25 want to live. Once I kill, I have to kill some more to keep

1 my mind, my high."

2 MR. GREGORY: That's future conduct. It may be
3 relevant at penalty phase, but not at this stage of the
4 proceedings.

5 MR. STANTON: It's relevant for his state of
6 mind at the time he does the killing and relevant to state
7 of mind of intent to kill.

8 THE COURT: I'm going to sustain the objection.

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

11 MR. GREGORY: Your Honor, I don't know if we
12 made a formal objection before I asked to approach, but we
13 will object at this time.

14 THE COURT: Sustained.

15 BY MR. STANTON:

16 Q Mr. Kinikini, if you can turn to page 33 of
17 that transcript, line 32 through 35.

18 Specifically at this portion of the transcript,
19 did Mr. Vanisi tell you about a series of robberies?

20 A Yes.

21 Q What did he tell you about those robberies?

22 A He robbed his way over to where we were.

23 Q To Salt Lake City?

24 A Yes.

25 Q Did he also say something about a car?

1 A He stole a car.

2 Q At the time he mentioned the robberies, did he
3 do anything physically?

4 A He just pulled out the money.

5 Q The wad of cash?

6 A Yes.

7 MR. STANTON: Thank you. I have no further
8 questions.

9 THE COURT: Cross-examination?

10 MR. GREGORY: May I have the Court's
11 indulgence?

12 THE COURT: Yes.

13 (There was a pause in the proceedings while
14 counsel and the defendant conferred.)

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

17 THE COURT: Okay. You may step down. Please
18 do not leave the courthouse until I release you.

19 (The witness stepped down and left the
20 courtroom.)

21 MR. GAMMICK: Your Honor, may I confer with the
22 clerk for a moment?

23 THE COURT: Yes.

24 MR. GAMMICK: Your Honor, I have three items of
25 evidence to bring to the Court at this time. Number 35 is

1 an outline of chain of custody for some of the evidentiary
2 items. That was stipulated to previously in this case to be
3 admitted.

4 MR. GREGORY: We will submit it, Your Honor.

5 THE COURT: Exhibit 35 is admitted.

6 (Plaintiff's Exhibit No. 35 admitted.)

7 MR. GAMMICK: Number 36 is a blow-up of the
8 month of January, 1998. That was also previously stipulated
9 to be admitted.

10 THE COURT: Counsel?

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

13 THE COURT: It's admitted.

14 (Plaintiff's Exhibit No. 36 admitted.)

15 MR. GAMMICK: Item number 37, Your Honor, which
16 is a time line of some of the events that occurred. It was
17 also previously stipulated to be admitted.

18 MR. GREGORY: Again, Your Honor, we will submit
19 it.

20 THE COURT: Approach, please.

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

23 MR. GAMMICK: I'm having a little problem here.
24 My understanding was all stipulated items would be
25 stipulated to. Mr. Specchio specifically stipulated to all

1 three of these items. I don't know why we are getting this
2 "submit" now instead of the stipulation.

3 THE COURT: Okay. These were stipulated to
4 prior to the first trial or in the middle of the first
5 trial?

6 MR. GAMMICK: During the course of the first
7 trial, yes.

8 THE COURT: And that's what I just wanted to
9 ask you about.

10 MR. GAMMICK: Yes.

11 THE COURT: Were they offered previously? Or
12 you just reached the stipulation in the first trial?

13 MR. GAMMICK: This was done during the trial,
14 No. 37. I recall No. 35 was done before the trial. No. 36
15 was done, I believe, at the commencement of the trial or
16 shortly after we started.

17 THE COURT: Okay. Based upon the stipulation
18 you prepared the document; is that correct?

19 MR. GAMMICK: Yes.

20 THE COURT: And where did you get the
21 information? Did you get it off of --

22 MR. GAMMICK: The information for No. 37, Your
23 Honor, came from the police reports and/or the dispatch
24 tapes. We went back and checked on them. When we prepared
25 this item, we gave a copy to the defense. Mr. Specchio did

1 stipulate and submitted that it was accurate.

2 MR. GREGORY: We will agree that Mr. Specchio
3 did stipulate to that.

4 MR. GAMMICK: Mr. Specchio from my
5 understanding is still the attorney, one of the attorneys of
6 record because Mr. Gregory and Mr. Bosler are also attorneys
7 of record.

8 THE COURT: Right. As I understood, the
9 agreement was that everything that had been stipulated to
10 previously was still in effect unless a new motion was made.
11 No new motion was made with regard to Exhibit 37. Correct?

12 MR. GREGORY: That's correct.

13 THE COURT: Okay. It is admitted.

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

16 THE COURT: Exhibit 37 is admitted.

17 (Plaintiff's Exhibit No. 37 admitted.)

18 MR. GAMMICK: Your Honor, with that
19 understanding of the evidence, the State would rest its
20 case.

21 THE COURT: Ladies and gentlemen of the jury,
22 before we proceed any further, I do need to have a hearing
23 outside of your presence. During this hearing, I ask that
24 you remember the admonition I've given you at the other
25 breaks.

1 You may not form or express any opinion about
2 the ultimate outcome of this case. You may not discuss the
3 case among yourselves or with anyone else. You may not
4 allow anyone to attempt to influence you with regard to it.
5 You may not view any news media accounts regarding this case
6 should there be any, or listen to or read them.

7 Please excuse us for a few minutes and go ahead
8 and go in the jury room.

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

12 THE COURT: Counsel, approach, please.

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

15 THE COURT: We are going to take a short
16 recess. The Court is in recess.

17 (A recess was taken at 11:34 a.m.)

18 (See Volume 6A for Sealed portion of
19 proceedings.)

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

23 THE COURT: Mr. Gregory, will you be making an
24 opening statement?

25 MR. GREGORY: No, Your Honor. We will rest our
 case on the evidence already presented.

1 THE COURT: Okay. Mr. Gammick? That means, I
2 think, that all we have left to do prior to closing
3 arguments is finalize the jury instructions and then move
4 forward with closing arguments this afternoon.

5 Counsel see any reason why we couldn't let the
6 jury go now until 1:30, finalize the instructions and argue
7 at 1:30?

8 MR. GREGORY: No, Your Honor.

9 MR. GAMMICK: None, Your Honor. Is the defense
10 going to rest in front of the jury?

11 THE COURT: Yes, I'll bring the jury in, offer
12 them that opportunity. We'll send the jury to lunch, and I
13 would like you to stay and we will finalize the --

14 MR. GREGORY: Your Honor, the Kinikini brothers
15 are awaiting counsel downstairs. I would like the
16 opportunity to see them.

17 THE COURT: We want to finalize the jury
18 instructions before the jury comes back. That has to be the
19 first order of business.

20 MR. GAMMICK: In order to make the airplane to
21 get out of here, they have to leave here at 12:30.

22 THE COURT: Oh, 12:30? I thought you said the
23 plane didn't leave until 5:00.

24 MR. GAMMICK: That was the original plans. Our
25 office called and managed to get them on an earlier flight.

1 They leave 12:30 or they have to stay here until 5:00 to
2 catch the next night. It's however the Court wants to work
3 that out. We are putting two officers, they are leaving
4 here 12:30 to catch that earlier flight.

5 THE COURT: Has the defense had an opportunity
6 to talk to the brothers at all?

7 MR. BOSLER: No, Your Honor.

8 THE COURT: Okay. We will see what we can do.
9 We'll see how quickly we can go.

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

12 MR. GAMMICK: May we approach?

13 THE COURT: Did you need to be on the record?

14 MR. GAMMICK: No.

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

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

19 MR. GAMMICK: Yes, Your Honor.

20 MR. GREGORY: The defense will so stipulate,
21 Your Honor.

22 THE COURT: Thank you. The State has rested.
23 Counsel for the defense?

24 MR. GREGORY: Your Honor, at this time we are
25 not going to make an opening statement and we will rest on

1 the evidence already presented to this jury.

2 THE COURT: Thank you. Ladies and gentlemen of
3 the jury, I am going to send you to lunch now, let you go on
4 about your business until 1:30. During this lunch recess, I
5 advise you to make arrangements for your evening.

6 What will happen next is when you come back at
7 1:30, I will read the law to you, the instructions that you
8 will receive in this case, and counsel will be able to make
9 their closing arguments. Then the matter will be submitted
10 to you for decision.

11 Once the matter is submitted to you for
12 decision, you will not be able to talk with anyone other
13 than each other. You won't be able to call your family and
14 tell them where you're at and what you're doing. Make sure
15 you make arrangements for your period of time with me after
16 lunch.

17 You will be back with me from lunch until
18 whenever we need to recess later. So ladies and gentlemen
19 of the jury, make those plans.

20 During this break, do not form or express any
21 opinion regarding the ultimate outcome of this matter. Do
22 not discuss the case among yourselves or with anyone else.
23 Do not allow anyone to attempt to influence you with regard
24 to this case in any way. If anyone should attempt to
25 influence you, notify the bailiff and he in turn will notify

1 me.

2 Do not read, listen to or view any news media
3 accounts regarding this case, should there be any.

4 Ladies and gentlemen of the jury, 1:30 this
5 afternoon, be back here. You are excused for now.

6 (The jury left the courtroom at 12:06 p.m.)

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

9 THE COURT: Counsel, I know you want to move
10 quickly, but I do have a couple of questions for you with
11 regard to the jury instructions. Last time when we left,
12 the defense indicated that they would or would not submit
13 instructions and they would let me know now.

14 MR. BOSLER: We are going to stand on the
15 representations and objections I made previously, Your
16 Honor.

17 THE COURT: Okay. Now, the defendant has
18 chosen not to testify. Do you wish to offer an instruction
19 with regard to his not testifying?

20 MR. GREGORY: Just the standard instruction, we
21 do indeed wish to offer. We don't have that available but
22 we will present it.

23 THE COURT: Are you talking about the
24 instruction that we utilize in this district saying that the
25 jury may not consider his failure to testify and may not

1 discuss it among themselves?

2 MR. GREGORY: Yes, Your Honor.

3 THE COURT: That's a specific request?

4 MR. GREGORY: It is indeed.

5 THE COURT: I will give that instruction. Also
6 the State was to correct an instruction for me.

7 MR. STANTON: Yes, that was provided to your
8 secretary, administrative assistant Friday afternoon.

9 THE COURT: We'll see if we can find it. Also
10 there was still an objection to the second line of the
11 intent instruction that I don't think I ruled on. While
12 witnesses may see and hear and best be able to give direct
13 evidence of what a defendant does or fails to do, there can
14 be no eye witness account of the state of mind with which
15 the acts were done or omitted, et cetera. And the State
16 objected to me deleting it, defense requested it. I said I
17 would rule later. I will go ahead and give it as it has
18 been presented in the packet.

19 Now, we have not numbered these, but we can
20 number them after the lunch hour, if you would like to go
21 speak with your witnesses now.

22 MR. GREGORY: Thank you, Your Honor.

23 THE COURT: You are going to have to be back
24 here by 1:00 so we can get them in order. I'm worried about
25 holding the jury up too long. I don't know how long you

1 think you'll need. 1:15?

2 MR. GREGORY: That gives us an opportunity to
3 get a sandwich.

4 MR. GAMMICK: If we could, Your Honor, 1:15
5 would be fine. We have no additional instructions to offer.
6 We will go in the same order the Court gave them last time.
7 We're set.

8 THE COURT: You had no additional ones to offer
9 or any further objections?

10 MR. BOSLER: No, Your Honor.

11 THE COURT: And no objections to the packet,
12 Mr. Gammick?

13 MR. GAMMICK: No, Your Honor.

14 THE COURT: I think that's clear. Is counsel
15 requesting that the instructions be read prior to closing?

16 MR. GREGORY: Yes, Your Honor.

17 MR. GAMMICK: Yes, Your Honor.

18 THE COURT: Court is in recess.

19 (Luncheon recess was taken at 12:10 p.m.)
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RENO, NEVADA, MONDAY, SEPTEMBER 27, 1999, 1:28 P.M.

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

THE COURT: Let the record reflect the Court has convened outside the presence of the jury for the purpose of finalizing jury instructions.

Counsel, I have gone through the packet which we went over Friday afternoon. There were a couple of typographical errors. Those have been corrected. And I have received a proposed instruction from the defense.

MR. GREGORY: There is an error in that also, Your Honor. I don't know if the Court's clerk brought it to your attention. On line 3 it should be "guilty."

THE COURT: I think line 5 is supposed to be "The law never imposes."

MR. GREGORY: That's correct. I'm sorry, Your Honor.

THE COURT: The administrative assistant is making those corrections, but I can read the instruction as it is going to be corrected. I have corrected it on my set.

Counsel, any objection to that procedure?

MR. STANTON: No, Your Honor.

MR. GREGORY: None.

1 THE COURT: Now, we have a packet then, this
2 instruction being added, of 1 through 34 instructions. Any
3 additional instructions to offer on behalf of the State?

4 MR. STANTON: No, Your Honor.

5 THE COURT: Any additional instructions to
6 offer other than those which were previously marked and
7 offered by the defense?

8 MR. GREGORY: No, Your Honor.

9 THE COURT: Any corrections or objections to
10 the instructions 1 through 34 as offered, Mr. Stanton?

11 MR. STANTON: No, Your Honor.

12 THE COURT: Any further objections than those
13 already noted, Mr. Gregory, to the instructions?

14 MR. GREGORY: No, Your Honor.

15 THE COURT: Specifically, and I'm not sure the
16 record was clear on this, Defendant's Exhibits A, B and C
17 were all denied. So to make that clear.

18 MR. GREGORY: And they will be made part of the
19 record.

20 THE COURT: They have been made already part of
21 the record, yes.

22 MR. GREGORY: Thank you, Your Honor.

23 THE COURT: Now we have the verdict forms.
24 Have you had a chance to review the potential verdict forms?

25 MR. GREGORY: Yes.

1 THE COURT: Any changes or corrections to be
2 made to those verdict forms?

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

4 THE COURT: Mr. Stanton.

5 MR. STANTON: No, Your Honor.

6 THE COURT: Now is there anything further that
7 you would like to resolve outside the presence of the jury
8 before we call the jury in?

9 MR. STANTON: Two items briefly, Your Honor.
10 The defense pro-offered instruction, which number will that
11 one be?

12 THE COURT: 33.

13 MR. STANTON: And just so the record is clear,
14 the defense counsel is indeed requesting that 33 be given.

15 MR. GREGORY: That's correct.

16 MR. STANTON: That's it, Your Honor.

17 THE COURT: Okay. Anything further, counsel?

18 MR. GREGORY: No, Your Honor.

19 THE COURT: We'll have the bailiff check and
20 see if the jury is all here.

21 DEPUTY BROKAW: Still missing two jurors, Your
22 Honor.

23 THE COURT: We'll be in recess until they
24 arrive.

25 (Recess taken at 1:31 p.m.)

1 RENO, NEVADA, MONDAY, SEPTEMBER 27, 1999, 1:40 P.M.

2 -o0o-

3
4 {Whereupon, the following proceedings were held
5 in open court, outside the presence of the
6 jury.}

7 THE COURT: I have been informed the jury is
8 all here, but we do have a few more things to go over
9 outside their presence. The first is the clerk has an
10 exhibit to mark.

11 THE CLERK: Exhibit 18-A is marked. It is the
12 transcript of the 911 phone call.

13 (Exhibit 18-A marked for identification.)

14 THE COURT: I understand there was a
15 stipulation with regard to the admission of that.

16 MR. GAMMICK: Your Honor, we'd ask for it to be
17 admitted since it's required now by Supreme Court Rule 250.

18 MR. BOSLER: My understanding, it was going to
19 be admitted as part of the record on appeal but not given to
20 the jury; correct?

21 THE COURT: That was my understanding also.
22 Right?

23 MR. BOSLER: With that, Your Honor, we'll
24 submit it.

25 THE COURT: So we just know what that is being

1 marked for the record.

2 (Exhibit No. 18-A marked for identification.)

3 We also have an issue of the juror's question.
4 We talked about that last Friday. We still haven't answered
5 the question, although I did prepare an answer. If counsel
6 has any objection, I think I will just read the question and
7 the answer before I begin jury instructions this afternoon.
8 It is the way it was read on Friday.

9 "Are we going to be able to see the cousin's
10 transcript?" Unsigned.

11 "You will only be reviewing the documents that
12 have been admitted in evidence."

13 MR. GAMMICK: That would be fine with the
14 State, Your Honor.

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

16 THE COURT: And the clerk asked me to make a
17 record and notify you that the bullets will not be going
18 into the jury room. The gun and bullets are available in
19 case the jury requests it. The gun will be removed by the
20 bailiff. We don't give them both at the same time. Any
21 objection?

22 MR. GAMMICK: No, Your Honor.

23 THE COURT: Then we will bring the jury in.

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

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

3 MR. GAMMICK: Yes, Your Honor.

4 MR. GREGORY: Yes, Your Honor.

5 THE COURT: Thank you.

6 Ladies and gentlemen of the jury, as I
7 indicated to you before your lunch recess, when you came
8 back you'd receive the instructions by the Court, you'd hear
9 closing arguments in the case, and then the matter would be
10 submitted to you. Before I give you the instructions of the
11 Court, I do want to answer a question that I received
12 earlier in the week.

13 The question was: "Are we going to be able to
14 see the cousin's transcript?"

15 And the answer that I will be giving you in
16 regard to that question is: "You will only be reviewing the
17 documents that have been admitted into evidence."

18 Now, I am going to be instructing you as to the
19 law in this case, and I wish that I would be allowed to just
20 in conversation terms tell you what the law is. However,
21 that is not permissible. The law is specific, and it is
22 technical in some regards, and it's important that I give
23 you specific instructions as to what the law is.

24 Therefore, the instructions of the Court are
25 written down, and I read those instructions to you. Now

1 during the course of this afternoon's period of time while
2 I'm reading these instructions to you, do not become
3 concerned if you are lost on one particular instruction or
4 if it is confusing to you. You will have a copy of these
5 instructions with you in the jury room, and may refer to
6 them during your deliberations.

7 Don't worry about taking notes during the
8 reading of the instructions, and if you do become confused,
9 just relax and wait for the next instruction to come along
10 and then review them for yourself while you are in the jury
11 room.

12 Ladies and gentlemen of the jury:

13 It is my duty as judge to instruct you in the
14 law that applies to this case, and it is your duty as jurors
15 to follow the law as I shall state it to you, regardless of
16 what you may think the law is or ought to be. On the other
17 hand, it is your exclusive province to determine the facts
18 in the case and to consider and weigh the evidence for that
19 purpose. The authority thus vested in you is not an
20 arbitrary power, but must be exercised with sincere
21 judgment, sound discretion and in accordance with the rules
22 of law stated to you.

23 The defendant in this matter, Siaosi Vanisi,
24 also known as Pe, also known as George, is being tried upon
25 an Information which was filed on the 26th day of February,

1 1998, in the Second Judicial District Court charging the
2 said defendant, Siaso Vanisi, also known as Pe, also known
3 as George, with:

4 Count I, murder in the first degree, a
5 violation of NRS 200.010 and NRS 200.030 and NRS 193.165, a
6 felony, in the following manner:

7 That the said defendant on the 13th day of
8 January, AD, 1998, or thereabout and before the filing of
9 this Information, at and within the County of Washoe, State
10 of Nevada, did willfully, unlawfully and with malice
11 aforethought, deliberation and premeditation, kill and
12 murder Sergeant George Sullivan, a human being, by means of
13 repeated blows to the head and face with a hatchet, and/or
14 other instrument, and/or other blunt force trauma inflicted
15 to the head and upper torso thereby inflicting mortal
16 injuries upon the Sergeant George Sullivan for which he died
17 on January 13th, 1998; or

18 That the said defendant during the course of
19 and in furtherance of an armed robbery did willfully and
20 unlawfully murder Sergeant George Sullivan in that the said
21 defendant on or about January 13th, 1998, did kill and
22 murder Sergeant George Sullivan, a human being, in the
23 perpetration and/or the furtherance of an armed robbery at
24 the University of Nevada, Reno, at or near the information
25 kiosk, with the use of a deadly weapon, to wit, a hatchet

1 and/or other implement; or

2 That the said defendant on or about January
3 13th, 1998, did kill and murder Sergeant George Sullivan, a
4 human being, by laying in wait, in that the said defendant
5 did watch, wait and conceal himself from Sergeant George
6 Sullivan, with the intention of killing Sergeant George
7 Sullivan, in that he hid and waited until Sergeant George
8 Sullivan completed a traffic stop, then observed and
9 followed Sergeant George Sullivan to a location where he was
10 alone and then ambushed Sergeant George Sullivan inflicting
11 mortal injuries to his person from which he died on January
12 13, 1998.

13 Count II, robbery with the use of a deadly
14 weapon, a violation of NRS 200.380, and NRS 193.165, a
15 felony, in the manner following:

16 That the said defendant on the 13th day of
17 January, AD, 1998, or thereabout and before the filing of
18 the Information, at and within the County of Washoe, State
19 of Nevada, did willfully and unlawfully take personal
20 property, to wit: a Glock .45 caliber handgun; Glock
21 magazines; a flashlight; and handcuffs from the person of
22 Sergeant George Sullivan, at or near the information kiosk
23 located at the University of Nevada, Reno campus, Washoe
24 County, Nevada, against his will and by means of force or
25 violence to his person, and with the use of a hatchet and/or

1 other implement, which the said defendant used to strike
2 Sergeant George Sullivan repeatedly in the head and face,
3 and/or other blunt force trauma inflicted to the head and
4 upper torso.

5 Count III, robbery with the use of a firearm, a
6 violation of NRS 200.380 and NRS 193.165, a felony, in the
7 manner following:

8 That the said defendant on the 13th day of
9 January, AD, 1998, or thereabout, and before the filing of
10 the Information, at and within the County of Washoe, State
11 of Nevada, did willfully and unlawfully take personal
12 property, to wit, U.S. currency from the person of Patricia
13 Misito, clerk of the 7-11 store located at 710 Baring
14 Boulevard, Washoe County, Nevada, against her will and by
15 means of force or violence or fear of immediate or future
16 injury to her person and with the use of a large caliber
17 handgun which the said defendant displayed to the victim and
18 demanded money.

19 Count IV, robbery with the use of a firearm, a
20 violation of NRS 200.380, and NRS 193.165, a felony in the
21 manner following:

22 That the said defendant on the 13th day of
23 January, AD, 1998 or thereabout and before the filing of
24 this Information, at and within the County of Washoe, State
25 of Nevada, did willfully and unlawfully take personal

1 property, to wit, U.S. currency from Diana Lynn Shouse, the
2 clerk at said establishment, at the Jackson Food Mart
3 located at 2595 Clearacre lane, Washoe County, Nevada,
4 against her will and by means of force or violence or fear
5 of immediate or future injury to her person and with the use
6 of a large caliber handgun, which this defendant displayed
7 to the victim and demanded money.

8 Count V, grand larceny, a violation of NRS
9 205.220, a felony, in the manner following:

10 That the said defendant on the 13th day of
11 January, AD, 1998, or thereabout and before the filing of
12 this Information, at and within the County of Washoe, State
13 of Nevada, did willfully and unlawfully steal, take and
14 drive away the personal property of Louis D. Hill, to wit, a
15 certain black four door 1993 Toyota Camry bearing Nevada
16 license plate 029 HPY, with the intent then and there to
17 permanently deprive the owner thereof.

18 To the charges stated in the Information, the
19 defendant, Siaosi Vanisi, also known as Pe, also known as
20 George, pled not guilty.

21 An Information is a formal method of accusing a
22 defendant of a crime. It is not evidence of any kind
23 against the accused and does not create any presumption or
24 permit any inference of guilt.

25 If in these instructions any rule, direction or

1 idea is stated in varying ways, no emphasis thereon is
 2 intended by me and none must be inferred by you. For that
 3 reason you are not to single out any certain sentence or any
 4 individual point or instruction and ignore the others, but
 5 you are to consider all the instructions as a whole and to
 6 regard each in the light of all the others.

7 If during this trial I have said or done
 8 anything which has suggested to you that I'm inclined to
 9 favor the position of either party, you will not be
 10 influenced by any such suggestion.

11 I have not expressed nor intended to express
 12 any opinion as to which witnesses are or are not worthy of
 13 belief, what facts are or are not established, or what
 14 inference should be drawn from the evidence. If any
 15 expression of mine has seemed to indicate an opinion
 16 relating to any of these matters, I instruct to you
 17 disregard it.

18 Although you are to consider only the evidence
 19 in the case in reaching a verdict, you must bring to the
 20 consideration of the evidence your everyday common sense and
 21 judgment as reasonable men and women. Thus, you are not
 22 limited solely to what you see and hear as the witnesses
 23 testify. You may draw reasonable inferences which you feel
 24 are justified by the evidence, keeping in mind that such
 25 inferences should not be based on speculation or guess.

1 A verdict may never be influenced by sympathy,
2 passion, prejudice or public opinion. Your decision should
3 be the product of sincere judgment and sound discretion in
4 accordance with these rules of law.

5 It is the duty of attorneys on each side of the
6 case to object when the other side offers testimony or other
7 evidence which counsel believes is not admissible.

8 When the Court has sustained an objection to a
9 question, the jury is to disregard the question and may draw
10 no inference from the wording of it, or speculate as to what
11 the witness would have said if permitted to answer.

12 Nothing that counsel say during the trial is
13 evidence in the case.

14 The evidence in a case consists of the
15 testimony of the witnesses and all physical or documentary
16 evidence which has been admitted.

17 The penalty provided by law for the offense
18 charged is not to be considered by the jury in arriving at a
19 verdict.

20 Neither the prosecution nor the defense is
21 required to call as witnesses all persons who may appear to
22 have some knowledge of the matters in question in this
23 trial.

24 There are two types of evidence from which a
25 jury may properly arrive at a verdict. One is direct

1 evidence, such as the testimony of an eyewitness. The other
2 is circumstantial evidence, the proof of a chain of
3 circumstances pointing to the existence or nonexistence of a
4 fact in issue.

5 The law makes no distinction between direct and
6 circumstantial evidence but requires that before convicting
7 a defendant the jury be satisfied of the defendant's guilt
8 beyond a reasonable doubt from all the evidence in the case.

9 To the jury alone belongs the duty of weighing
10 the evidence and determining the credibility of the
11 witnesses. The degree of credit due a witness should be
12 determined by his or her character, conduct, manner upon the
13 stand, fears, bias, impartiality, reasonableness or
14 unreasonableness of the statements he or she makes and the
15 strength or weakness of his or her recollections viewed in
16 the light of all the other facts in evidence.

17 If the jury believes that any witness has
18 willfully sworn falsely, they may disregard the whole of the
19 evidence of any such witness.

20 A person is qualified to testify as an expert
21 if he or she has special knowledge, skill, experience,
22 training or education sufficient to qualify him or her as an
23 expert on the subject to which his or her testimony relates.

24 Duly qualified experts may give their opinions
25 on questions and controversy at a trial. To assist you in

1 deciding such questions, you may consider the opinion and
2 the reasons given for it, if any, by the expert who gives
3 the opinion. You may also consider the qualifications and
4 credibility of the expert.

5 You are not bound to accept an expert opinion
6 as conclusive but should give it the weight to which you
7 find it to be entitled. You may disregard any such opinion
8 if you find it to be unreasonable.

9 In every crime there must exist a union or
10 joint operation of act and intent.

11 The burden is always upon the prosecution to
12 prove both act and intent beyond a reasonable doubt.

13 Intent may be proved by circumstantial
14 evidence. It rarely can be established by any other means.
15 While witnesses may hear and see and thus be able to give
16 direct evidence of what a defendant does or fails to do,
17 there can be no eyewitness account of a state of mind with
18 which the acts were done or omitted, but what a defendant
19 does or fails to do may indicate intent or lack of intent to
20 commit the offense charged.

21 Every person charged with the commission of a
22 crime shall be presumed innocent unless the contrary is
23 proved by competent evidence beyond a reasonable doubt.

24 The burden rests upon the prosecution to
25 establish every element of the crime with which the

1 defendant is charged, and every element of the crime must be
2 established beyond a reasonable doubt.

3 A reasonable doubt is one based on reason. It
4 is not mere possible doubt but is such a doubt as would
5 govern or control a person in the more weighty affairs of
6 life. If the minds of the jurors after the entire
7 comparison and consideration of all the evidence are in such
8 a condition that they can say they feel an bidding conviction
9 of the truth of the charge, there is not a reasonable doubt.
10 Doubt to be reasonable must be actual, not mere possibility
11 or speculation.

12 Murder is the unlawful killing of a human
13 being, with malice aforethought, either express or implied.
14 The unlawful killing may be effected by any of the various
15 means by which death may be occasioned.

16 Murder is further divided into murder of the
17 first degree and murder of the second degree.

18 As it applies to this case, murder of the first
19 degree is:

20 premeditated and deliberate murder or
21 murder committed while lying in wait or
22 murder committed during the commission or in
23 the furtherance of a robbery.

24 All other types of murder are murder in the
25 second degree.

1 NRS 200.020 defines malice, express and
2 implied, as follows:

3 Express malice is that deliberate intention
4 unlawfully to take away the life of a fellow creature, which
5 is manifested by external circumstances capable of proof.

6 Malice may be implied when no considerable
7 provocation appears or when all the circumstances of the
8 killing show an abandoned and malignant heart.

9 Malice aforethought, as used in the definition
10 of murder, means the intentional doing of a wrongful act
11 without legal cause or excuse, or what the law considers
12 adequate provocation. The condition of mind described as
13 malice aforethought may arise not alone from anger, hatred,
14 revenge or from particular ill will, spite or grudge towards
15 the person killed, but may also result from an unjustifiable
16 or unlawful motive or purpose to injure another which
17 proceeds from a heart fatally bent on mischief, or with
18 reckless disregard of consequences and social duty.

19 The nature and extent of the injuries, coupled
20 with the repeated blows, may constitute evidence of
21 willfulness, premeditation and deliberation.

22 Unless felony murder applies, the unlawful
23 killing must be accompanied with deliberate and clear intent
24 to take life in order to constitute murder of the first
25 degree. The intent to kill must be the result of deliberate

1 premeditation.

2 Premeditation is a design, a determination to
3 kill, distinctly formed in the mind at any moment before or
4 at the time of the killing.

5 Premeditation need not be for a day, an hour or
6 even a minute. It may be as instantaneous as successive
7 thoughts of the mind. For if the jury believes from the
8 evidence that the act constituting the killing has been
9 preceded by and has been the result of premeditation, no
10 matter how rapidly the premeditation is followed by the act
11 constituting the killing, it is willful, deliberate and
12 premeditated murder.

13 Whenever death occurs during the perpetration
14 of certain felonies, including robbery, NRS 200.030 defines
15 this as a murder in the first degree. This is known as the
16 felony murder rule.

17 Therefore, an unlawful killing of a human
18 being, whether intentional, unintentional or accidental,
19 which is committed in the perpetration of a robbery, is
20 murder in the first degree if there was in the mind of a
21 defendant the specific intent to commit the crime of
22 robbery.

23 The specific intent to commit robbery must be
24 proven by the State beyond a reasonable doubt.

25 All verdicts in this case must be unanimous.

1 In considering Count I, murder, the State has alleged three
2 different theories of first degree murder. The three
3 theories of murder in the first degree are as follows.

4 Premeditated and deliberate murder; or
5 that the murder was perpetrated in the
6 furtherance of a robbery, or
7 the murder was committed by means of lying in
8 wait.

9 However, you need not be unanimous in your
10 finding as to either of the theories I have just outlined.

11 Thus, you do not have to agree on the theory of
12 murder in the first degree. It is sufficient that each of
13 you find beyond a reasonable doubt that the murder under any
14 one of the three theories was murder in the first degree.

15 Robbery is the unlawful taking of personal
16 property from the person of another or in his presence
17 against his will by means of force or violence or fear of
18 injury immediate or future to her person or property.

19 The value of property or money taken is not an
20 element of the crime of robbery, and it is only necessary
21 the State prove the taking of the property or money.

22 Grand larceny consists of the unlawful
23 stealing, taking and carrying away of the personal
24 property -- personal goods or property of another of a value
25 of \$250 or more with the intent to permanently deprive the

1 owner of the possession of such personal goods or property.

2 If you find the defendant guilty of any of the
3 first four counts of the Information, murder in the first
4 degree and/or robbery, you must then answer the question as
5 to whether the crime was committed with a deadly weapon.

6 A deadly weapon is any object, instrument or
7 weapon which is used in such a manner as to be capable of
8 producing, and likely to produce, death or great bodily
9 injury.

10 Each count charges a separate and distinct
11 offense. You must decide each count separately on the
12 evidence and the law applicable to it, uninfluenced by your
13 decision as to any other count. The defendant may be
14 convicted or acquitted on any or all of the offenses
15 charged. Your finding as to each count must be stated in a
16 separate verdict.

17 It is your duty as jurors to consult with one
18 another and to deliberate, with a view of reaching an
19 agreement if you can do so without violence to your
20 individual judgment. You each must decide the case for
21 yourself but should do so only after a consideration of the
22 case with your fellow jurors, and you should not hesitate to
23 change your opinion when convinced that it is erroneous.
24 However, you should not be influenced to vote in any way on
25 any question submitted to you by the single fact that a

1 majority of the jurors or any of them favor such a decision.
2 In other words, you should not surrender your honest
3 convictions concerning the effect or weight of evidence for
4 the mere purpose of returning a verdict or solely because of
5 the opinion of the other jurors.

6 The law does not compel a defendant in a
7 criminal case to take the witness stand and testify, and no
8 presumption of guilt may be raised, and no inference of any
9 kind may be drawn from the fact that the defendant has not
10 testified.

11 As stated before, the law imposes upon a
12 defendant -- the law never imposes upon a defendant in a
13 criminal case the burden or duty of calling any witnesses or
14 producing any evidence.

15 Upon retiring to the jury room you will select
16 one of your number to act as foreperson, who will preside
17 over your deliberations and who will sign a verdict to which
18 you agree.

19 When all 12 of you have agreed upon a verdict,
20 the foreperson should sign and date the same and request the
21 bailiff to return you to court.

22 Signed, District Judge Connie J. Steinheimer.
23 Counsel, you may proceed with opening closing.

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

1 On January 13th, 1998, at sometime between
2 about 25 minutes to one and five minutes to one in the
3 morning, Sergeant George Sullivan of the University of
4 Nevada, Reno, Police Department was murdered. There can be
5 no question of that having seen the evidence in this
6 courtroom over the last week.

7 What I would like to do now is to talk to you
8 about how some of the evidence ties together and to talk to
9 you about those issues that are not issues, and then we'll
10 get down to what is the issue in this case.

11 Murder is defined as the unlawful killing of
12 another human being. When you look at this exhibit that
13 Dr. Clark came in and testified to, you need to look at it
14 as evidence.

15 What comes out of this exhibit? It is not
16 pleasant to look at. There's absolutely no question.

17 But what is the evidence that is shown here?
18 It shows a man that was brutally beaten to death. This was
19 not a suicide. This was not an accidental death. This was
20 not a natural death, nor was it undetermined.

21 The other thing you need to look at when you
22 look at these photographs is does it give us a clue. Can
23 Sergeant Sullivan give us some information to help make your
24 decisions that you need to make within the next few hours?
25 Undoubtedly he talked to us.

1 There's absolutely no question that this is the
2 weapon that was used to murder Sergeant George Sullivan. If
3 you remember Dr. Clark's testimony, she went through using
4 the demonstrative evidence, the undamaged hatchet, she went
5 through and showed you how this hatchet, how the head of it
6 matched up to various wounds that Sergeant Sullivan
7 suffered.

8 Look at them, compare them. Remember when she
9 talked about extreme force being used to break the bones
10 that were broken and take a look at the shafts of the
11 undamaged hatchet and the murder weapon. Compare them for
12 yourself.

13 And one other thing to remember on this weapon.
14 Sergeant George Sullivan's blood was found on it. It was
15 recovered within an hour after the murder. Or it was
16 spotted again at the apartment. Excuse me. It wasn't
17 recovered till later.

18 The murder is not really at issue here.

19 What else is not at issue? Let's talk about
20 the armed robberies. Counts III and IV. This is what you
21 get to do, because you will have this evidence. Compare.
22 Take a look.

23 This is from the Jackson Food Mart. This is
24 defendant Vanisi before he was clean shaven. Look for
25 yourself. You'll have the opportunity to see these.

1 Absolutely no question that an armed robbery occurred at the
2 7-11. Absolutely no question that an armed robbery occurred
3 at Jackson's Food Mart.

4 Defendant Vanisi walked in with a gun and
5 demanded money and received money. That's it. What else?

6 Count V, grand larceny of a motor vehicle.
7 Louis Hill's car. He left it parked running. It's gone.
8 It's found in Salt Lake City.

9 You heard statements made today about how it
10 was a stolen car from Reno. Louis Hill didn't know
11 Mr. Vanisi and did not ever give him permission to take his
12 car.

13 I submit to you as we're sitting here right
14 now, Counts III, IV and V are proven. There is no other
15 verdict except guilty.

16 As to Counts I and II, the murder and the
17 robbery of Sergeant George Sullivan, all the elements are
18 proven. The only question is who. Who did the murder, who
19 did the armed robbery?

20 Now let's take a look at that.

21 "I want to kill a cop. Watch me.

22 "Wait until I kill a cop and rob a store.

23 "There was a police station, and he wanted to
24 kill a cop."

25 He is I. I don't think I need to tell you

1 that. You have been very attentive.

2 "He was going to kill a cop, a police officer,
3 with an ax.

4 "He wanted to be walking, Doobie as a cover,
5 and sneak up behind a cop and kill him.

6 "He wanted to kill a white cop because his wife
7 left him for a white cop.

8 "He said he wanted to kill a cop more than 20
9 times. He was going to kill a cop, take his gun and radio.
10 He wanted to kill a white cop. He wanted to kill a cop with
11 a hatchet."

12 Think back among the witnesses you saw and
13 listened to before the murder. Those are friends of Siaso
14 Vanisi. Those were his acquaintances, and they came in here
15 and told you about these statements he made. Unfortunately,
16 no one took him real serious at that time.

17 Remembering and thinking about keeping these
18 statements in mind, what else do we know in the way of the
19 evidence? Defendant Vanisi came to Reno, you heard, a week,
20 two weeks, before the killing. He brought with him a wig, a
21 beanie and a leather jacket.

22 The wig, a beanie, and a leather jacket.
23 Described as a red or maroon leather jacket.

24 On Friday, January 9th, 1998, he went to
25 Wal-Mart. There he purchased a hatchet, the murder weapon,

1 for \$7.

2 He also purchased a pair of brown or tan
3 leather gloves.

4 Saturday night, he went to the dance. This was
5 his partner (indicating the hatchet).

6 Sunday night, he took an unsuccessful trip at
7 hunting a cop. Remember, Teki weenied out and said no and
8 drove him home. But he wanted to be dropped where he could
9 sneak up on and kill a cop.

10 Monday night, about 10:30, we have defendant
11 Siaosi Vanisi at the house on Sterling. You'll have these
12 again so you can see them and look at them. Remember, we
13 described this one, University of Nevada campus right here.
14 The actual place where Sergeant George Sullivan was
15 murdered.

16 The house on Sterling, 1545 Sterling, big park
17 right here behind it. Valley Road, and there is the house.
18 Not very far from the campus.

19 Who else lived on Sterling at that house? His
20 cousins, meaning Mr. Vanisi's, and one other important
21 player in this overall drama. Doobie. Doobie lived there.

22 About 10:30, defendant was still at the house.

23 Tuesday morning, at about 1208 or eight minutes
24 after midnight, a young lady went to pick up her dad every
25 night because if she didn't get there on time, dad was

1 hooking it down the street. Who did she see when she went
2 up on campus? In fact, she said she came up Virginia
3 Street, turned in right here at this intersection, and right
4 in this area where this red dot is, she has her own dog, she
5 loves dogs, she sees Doobie.

6 Doobie isn't alone. Doobie has a man with
7 him -- I don't know if Doobie is a him or her -- but Doobie
8 has a person that scares her. This man right here.

9 She goes and waits for a few minutes, picks up
10 her dad right in this area, comes back out, comes back down,
11 and guess what, Doobie is right here. Remember she talked
12 about the bridge that goes across Virginia Street. Doobie
13 is in that area now, and here is our man, walking down
14 towards Manzanita Lake. It isn't much longer that that man
15 is seen right down here again by a totally different person,
16 identified as this man.

17 Now when you get the various items of evidence,
18 you start looking at them, I have a little math thing here
19 for you. The wig and the beanie. And Mr. Vanisi before he
20 has his beard shaved off. You add all those together, take
21 a look at it, there he is. Positively identified in this
22 courtroom as being on the university campus a short period
23 of time before Sergeant Sullivan is murdered, and being in
24 the area of Ninth and Wells.

25 This was about, when he was seen down in here,

1 the call, the stop was made at 17 minutes after midnight.
2 So what are we talking? 17, 20 minutes after midnight?

3 Sergeant Sullivan leaves that call and goes
4 back up on the hill. What happened? Well, until today you
5 didn't know.

6 Vainga Kinikini came in, again a relative of
7 the defendant. And he tells some of the things that he was
8 told that happened.

9 How Mr. Vanisi told him that he saw the officer
10 make the stop and waited for him, 10, 15 minutes. That he
11 put the sneak on him.

12 Remember one of those statements that was made,
13 one of the other people was he wanted to put a sneak on a
14 police officer.

15 That he also wanted to catch a police officer
16 who was doing his paperwork or was on his coffee break.
17 George Sullivan was doing his paperwork, parked up under the
18 lights, his coffee cup was in the car.

19 As you can see in this photograph, the inside
20 of Sergeant Sullivan's car, and there is purple or actually
21 more aqua-marine or turquoise. Might help if I turn the
22 picture the right way, too. Right there.

23 How do we know he was doing paperwork? Not
24 only did Vainga tell you that this morning, but we also have
25 the field interview card that was not completed Sergeant

1 Sullivan was writing on.

2 After the greeting was made, defendant started
3 hitting Sergeant Sullivan. He said Sergeant Sullivan got
4 one shot in. Maybe, maybe not. We know from the extent of
5 the injuries and the damage that he didn't get many shots
6 in, if any. We also know that there weren't many defensive
7 wounds. The left hand where the fingers were almost cut
8 off.

9 Then he kicked him in the head and stomped him.
10 Is there evidence consistent with that? You heard
11 Dr. Clark. Enjoyed what he was doing. It was fun, it was
12 great.

13 We know the robbery was committed because when
14 you look at this photograph, you can see that Sergeant
15 Sullivan's gunbelt and weapon are missing.

16 Those were recovered later, as you heard the
17 evidence.

18 You have a photograph of what items were
19 actually taken. It was more than the gun and the gunbelt.
20 Included his radio, handcuffs, some ammo magazines, and his
21 gun. But that wasn't even recovered with this batch.

22 We talked about how he went along the canal and
23 how he got rid of the beanie and the wig. Now you know what
24 it meant when Mr. Moreira came in here, and we had the
25 pictures of the canal, and how he also talked about

1 recovering the beanie and the wig in the canal after the
2 water was drained. He also talked about some dogs barking
3 at him. So Mr. Moreira went back and recovered these items.

4 Doobie led him home back to Sterling. You have
5 heard how the area was described, how there is a path that
6 runs right up along here. Then if you look, you'll see a
7 road right here going across, a park, and then there is the
8 house on Sterling. The wig and the beanie were recovered
9 right here behind 1215 Beech, and the water runs this way,
10 toward the north end of the map.

11 Before 1:30 a.m., or 2:00 to 2:30, is what Mana
12 estimated it was, remember he was watching movies, the
13 people that said before 1:30 were on the computer and saw
14 the time displayed on the computer itself. So whichever
15 time you want to adopt is up to you. The wig and the beanie
16 are gone. And he's carrying a white plastic bag.

17 He shows up at the apartment wearing the jacket
18 with the gloves, with the hatchet. Sergeant Sullivan's
19 blood was identified on all three of those items. You
20 recall from the chart that Jeff Riolo brought in here and
21 explained the findings of his DNA testing.

22 Later Tuesday, Mr. Vanisi goes to the Mormon
23 church. You remember that. He approaches Teki and shows
24 him a gun. Teki identified this as the gun he was shown.
25 Sergeant Sullivan's gun.

1 Later on, if you recall, a few days later, the
2 pistol belt and the other missing items of Sergeant
3 Sullivan's are found at the Rock Street apartment, and they
4 are contained in a white plastic bag. Whose fingerprint was
5 on the white plastic bag? Defendant Vanisi's.

6 There was a second print that was unidentified.
7 But defendant Vanisi's was identified as one of the prints.

8 All of those items are in this box. But I'm
9 going to caution you before you reach in and start handling
10 those very much, these were treated with Super Glue. They
11 are marked as a biohazard. You can open the box, take a
12 look at them, but I wouldn't handle them a whole lot. There
13 are photographs for you to look at closer.

14 The recovery of the jacket and the gloves by
15 Detective Duncan.

16 Recovery of the hatchet, Rock Boulevard by the
17 front door, with blood on it.

18 Later on Tuesday night, there are two armed
19 robberies and a car theft, and defendant Vanisi disappears.
20 Massive manhunt going on, arrest warrant obtained. Salt
21 Lake City calls Wednesday and says we have him up in Salt
22 Lake City. He is barricaded in his cousin's house.

23 Not only do you have the statements that come
24 from defendant Vanisi while he's there, but also if you will
25 recall, there are several other pieces of evidence that come

1 from that location. Renee, his cousin, describes defendant
2 Vanisi as wearing a purple shirt with cutoff sleeves. If
3 you remember, this shirt was identified as being worn by the
4 man who committed at least one of the two robberies.

5 The boots that were being worn by defendant
6 Vanisi also have Sergeant Sullivan's blood on them,
7 identified by Mr. Riolo as shown on the chart.

8 Between the statements that were made here
9 before he left and the statements that were made in Salt
10 Lake City, we have, "I killed a cop." No question about
11 that statement.

12 "There was a policeman killed. Did you do it?

13 "Yes.

14 "After the purchase of the hatchet, said he was
15 looking for a white police officer.

16 "Said he had committed a murder.

17 "I was beating his ass.

18 "Kicked him over and over and then stomped on
19 his head.

20 "It was fun.

21 "It was great.

22 "I don't feel nothing, man."

23 Ladies and gentlemen, we're never required to
24 prove motive, but the question has to come about why. He
25 made several statements for his own reasons that he hates

1 white people. He stated that his wife left him for a white
2 cop, and therefore, he wanted to kill a white cop.

3 Whatever the reason, Sergeant Sullivan didn't
4 have anything to do with it. This didn't involve him.

5 You talk about being at the wrong place at the
6 wrong time, Sergeant Sullivan was alone on the university
7 campus January 13th, 1998, when he became the target of a
8 stalker and was murdered for no reason other than he was a
9 white cop.

10 This also didn't involve Patricia Misito or
11 Caleb Bartelheim or Diana Shouse. I don't know if that
12 answers the why or not, but whether it does or not, there's
13 absolutely no question, look at the evidence, deliberate,
14 take all the time you need and return with a verdict of
15 guilty; guilty of murder of the first degree, guilty of
16 robbery, armed; guilty of robbery, armed; guilty of robbery,
17 armed three counts; and guilty of grand larceny.

18 Thank you very much for your time.

19 THE COURT: Counsel.

20 MR. GREGORY: Thank you, Your Honor.

21 We thank this jury. We would waive our closing
22 argument.

23 THE COURT: Ladies and gentlemen of the jury,
24 we have reached the stage in the proceedings when I'm about
25 to allow you to go into the jury room and begin your

1 deliberations. When you go into the jury room to begin your
2 deliberations, you will be able to take with you into the
3 jury room the notes that you have taken through the course
4 of this trial, as well as all the evidence which has been
5 received in this case. The clerk will be bringing the
6 evidence in to you in a few minutes after you have retired.

7 You will receive the written instructions of
8 the Court, and you will have all this with you in the jury
9 room. We also have a television set in there with a video
10 attached in case you want to review any of those things that
11 have been admitted.

12 We have thought that this trial originally was
13 going to take three weeks, so we selected lots of you so
14 that everyone could get sick or many people could get sick.
15 As it turned out, we haven't lost very many of you, and
16 we're down to having more than I need to deliberate.

17 Therefore, counsel and I have determined the
18 first 12 of you who will be deliberating. The other three,
19 however, will still be required to remain with us. Your job
20 is not over even though you are not deliberating in this
21 phase of the proceedings.

22 I am going to ask that you follow the
23 admonition that I have given you at all other breaks, and
24 that is, Mr. Carmichael, Mr. Costello and Miss Frazer,
25 unlike your fellow jurors, you will not be allowed to

1 discuss the case among yourselves. Furthermore, you may not
2 begin to form opinions about the ultimate outcome of this
3 matter.

4 You must continue to not view any news media
5 accounts regarding this case or listen to them or read any
6 news media accounts.

7 And we also must keep you in a position where
8 you will not be influenced by anyone, and if anyone should
9 attempt to influence you, you must report it to one of the
10 officers taking charge of you.

11 Now, for the interim of this period of time, in
12 a few minutes I'm going to swear the officers to take charge
13 of the jury and the alternates, and you will proceed with
14 Mr. Anderson into the jury room, collect your personal
15 belongings and then go into a separate jury room where you
16 will remain together. But while you remain together, you
17 may not discuss the case amongst the three of you.

18 Do you all understand this admonition as well
19 as the instructions I have given you?

20 THE ALTERNATE JURORS: Yes.

21 THE COURT: Do you all agree to follow that
22 admonition?

23 THE ALTERNATE JURORS: Yes.

24 THE COURT: Thank you. Ladies and gentlemen of
25 the jury, the rest of you will begin your deliberations as

1 soon as I swear the officers to take charge of you. You
2 will go into the jury room and begin your work.

3 The clerk will now swear the officers to take
4 charge.

5 (Officers sworn to take charge of jury.)

6 THE COURT: Ladies and gentlemen of the jury,
7 and alternates, you may proceed with the bailiffs into the
8 jury room.

9 (Whereupon, the jury retired to deliberate, and
10 the following proceedings were held in open
court, outside the presence of the jury.)

11 THE COURT: Counsel, I think while I was
12 reading the instructions you probably heard, if you were
13 reading along with me, you saw a couple of typographical
14 errors that we hadn't caught previously. I have provided
15 those to my administrative assistant. She's corrected those
16 to comport with the typographical errors. The clerk has the
17 originals that I read from which show the typographical
18 errors.

19 Those will all be corrected and provided in
20 their corrected form to the jury, as well as the verdict
21 forms that we discussed before.

22 Anything further for the record at this time?

23 MR. GREGORY: No, Your Honor.

24 MR. GAMMICK: No, Your Honor.

25 THE COURT: Deputy Uptain, you are alternate

1 bailiff, so you are going to have to help me with this. We
 2 are moving our alternates to another jury room. So if the
 3 audience would give us a few minutes before you exit the
 4 courtroom, I would appreciate it, and Deputy Uptain will
 5 take care of that.

6 Thank you. Court is in recess.

7 (Recess taken at 2:38 p.m.)
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1 RENO, NEVADA, MONDAY, SEPTEMBER 27, 1999, 3:23 P.M.

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3
4 (Whereupon, the following proceedings were held
5 in chambers, outside the presence of the jury.)

6 THE COURT: Let's go on the record.

7 Let the record reflect that we are convened in
8 chambers with Mr. Gregory, Mr. Stanton and Mr. Gammick and
9 the Court clerk for the purpose of reviewing the question
10 that has been received from the jury. The question is:
11 "Can we get a copy of NRS 200.380 and NRS 193.165?"

12 Counsel, does Mr. Vanisi waive his appearance
13 for purposes of answering the jury questions?

14 MR. GREGORY: He does, Your Honor.

15 THE COURT: I intend to answer the question:
16 The law as it applies to this case has been given to you.
17 You may not review anything else -- any other -- help me
18 out, gentlemen. Do you have an idea?

19 MR. GREGORY: The law that you are to consider
20 has been given to you by this Court through instructions.

21 MR. GAMMICK: And then I was even thinking, if
22 the Court is inclined to add a little bit more than
23 that to help them out, to the effect that even though it may
24 not be identified specifically by statute. At least they
25 will know they have been instructed on all the law to

1 include the specific sections they are asking for.

2 (Off the record.)

3 THE COURT: After looking at the alternatives,
4 I have come up with: You may not review the Nevada Revised
5 Statutes. However, this law has been given to you already
6 in the instructions of the Court.

7 Any objection to that answer?

8 MR. GAMMICK: No.

9 MR. GREGORY: No, Your Honor.

10 THE COURT: Then the clerk will type that, and
11 I'll sign it, and we'll get it to the jury.

12 (Recess at 3:31 p.m.)

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RENO, NEVADA, MONDAY, SEPTEMBER 27, 1999, 4:31 P.M.

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

THE COURT: Deputy, have you heard from the jury?

DEPUTY BROKAW: Yes, Your Honor, they have informed me they have a verdict.

MR. GREGORY: Your Honor, may we approach?

THE COURT: Do you need a court reporter, or is it administrative?

MR. GREGORY: I don't think it is necessary. It is just procedural.

(Whereupon, a bench conference was held among Court and counsel:)

THE COURT: Go ahead and bring the jury in.

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

THE COURT: The clerk will now call the roll of the jurors and alternates.

THE CLERK: Bonnie K. James.

JUROR JAMES: Here.

THE CLERK: Nettie Horner.

JUROR HORNER: Here.

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1 THE CLERK: Shaylene J. Grate.
2 JUROR GRATE: Here.
3 THE CLERK: Jeannette L. Minassian.
4 JUROR MINASSIAN: Here.
5 THE CLERK: Larry F. Mullins.
6 JUROR MULLINS: Here.
7 THE CLERK: James D. McMorran.
8 JUROR McMORRAN: Here.
9 THE CLERK: Michael Sheahan.
10 JUROR SHEAHAN: Here.
11 THE CLERK: Alice J. Bell.
12 JUROR BELL: Here.
13 THE CLERK: Leslie C. Johnson.
14 JUROR JOHNSON: Here.
15 THE CLERK: James L. Ayers.
16 FOREPERSON AYERS: Here.
17 THE CLERK: Robert T. Buck.
18 JUROR BUCK: Here.
19 THE CLERK: Richard A. Tower.
20 JUROR TOWER: Here.
21 THE CLERK: Shaun L. Carmichael.
22 JUROR CARMICHAEL: Here.
23 THE CLERK: Pete S. Costello.
24 JUROR COSTELLO: Here.
25 THE CLERK: Lori T. Frazer.

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JUROR COSTELLO: Here.

THE COURT: Ladies and gentlemen of the jury,
have you chosen a foreperson?

THE JURY: Yes, we have.

THE COURT: Who is it?

FOREPERSON AYERS: Myself.

THE COURT: You, Mr. Ayers?

Has the jury reached a verdict?

FOREPERSON AYERS: Yes, we have.

THE COURT: Would you please hand the verdicts
to the bailiff who in turn will hand them to the Court?

The bailiff approach, please.

THE COURT: The clerk will read the verdicts.

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

We the jury in the above-entitled matter find
the defendant, Siasos Vanisi, also known as Pe, also known
as George, guilty of murder, dated this 27th day of
September, 1999, James L. Ayers, foreperson.

Having found the defendant guilty of murder,
you must answer the following question: Was it murder of
the first degree or murder of the second degree?

1 Murder of the first degree. James L. Ayers,
2 foreperson.

3 If you have found the defendant guilty of
4 murder, you must answer the following question: Was a
5 deadly weapon used in the commission of this murder as
6 defined in these instructions? Yes. James L. Ayers,
7 foreperson.

8 Verdict: We the jury in the above-entitled
9 matter find the defendant Siaosi Vanisi, also known as Pe,
10 also known as George, guilty of Count II, robbery. Dated
11 this 27th day of September, 1999, James L. Ayers,
12 foreperson.

13 If you have found the defendant guilty of
14 robbery, you must answer the following question: Was a
15 deadly weapon used in the commission of this robbery as
16 defined in these instructions? Yes. James L. Ayers,
17 foreperson.

18 Verdict: We the jury in the above-entitled
19 matter find the defendant, Siaosi Vanisi, also known as Pe,
20 also known as George, guilty of Count III, robbery, dated
21 this 27th day of September, 1999, James L. Ayers,
22 foreperson.

23 If you have found the defendant guilty of
24 robbery, you must answer the following question: Was a
25 deadly weapon used in the commission of this robbery as

1 defined in these instructions? Yes. James L. Ayers,
2 foreperson.

3 Verdict: We the jury in the above-entitled
4 matter find the defendant, Siaosi Vanisi, also known as Pe,
5 also known as George, guilty of Count IV, robbery. Dated
6 this 27th day of September, 1999. James L. Ayers,
7 foreperson.

8 If you have found the defendant guilty of
9 robbery, you must answer the following question: Was a
10 deadly weapon used in the commission of this robbery as
11 defined in these instructions? Yes. James L. Ayers,
12 foreperson.

13 Verdict: We the jury in the above-entitled
14 matter find the defendant, Siaosi Vanisi, also known as Pe,
15 also known as George, guilty of Count V, grand larceny,
16 dated this 27th day of September, 1999. James L. Ayers,
17 foreperson.

18 THE COURT: Ladies and gentlemen of the jury,
19 are these your verdicts as read, say you one, say you all?

20 THE JURY: Yes.

21 THE COURT: Does either the State or the
22 defense wish the jury polled?

23 MR. GAMMICK: No, Your Honor.

24 MR. GREGORY: No thank you, Your Honor.

25 THE COURT: Ladies and gentlemen of the jury,

1 as you know, from your process of selection of the jury,
2 your job here is not finished at this time. We will be
3 moving into a penalty hearing.

4 However, we're not able to tell you exactly
5 when that penalty hearing will begin. The parties are
6 looking for their witnesses that they want to put on for the
7 penalty hearing, and we do not know for sure what day we can
8 start this hearing. I'd like to begin it on Wednesday
9 morning, but I can't tell you now for sure.

10 What I'm going to ask that you do is call my
11 chambers, the direct line into the chambers, between four
12 and five tomorrow afternoon, at which time one of the
13 members of my staff will advise you as to what time to be
14 here. If at all possible it will be 9:00 o'clock Wednesday
15 morning. But it may not be possible to get all the
16 witnesses here that are necessary.

17 We will give you instructions either to call at
18 another day or a specific time and date to report.

19 Now during this break I want to remind everyone
20 that you no longer are allowed to discuss the case among
21 yourselves. Your deliberations on this phase of the
22 proceedings are over. Therefore, you may not form or
23 express any opinion about the ultimate outcome with regard
24 to penalty. You may not discuss the case among yourselves
25 or with anyone else until it's given to you again for

1 deliberations.

2 You may not allow anyone to attempt to
3 influence you in any manner regarding this case. And if
4 anyone does attempt to influence you with regard to it, you
5 are to report such an occurrence to the court through the
6 bailiff immediately.

7 You are not to read, listen to or view any news
8 media accounts regarding this case. Now ladies and
9 gentlemen, of the alternates, you are under the same
10 obligations as you have been at all other times. You will
11 be remaining with the jury, and you will return for the
12 penalty phase of this hearing. You will hear the evidence
13 again, and again, I don't know for sure that everyone will
14 stay healthy and able to attend the deliberations, and if
15 for some reason there is a vacancy on the jury for the
16 penalty phase, you will be substituted on to the jury and
17 you will begin deliberations with the rest of the members of
18 the jury.

19 So it's very important that you take these
20 admonitions seriously. They do apply to you even though you
21 were not able to deliberate on the guilt phase in this case.

22 Ladies and gentlemen of the jury, when I say
23 you can't talk about it, when you go home tonight and go
24 back to work tomorrow, people are going to question you, and
25 you must be assertive about the inability to talk about it.

1 You can't talk about how you came up with this verdict, what
2 you talked about with each other in getting this verdict,
3 and you cannot talk about or allow anyone else to talk about
4 the potential penalties involved in this case. And walk
5 away, leave, whatever you need to do. We will assist you if
6 anyone is persistent in their following you or anything like
7 that. But be sure that you are vigilant in following this
8 admonition.

9 We will be hearing additional evidence. You
10 will be hearing arguments and opening statements from both
11 sides in this case when we get to the additional piece of
12 the rest of the case. So you do not have all the evidence
13 before you. So it is absolutely important that you not
14 begin to form or express any opinions.

15 Does anyone on the jury misunderstand this or
16 have any questions about the process?

17 Now, Mr. Ayers, it's going to be your
18 responsibility when the jury is all gathered in the jury
19 room to be sure that you followed the admonition that I have
20 given. So you have a double duty. You have to do it for
21 yourself as well as notify me if there is any problems with
22 regard to the jury.

23 FOREPERSON AYERS: Okay.

24 THE COURT: Now does everyone -- the bailiff
25 will provide you with that number if you don't already have

1 it for the chambers. Remember, it's between four and five
2 tomorrow afternoon that you will be calling me in my
3 chambers to speak with the staff about your next appearance.
4 Plan on Wednesday morning but don't make anything too final
5 because I don't know for sure. The attorneys will work
6 today and all tomorrow morning trying to locate all the
7 witnesses.

8 Ladies and gentlemen of the jury, at this time
9 I'm going to excuse you until your further call. Remember
10 the admonition. Do not discuss the case among yourselves or
11 with anyone else. Do not form or express any opinion with
12 regard to the ultimate outcome of this case.

13 Do not allow anyone to attempt to influence you
14 with regard to it in any manner. If anyone were to do so,
15 notify the bailiff outside the presence of your other jurors
16 as soon as possible.

17 Do not read, listen to or view any news media
18 accounts regarding this case should there be any.

19 Is Mr. Anderson going to go out with the jury?

20 DEPUTY BROKAW: Yes, Your Honor.

21 THE COURT: Mr. Anderson, would you go out with
22 the jury into the jury room?

23 MR. ANDERSON: Yes, Your Honor.

24 (Whereupon, the jury was excused for the day,
25 and the following proceedings were held in open
court:)

1 THE COURT: The audience will be seated,
2 please. Will everyone please remain seated and return to
3 their seats? Thank you.

4 Which television station is filming today?

5 FROM THE AUDIENCE: Two.

6 THE COURT: The bailiff will be confiscating
7 your tape until we have a hearing with regard to the
8 shooting of the jurors. If there's anyone here with you
9 besides the camera man, you may talk about it with the
10 bailiff, and we can have a hearing if there is a problem.

11 FROM THE AUDIENCE: Okay.

12 THE COURT: The bailiff noticed that the jurors
13 were photographed. In addition, we have another hearing
14 tomorrow at 1:30 with regard to the potential of setting the
15 penalty phase. Until then, counsel, we'll be in recess.
16 Court is in recess.

17 (Recess taken for day at 4:44 p.m.)

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STATE OF NEVADA,)
)
COUNTY OF WASHOE.)

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

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

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

DATED: At Reno, Nevada, this 27th day of September, 1999.

CERTIFIED ORIGINAL
of the transcript and notes of the proceedings
entitled herein, and the same are true and correct
as the same were taken by the undersigned
KAREN YATES, CCR No. 195
DATE: 9/27/99
ERIC V. NELSON, CCR No. 57
v9

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FILED

Code No. 4185

SEP 30 1999

AMY HARVEY
By: *m Stone*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,)	
)	
Plaintiff,)	Case No. CR98-0516
)	Dept. No. 4
vs.)	
)	
SIAOSI VANISI,)	
)	
Defendant.)	

TRIAL - VOLUME 7
September 28, 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: SIAOSI VANISI
Reported by: DENISE PHIPPS, CCR No. 234

ORIGINAL

SIERRA NEVADA REPORTERS (775) 329-6560

1 RENO, NEVADA, TUESDAY, SEPTEMBER 28, 1999, 1:30 P.M.

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

5
6 THE COURT: I've been in contact with Judge
7 Judith Koslowski, Department 10 in San Mateo County.

8 Counsel, why don't you tell me your version and
9 I can tell you what her version is.

10 MR. BOSLER: All right. I just got off the
11 phone with John Digiacinto. He's the assistant program
12 director for the Private Defenders Group in San Mateo
13 County. He's the person who has been generous enough to
14 help us with our out-of-state subpoenas. Four people were
15 present at the hearing today in San Mateo asking not to be
16 compelled to come to Nevada: Mr. Selsback, Mr. Verna,
17 Mr. McGinn and Ms. James. I believe the Court spoke to
18 most, if not all, of them and has reset a hearing for 4:00
19 tomorrow in which Mr. Digiacinto is supposed to provide some
20 additional pleadings in order to satisfy the Court down
21 there and secure the attendance of those people through this
22 out-of-state service.

23 My understanding is that the judge in
24 California will not compel Mr. Verna or Mr. McGinn unless
25 proof is shown that they both will return the evening of

1 October 4th. The judge is trying to accommodate some of the
2 business difficulties and other hardships that have been put
3 upon these persons as a result of the paperwork filed by our
4 office.

5 All these people, it's my understanding, will
6 be compelled -- if the Court's satisfied with the additional
7 pleadings, and at the hearing tomorrow at 4:00 all these
8 witnesses will be compelled to appear on October 4th. And
9 that's the information I have from Mr. Digiacinto.

10 I'd ask the Court to share with me any
11 additional information the Court has in that regard.

12 THE COURT: Well, I spoke twice with Judge
13 Koslowski this morning. She indicated to me that she took
14 an hour recess because there was absolutely no declaration
15 prepared or submitted with paperwork showing the necessity
16 of these witnesses. And that I don't know the name --

17 MR. BOSLER: Digiacinto.

18 THE COURT: They call him a private defender in
19 the county had requested a recess, and she gave him an hour
20 to go and try to contact you. Then the hearing went forward
21 after that period of time, and the problem was that
22 Mr. Selsback says he might have taught Mr. Vanisi but he
23 doesn't know, and nobody has spoken to him about it. And
24 Anna Marie Emma Jones is the secretary at the school but she
25 didn't start working there until the year after the

1 defendant quit going to school there. So she doesn't know
 2 what she's supposed to be testifying to. Mr. Verna has
 3 started firemen's academy. He can't be gone a long time.
 4 And he alleged to the Court that he was left up here for
 5 four days. He was brought for the prior trial and was left
 6 sitting around for four days without contact. And
 7 Mr. McGinn has a football game. He's a coach, and he has a
 8 football game Friday night, and the judge is not going to
 9 compel him to come until Monday.

10 Now, I have assured her that Mr. Verna would
 11 get on the stand on Monday the 4th and get off the stand.
 12 And she believes that Mr. Verna and Mr. McGinn, because they
 13 are contemporaries of the defendant's, that she doesn't
 14 necessarily think that it will be impossible for you to show
 15 the necessity for their testimony.

16 Your marginal candidates are Mrs. Jones, who
 17 you're going to have to show why, if she didn't even come to
 18 work until after the defendant wasn't at that school
 19 anymore, why she's necessary. And the same with
 20 Mr. Selsback. You'll have to remind him of how he knew the
 21 defendant and why there's a connection.

22 She also represented to me that the people in
 23 the hearing, Mr. McGinn, specifically, did not understand
 24 that he was signing a waiver of appearance and thought all
 25 he was doing was agreeing to appear at her hearing. And he

1 did actually sign a waiver for you all, but he appeared at
2 the hearing anyway because he didn't know what it was. So
3 the judge down there was very concerned about some of the
4 other people who may have signed waivers and not realized
5 that they're agreeing to appear.

6 Furthermore, neither Mr. Verna or Mr. McGinn
7 have their airline tickets yet. Now, yesterday I thought I
8 made it clear to counsel that it was my belief that someone
9 from the Washoe County Public Defender's Office should have
10 been at that hearing today physically present and that
11 someone should be down there with the tickets. I don't know
12 what the situation is, but there is another hearing tomorrow
13 afternoon. And I don't really think that a faxed copy of an
14 affidavit is sufficient given the circumstances here. These
15 witnesses are necessary. Someone from the Public Defender's
16 Office better drive down to San Mateo County, be present
17 before Judge Koslowski and explain why these witnesses are
18 necessary.

19 I'm telling you, before my second call with her
20 I was going to order you to do it. I'm not going to order
21 you to do it, because at least after the second hearing, a
22 couple of these people indicated that they had talked to
23 Crystal Calderone previously. But in the first hearing they
24 were telling the judge they hadn't even talked to anyone
25 from your office. Now they're admitting they have talked to

1 Ms. Calderone. But some as long ago as six months ago.
2 That's what the judge down there is getting.

3 As far as trying to start this hearing before
4 the 4th, there's no way. There wasn't anybody physically
5 down there today from the Public Defender's Office to talk
6 to the judge or these people. No one brought any tickets
7 down from the Public Defender's Office as alternative
8 transportation, even if these people would have agreed to
9 appear. There's other people that have signed waivers that
10 may or may not appear. I don't know how much -- the judge
11 was concerned that at least one person misunderstood what
12 they signed.

13 MR. BOSLER: Your Honor, may I reply?

14 THE COURT: Well, wait a minute. I'm telling
15 you and the State I don't see how we can start the hearing
16 before the 4th because I can't get the witnesses down here
17 before the 4th.

18 MR. GAMMICK: We still have our case to
19 present, Your Honor. Faced with that set of circumstances,
20 I believe we would prefer starting Friday morning. It's
21 going to take upwards of a day or less for us to present our
22 case. Then the defense can present theirs Monday morning,
23 or even if they have local witnesses, if we still have time
24 Friday afternoon, they can present those and present the
25 out-of-states Monday morning.

1 THE COURT: Okay. Now Mr. Bosler.

2 MR. BOSLER: Just to correct what I perceive as
3 some inaccuracies on the record. We've talked to all those
4 witnesses.

5 THE COURT: She's faxing me a copy of the
6 transcript from the hearing, because I wanted to see it.
7 But these people are saying they were contacted five or six
8 months ago by Crystal Calderone. Some of the people were
9 contacted again in August and they were served with
10 subpoenas on September 22nd.

11 MR. BOSLER: All the witnesses have been talked
12 to. The tickets that the Court mentioned are all E-tickets.
13 So although some people have actually had plane tickets, the
14 arrangements have been made as ticketless travel. I think
15 those people who think they don't have tickets actually do
16 have tickets. They just don't know the logistics or they've
17 forgotten what arrangements had been made.

18 THE COURT: The judge won't order them to be
19 here unless they have tickets. That's what she says.

20 MR. BOSLER: I've already asked my investigator
21 to fax affidavits to Mr. Digiacinto. He assured me that he
22 spoke to the same judge you talked to and she was going to
23 accept those affidavits, even though they were faxed; that
24 they set forth materiality. They do set forth materiality,
25 and this is a capital case, and I don't think I need to

1 remind the Court, that any information can be considered as
2 mitigation no matter how slight it may seem to us or even to
3 the Court in California. We're convinced that once the
4 Court does receive those affidavits, these people will be
5 compelled to appear.

6 I've also asked our investigator to fax
7 information regarding the E-ticket availability for
8 Mr. Verna and Mr. McGinn so they can make this a one-day
9 trip. Unfortunately, what you have, Judge, is that we were
10 prepared. We had these witnesses. We talked to them months
11 ago. This is before the first trial even began. After the
12 mistrial, we were gearing up to have them commit for the
13 second trial. When the Court continued that hearing two
14 weeks, we had to redo everything.

15 I've already been down there twice for hearings
16 and spoken to some of the witnesses, spoken to
17 Mr. Digiacinto, spoke to his other attorney who is handling
18 the case for me, Majeek Shamardi (phonetic). We've done all
19 we could to get these people up here. When the Court
20 continued the case for two weeks, it kind of threw us into a
21 spin to try to get new paperwork down there and recontact
22 these people. What you have is some people that have work
23 obligations and may have been reluctant just based upon the
24 nature of the case. Maybe it's human, just the way human
25 nature is, but they were reluctant to come up. Then to have

1 everything bumped another two weeks made them more
 2 reluctant. The people who now tell the court down there
 3 they don't have information, that's inaccurate. They do
 4 have information. They may not be willing to share it with
 5 the Court, but we've already essentially got the information
 6 we need from them; and once they're compelled to come up
 7 here, I think the Court's going to understand why they're
 8 important.

9 THE COURT: But I'm telling you that the judge
 10 will not compel them to appear unless she's satisfied
 11 tomorrow. And the only way you can be sure that she will be
 12 satisfied is if someone from here is down there confirming
 13 that they have a ticket and their materiality.

14 The statute in California is very specific.
 15 She can deny your request if it's just too much hardship on
 16 them.

17 MR. BOSLER: I disagree that that's what the
 18 law says down there.

19 THE COURT: That's what she says. I'm not a
 20 judge in California. I'm just telling you what she thinks
 21 her position is. If that's what she's saying and she's
 22 concerned, I know she has told me also that she will accept
 23 the faxed affidavit, but I think that this case is of such a
 24 serious nature that someone from here should go, especially
 25 since it's only a three-and-a-half-hour drive.

1 MR. BOSLER: None of the attorneys can give any
2 more information than what the investigator has and can put
3 down in the affidavit. So I mean I trust the Court will
4 leave that decision to us. But I've spoken to
5 Mr. Digiacinto. We're faxing stuff even as we speak,
6 E-ticket information. That will all be in his office today.
7 The tickets have already been purchased. We've been ready
8 to go. We were ready to go at the first trial. The short
9 continuance the Court allowed --

10 THE COURT: These people were not ready to go.
11 You didn't even have me sign any exemplars for the first
12 trial. When I gave you the two-week continuance, you had
13 not asked for any out-of-state process. I didn't get any
14 out-of-state process until the week before this trial
15 started. So you weren't all ready to go.

16 MR. BOSLER: I'd ask the Court to look at its
17 records because I was down there for hearings
18 for the out-of-state process for the first trial.

19 THE COURT: For the second date.

20 MR. BOSLER: That's what I mean. I was down in
21 San Francisco arguing pleadings.

22 THE COURT: The September 11th date?

23 MR. BOSLER: Yes.

24 THE COURT: For starting this trial on
25 September 7th?

1 MR. BOSLER: Yes.

2 THE COURT: I signed out-of-state process
3 request?

4 MR. BOSLER: I was down there with pleadings
5 that were signed or stamped by you. I don't know whether
6 there was a signature on there. It was a stamp.

7 THE COURT: Are you sure you didn't get them
8 from the chief judge? You might have. I don't know. It's
9 possible.

10 MR. BOSLER: Well, there were pleadings filed.
11 We were down there arguing this matter.

12 THE COURT: Did you have declarations with them
13 that day?

14 MR. BOSLER: Yes. Just to correct another
15 misconception. There is declarations. The Court down there
16 found that they were insufficient. Inasmuch as we didn't
17 want to disclose our witnesses and what they had to say to
18 the State, the declarations were maybe, in retrospect, maybe
19 a little bit too conclusary. But there's information on
20 those petitions saying this is why we believe this person is
21 important. The Court wanted more. We're willing to submit
22 that down there with affidavits. We're doing everything we
23 can, Judge, to get these people here.

24 THE COURT: She was wrong when she said there
25 were no declarations attached?

1 MR. BOSLER: I guess it would depend how you
2 define the word "declaration." They're complete pleadings
3 down there.

4 THE COURT: That's not what she thought.
5 How do you feel about starting the penalty
6 hearing on Friday morning?

7 MR. BOSLER: I think that's probably the best
8 way to go at this point, Your Honor.

9 THE COURT: Can you get your local witnesses
10 here for Friday afternoon?

11 MR. BOSLER: Yes. We'll have some local
12 witnesses available.

13 THE COURT: And now when have you compelled the
14 people from Salt Lake to return?

15 MR. BOSLER: We gave them subpoenas for both
16 days, Thursday and Monday. I would ask the Court not to ask
17 those people to come on Friday just in case we can't get to
18 them. We prefer to have those people return on Monday.

19 THE COURT: The State.

20 MR. GAMMICK: That's fine with us, Your Honor.

21 THE COURT: Okay. We'll start the penalty
22 hearing then Friday morning at nine a.m.

23 MR. GAMMICK: We do have one other issue before
24 we recess.

25 THE COURT: We'll do it Friday until the end of

1 business. Then we'll continue it over until Monday. And I
2 have the original jury instructions that were provided for
3 the first trial for penalty phase. I have not received any
4 additional instructions. Do you want to go through those
5 again and submit whatever you want me to look at?

6 MR. GAMMICK: Mr. Stanton has started on that
7 already. We're going back through them to ensure that the
8 ones you have now are the ones we want to use, or if we do
9 have additional, we'll get them to you in the next day or
10 two, and to the defense.

11 MR. BOSLER: Same with us. We're working on
12 additional instructions.

13 THE COURT: So penalty phase instructions by
14 4:00 p.m. on Thursday.

15 MR. BOSLER: Yes, Your Honor.

16 THE COURT: Your other matter, Mr. Gammick.

17 MR. GAMMICK: The defense has furnished us with
18 a list of witnesses they intend to call. We've discussed
19 four of them today. I would like to have this placed with
20 the Court's records, please, if I may. These were also --
21 there's been some mention about some others. It's our
22 understanding at this time that they intend to call family
23 members but they haven't been specified yet. We expect the
24 ex-wife and we expect the aunt of the defendant. But if
25 there are other family members, we have no idea who they

1 are. I understand from the defense they intend to call Dr.
2 Thienhouse, who I believe has appeared in this matter in
3 court before. And then we also are expecting David and
4 Vainga Kinikini from Salt Lake City; Mele Mavani, who did
5 testify during the guilt phase, and Renee Peaua, who also
6 did testify during the guilt phase.

7 If there are any other additional witnesses
8 that the defense intends to call, we would like to have that
9 information now so that we may prepare for the penalty
10 phase.

11 MR. GREGORY: Well, I already told him we would
12 give him the specific names of the family members after this
13 hearing was over. We have them back at the office. So I
14 have no problems with that.

15 THE COURT: Okay. So approximately how many
16 witnesses do you think you'll be calling?

17 MR. GREGORY: 18 to 19 witnesses, Your Honor.

18 THE COURT: So do you think it will take two
19 days?

20 MR. GREGORY: Well, we're hoping to be able to
21 finish in one day, but it may well take two.

22 THE COURT: I have promised the San Mateo judge
23 that Mr. Verna will be on on October 4th. I didn't know for
24 sure that there was a problem with Mr. McGinn, but if that's
25 part of the order, then make sure you consider those things

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in your order of witnesses.

MR. GREGORY: We will, Your Honor.

THE COURT: And anything further?

MR. GAMMICK: Not from us, Your Honor.

MR. GREGORY: Not by the defense. Thank you.

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

(Recess taken at 1:53 p.m.)

STATE OF NEVADA,)
)
COUNTY OF WASHOE.)

I, DENISE PHIPPS, 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 28th day of
September, 1999.

Denise Phipps
DENISE PHIPPS, CCR No. 234
CERTIFIED ORIGINAL
of which this certificate is
attached to the original
which was on file in my
office in case number
DATE: MAY 19, 1999
AMY HARVEY, Clerk of the Second Judicial
District Court in and for the County of
Washoe, State of Nevada
vs
COURT

SIERRA NEVADA REPORTERS (775) 329-6560

27
FILED

Code No. 4185

OCT 01 1999

AMY HARVEY
By: *M. Stone*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,

Plaintiff,

vs.

SIAOSI VANISI,

Defendant.

Case No. CR98-0516
Dept. No. 4

TRIAL - VOLUME 8
September 30, 1999
Reno, Nevada

ORIGINAL

APPEARANCES:

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The Defendant:

SIAOSI VANISI

Reported by:

ERIC V. NELSON, CCR. No. 57

SIERRA NEVADA REPORTERS (775) 329-6560

I N D E X

EXHIBITS:	ID	EVID
h and I.....	1068	
J.....	1074	
K.....	1092	
L.....	1092	
44.....	1098	
45.....	1100	
46-A through 46-E.....	1105	1105

RENO, NEVADA, THURSDAY, SEPTEMBER 30, 1999, 3:39 P.M.

-oOo-

THE COURT: This is the time set for hearing to be sure that we're ready to go forward with penalty hearing tomorrow.

I have heard from the judge in California, Judge Kozlowski, and all but one of your witness were ordered. I think we should make a record on that one witness which is the one that was a teacher.

MR. GREGORY: I think Mr. Bosler can handle that.

MR. BOSLER: Mr. Selsback, if I'm not mistaken.

THE COURT: That is correct.

MR. BOSLER: My understanding is the judge found that because his testimony was also going to be presented through another instructor and because of his medical condition, she found that there was insufficient reason for him to be bound over.

THE COURT: What she told me was that he made -- someone questioned him in the hallway about whether or not he knew Mr. Vanisi, and he said, oh, yes, he was a nice guy. But he went back and he looked in the yearbook and he realized it was not the defendant that he was talking about. In fact, it was some other individual with a

1 slightly different name that he had in his memory and had no
2 memory of Mr. Vanisi. That's what she told me was the basis
3 for her not requiring him to attend.

4 MR. BOSLER: My information comes from the
5 attorney who was helping us. He also informed me that his
6 medical condition, I guess he has a broken leg or some other
7 medical disability that also figured in her decision. We're
8 prepared to go forward with the witnesses we have who have
9 been ordered to appear, and I'm also I'm informed that
10 Leanne Jones was also ordered I believe from Chico this
11 afternoon or today and as part of the hearing. So with that
12 we're prepared to go forward.

13 THE COURT: Have all your witnesses been
14 contacted with their appropriate dates? As of yesterday
15 afternoon two of the witnesses still did not have the new
16 time.

17 MR. BOSLER: That is my understanding. They
18 have all been contacted. Even one of those people who said
19 they hadn't been contacted had been contacted before
20 yesterday's hearing who had just forgotten what the
21 arrangements that were made.

22 THE COURT: Everyone has been recontacted?

23 MR. BOSLER: That was my understanding, Your
24 Honor.

25 THE COURT: Thank you. Now Mr. Stanton.

1 MR. STANTON: Yes, Your Honor. In discussing
2 some matters prior to today's hearing with Mr. Gregory,
3 there appears to be some disagreement relative to the
4 admissibility of some evidence that the State possesses and
5 will attempt to admit during the penalty phase beginning
6 tomorrow.

7 MR. GREGORY: May I have the Court's
8 indulgence?

9 THE COURT: Yes.

10 MR. GREGORY: Thank you, Your Honor.

11 MR. STANTON: In addition, I'd like, since
12 we're on the witnesses, I'd like to make a record and
13 provide some documents to the Court about what the State has
14 been advised of the status of the witnesses to be called by
15 the defense. If I could have two items marked, Your Honor.

16 THE COURT: Are those for purpose of the
17 discussions with regard to the availability of witnesses?

18 MR. STANTON: No. It's just -- this is
19 strictly based upon the notice that has been -- notice or
20 lack thereof that's been given to the State in this case.

21 THE COURT: So this isn't something that will
22 ultimately go to the jury?

23 MR. STANTON: No, Your Honor.

24 THE COURT: Yes, you may approach the clerk.

25 MR. STANTON: Your Honor, if I could have the

1 next in order.

2 THE CLERK: Exhibits H and I marked.

3 (Exhibits H and I marked.)

4 MR. STANTON: Your Honor, for the record,
5 Exhibit H is a three-page document. This is printed from an
6 attachment to an E-mail provided to us, the Washoe County
7 District Attorney's Office, yesterday morning at
8 approximately 9:36. This is from the Public Defender
9 Investigator Crystal Calderon.

10 And Exhibit I is an E-mail sent to me and
11 Mr. Gammick with its date sent listed on the exhibit itself
12 September 30th, today's date, at 10:35 a.m.

13 Your Honor, I'd like to begin my comments and
14 to lay out the record to the transcript of two days ago,
15 September 28th, where Mr. Gammick stood before this court on
16 page 1062 of the transcript in this case and advised the
17 court of the fact that a list of witnesses had been provided
18 to the State of who the defense intended to call during the
19 penalty phase of this trial. That exhibit was marked and
20 made part of the whole record in this case.

21 In addition, Mr. Gammick mentioned and we had
22 previously been advised that the defendant's ex-wife, an
23 aunt that supposedly raised Mr. Vanisi in the Bay area, were
24 potential family witnesses. And Dr. Thienhouse was
25 mentioned by Mr. Gregory as a potential witness, as well as

1 the Kinikini brothers, and the two witnesses that were
2 called by the State during the guilt phase.

3 That document is entitled, the one that was
4 admitted on two days ago, is a memo from the Public
5 Defender's Office entitled Mitigation Witnesses.
6 Mr. Gregory responded to this Court that the District
7 Attorney's Office would be provided names of family members
8 after the hearing was over.

9 We were provided through an attached E-mail
10 from Crystal Calderon, of which the first exhibit you have
11 there was sent. It lists 25 witnesses. That exhibit was a
12 subsequent amendment apparently to that which highlights,
13 and that's the laser printed version of that exhibit and
14 witnesses 1 through 5 and throughout, and the statement in
15 the E-mail saying these are the witnesses we're really going
16 to call at penalty phase.

17 The next exhibit, Exhibit I, is the latest
18 E-mail from Miss Calderon informing us of two names of
19 witnesses that they are going to call at the penalty phase
20 that have never been provided to the State before. The
21 State objects, Your Honor. The State objects to the
22 fashion, the form of this notice.

23 There is absolutely nothing that the State can
24 glean from the information it knows about these witnesses as
25 to why or a basis of good cause why these names weren't

1 timely notified to the State. It is a violation of the law,
2 number one. And it is a violation of fundamental fairness
3 and violation of due process on behalf of the other party to
4 this litigation, the State of Nevada.

5 We cannot, as the Court I'm sure can glean from
6 that witness list, adequately prepare and even understand
7 the content of what these people could remotely testify to
8 without having some ability to meaningfully contact them as
9 opposed to 24 to 48 hours. Most of these people reside in
10 California.

11 We have had two investigators working full time
12 since we were provided with this list, and I'm sure it will
13 surprise no one in this courtroom that the vast majority of
14 these witnesses have not been able to be contacted by the
15 State, have refused to return telephone calls by the State,
16 leaving the State with no other option other than to
17 physically go down and try and track them down in California
18 and find out who they are, what they know, what they are
19 going to testify to, what relationship they are to
20 Mr. Vanisi, when they knew him, when was the last time they
21 saw him, to find some basis so that I can intelligently
22 cross-examine witnesses in a capital murder penalty phase.
23 We haven't been able to do that.

24 The State strenuously and vehemently objects to
25 the method, the nature of how defense counsel is playing

1 hide the ball, and that's exactly what they are doing in
2 this case.

3 Mr. Bosler has told this Court that in their
4 declaration in California, they purposely left the
5 declaration vague so as to not give the State the benefit of
6 understanding, quote, their strategy in the penalty phase.
7 Whether he wants to do that, whether it's logical or not, is
8 not the gravamen of my comments. But it certainly speaks to
9 what indeed has been I think evidenced by this, the
10 defense's strategy in this case. And it hurts the State, it
11 hurts the State's ability to intelligently cross-examine
12 these experts.

13 And the only thing that I would ask the Court,
14 if the roles were reversed and the State were to provide
15 notice of witnesses in this fashion, in the same setting,
16 what would be the objection and how would the defense object
17 to that, how would an appellate court review that, how would
18 this trial court review the State's performance, how could
19 the defense intelligently cross-examine the State's
20 witnesses in that fashion, and whether or not there's even
21 one piece of authority, case law or statute that would hold
22 that the rules of notice for witnesses is different from the
23 State or for the deference perspective. The State is
24 unaware of any. The same rules, the same logic, the same
25 sense of fairness, the same sense of due process applies to

1 both parties in this type of proceeding, and in any criminal
2 proceeding. And yet, they have been grossly violated in
3 this case.

4 We would object to any witnesses being called
5 outside those that are noticed in the initial exhibit that
6 was provided to the State. That in and of itself was
7 untimely by Nevada law.

8 MR. GREGORY: I think what he's requesting is
9 that we have no family members come in and testify for Mr.
10 Vanisi. I think that's what he is suggesting, Your Honor.

11 We were under the impression, in fact, I
12 believe they were given this list of family members for the
13 first trial in January. When we gave them the additional
14 list, we presumed that they had these family members. We're
15 not doing anything nefarious. We're not playing hide the
16 ball.

17 Those highlighted witnesses are the ones that
18 at this time we feel should be called. The other ones may
19 be called. Which is our option.

20 Judge, depending on what kind of a case they
21 put on, we could have 30 witnesses that come to mind as a
22 result of their case, and there's no court that's not going
23 to allow us to put on witnesses in mitigation of this crime
24 that this man has been found guilty of. So I don't know how
25 to answer Mr. Stanton other than to say use your vast

1 resources.

2 I mean, they got the entire law enforcement
3 community in Northern California. You want to use strong
4 words, intimidating our witnesses, coming with their muscle
5 to the door, what are you going to talk about?

6 They don't want anybody to come here and talk
7 about this man. They want the image that they have created
8 in the media, they want that image to be the only image that
9 this jury has, the wild man from Tonga. Not an ounce of
10 civilization, of civilized behavior in his body. That is
11 what they want presented is a blood lust in this community.

12 There are politics at play here. This is an
13 ugly thing.

14 But for them to suggest that they don't have
15 the resources to contact people where we have the addresses
16 and the phone numbers is mind boggling. They probably have
17 2,000 officers at their disposal in California who can't
18 wait to do whatever they can to kill this man.

19 I'll leave it at that, Judge.

20 THE COURT: Mr. Stanton, do you want to say
21 something?

22 MR. STANTON: Yes, Your Honor. Let me address
23 Mr. Gregory's comments because I don't think he either
24 understood my comments.

25 If counsel can establish good cause as to why

1 these witnesses weren't notified to us pursuant to Nevada
2 law, that is five days prior to trial, why -- he sits there
3 and says he has to wait until the state's case in chief.
4 The State already provided them discovery in the case in
5 chief. We provided them as required the notice of our
6 witnesses to be called at trial well in advance of five
7 days. They had the same witnesses go around in the first
8 trial. This Court sat through a portion of the first trial,
9 and obviously, the entirety of the second trial.

10 So counsel is completely missing the point.
11 Can he establish good cause as to name one of these
12 witnesses that he was not able to understand and contemplate
13 their testimony prior to the presentation of the State's
14 case in chief? The reason why is he can't do it.

15 May I have this next marked in evidence?

16 THE CLERK: Exhibit J marked.

17 (Exhibit J marked.)

18 MR. STANTON: Your Honor, counsel made a
19 statement that these witnesses have previously been provided
20 to the State prior to trial. What you have marked as J,
21 Your Honor, is the entirety, the absolute entirety of the
22 notice that the State was given of the defense witnesses at
23 penalty in the first case, and as you can see, that is an
24 E-mail message sent by Mr. Specchio to our office dated
25 December 31st, 1998. There's no address, there's no phone

1 numbers. Wife, Deanne, quote, mother, sister, David Goodman
2 and David Kinikini.

3 So when Mr. Gregory says that notice has
4 previously been provided, that's the notice. So now the
5 Court has before it the entirety of the notice that the
6 State has been given and when it's been provided.

7 Contrary to Mr. Gregory's recollection and to
8 his speech unsupported by any facts about what resources are
9 available to the State, it's not a matter of what resources
10 and that we have 2,000 officers at our beck and call. We
11 can't do anything when we're provided witnesses 24 hours
12 before when they are to be called, 48 hours at the maximum,
13 when we are doing other things relative to our resources
14 here in the state.

15 And I think the more operative question is, is
16 what did they know about these witnesses and when did they
17 know it and why can't they establish good cause as to why
18 any of these witnesses couldn't have been noticed to the
19 State earlier?

20 MR. GREGORY: Your Honor.

21 THE COURT: Mr. Gregory.

22 MR. GREGORY: I think we should indicate that
23 with the exception maybe of a couple witnesses, our
24 witnesses aren't even going to be presented before Monday.
25 I'll remind the Court it was the State, when they are

1 throwing bricks at us for messing up the compelling of
2 witnesses from California, that so freely volunteered we had
3 no trouble getting ahold of these witnesses, we were able to
4 get ahold of them with no trouble. And now they have
5 trouble.

6 I'd almost have to have Mr. Specchio in because
7 I know, Your Honor, that they had a more complete list than
8 that. Because I know that they have known about Bishop
9 Tonga, we had these conversations, and there are others that
10 are on there that don't necessarily come to mind. But we
11 almost have to have -- there is a lot of things that went on
12 face-to-face verbally.

13 And the point I was making -- he missed the
14 point I was making. When they put on their penalty phase,
15 Judge, if as a result of the witnesses they present
16 witnesses are suggested to me or Mr. Bosler, even
17 Mr. Vanisi, that they haven't heard about, we still have a
18 right to put those witnesses on. We still have a right.
19 With no notice to them.

20 With that, Your Honor, I'll just submit it.
21 Thank you, Judge.

22 THE COURT: With regard to the question of what
23 the Court would do if the roles were reversed, the Court
24 would continue the penalty hearing. That's what the Court
25 would have to do. The Court would have no choice but to