

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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APPELLANT'S APPENDIX

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

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CERTIFICATE OF SERVICE

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

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

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1 standard. Both Dr. Bittker and Dr. Amezaga agree that
2 Mr. Vanisi, if competent, is relevant at all. He
3 understands the procedures, he understands why he's in
4 prison, he understands about court. They differ only on
5 one question and that is his ability to assist his
6 attorneys. And your Honor, that's where I think they're
7 running into a problem. That's a criminal standard for
8 competency, a standard applied to those when someone is
9 an accused person required to defend himself. This is
10 not a criminal case any more. This is a civil case
11 where the question is whether Mr. Vanisi can be heard.
12 If he is incompetent, then he is not allowed to litigate
13 on his own behalf. That's why, by the way, why I
14 suggested it would make some difference whether he is
15 incompetent because an incompetent prisoner like a
16 child, like a juvenile delinquent, can, indeed, be
17 heard, but I think this court could hear it, but as I
18 suggest, the appropriate standard would be the civil
19 standard.

20 And there is a definition, your Honor, in NRS
21 159.019, and I know the Court's familiar with it. And
22 it has to do with governing one's affairs, taking care
23 of one's affairs, which Mr. Vanisi, obviously, can.
24 Evidence before you has him complaining about being

1 overcharged for dental care, things like that. But that
2 civil standard has nothing to do with one's ability to
3 assist one's attorney, so instead the question asked
4 whether you have the ability to decide to litigate.

5 Now, I have -- you know, I ran across
6 something this morning and -- perhaps not. I don't have
7 the citation, your Honor, actually, I couldn't find it,
8 a memorandum decision from Supreme Court, U.S. Supreme
9 Court, Reece versus Peyton in 1966, and was somewhat
10 surprised to find it, I wasn't looking for that, where a
11 Habeas Petitioner was alleged to be incompetent and the
12 Supreme Court has remanded for determination. What made
13 it unusual is that the Habeas Petitioner never had
14 directed his attorneys to withdraw his petition.
15 Supreme Court said what is of interest is whether he has
16 the authority to not litigate, whether he has the
17 authority to withdraw his petition. It seemed to say
18 they imply that competent or not, the case can go on,
19 but if he's incompetent, then -- or if he's competent,
20 then and only then can he withdraw his petition. Of
21 course, it's just a memorandum decision and remanded for
22 -- to have the district court evaluate the competency so
23 I don't know if it's of any great precedential value,
24 but it seems to make sense to me. So if we assume

1 competency is at issue, and assuming further that we
2 should use a criminal standard of competency, which I
3 don't think so, then we have other issues.

4 First is the obvious, what you've been
5 confronted with already, you've got to choose between
6 these two experts, the expert that conducted objective
7 tests and the expert who chatted with Mr. Vanisi. I
8 don't mean -- I know a clinical interview is not just
9 chatting, but we did have one person, one witness
10 explain the advantage of one procedure over the other.
11 And it sounds to me, I don't know -- but I don't know,
12 your Honor, that it is really necessary to do that.
13 Frankly, I don't -- I don't even know if Dr. Bittker
14 really expressed the opinion that Mr. Vanisi is
15 incompetent. I mean, he certainly did in summary, but
16 from the last hearing, I noticed a couple of things, on
17 page 32 of the transcript, he testified in his opinion
18 Mr. Vanisi can't, quote, fully cooperate with his
19 attorneys. I don't know that's the right standard. And
20 I know in the argument just a few moments ago,
21 Mr. Qualls mentioned some things that were, like,
22 suboptimal, not the best. I don't know that that's the
23 correct standard, either. We can find the correct
24 standard. We'd have to show that, basically, he can't

1 help.

2 Now, Dr. Amezaga says he can, but I'll tell
3 you I think Dr. Bittker said so, too. At page 24 in
4 response to a question, Dr. Bittker testifies that yes,
5 indeed, he has the cognitive ability with sufficient
6 motivation. If he is asked a question and he knows the
7 answer, he has the ability to retrieve that information
8 and to express it. Dr. Amezaga agreed with that. So
9 what we have, taken in summary, is Dr. Bittker pretty
10 much expresses the same opinion that Dr. Amezaga did,
11 that he may be unwilling to do that. That is not the
12 correct standard. Even under criminal standard, the
13 Court must determine if it's relevant, if mental disease
14 or defect, if by virtue of mental disease or defect the
15 defendant lacks the capacity, the ability to consult
16 with his attorneys. Dr. Amezaga very clearly thinks
17 that Mr. Vanisi has the ability to consult with his
18 attorneys, and furthermore, based on what Dr. Bittker
19 said at page 24 of the transcript, it appears that he
20 thinks so, too.

21 Now, what's holding him up, according to
22 Mr. Bittker, is an attitude, a nihilistic delusion, a
23 belief that nothing matters, that -- your Honor, that's
24 not a diagnosis of a mental disease or defect. It's a

1 diagnosis of an attitude. Dr. Bittker says it's not in
2 the DSM and Dr. Amezaga says it's not in the DSM and
3 Dr. Bittker said he had to look it up in -- in a
4 dictionary to give meaning to the words, but it's not a
5 diagnosis of a mental disease or defect. He has mental
6 diseases and defects. Everyone seems to agree with
7 that. You know, some years ago Judge Gamble down in
8 Douglas County ruled that a fellow was goofy but
9 competent, and I think this was appropriate in that case
10 and I think Dr. Amezaga expressed that sentiment here
11 today. They're not the same thing. He has mental
12 diseases and defects, but they don't -- that is not what
13 prevents him, if anything does, that's not what prevents
14 him from being able to assist his attorneys. Instead,
15 what prevents him from being able to fully cooperate is
16 his unwillingness, his belief that nothing matters, but
17 Dr. Bittker says a sufficient mot -- with sufficient
18 motivation I can reach down inside him, pull up an
19 answer and express it. That's competence.

20 Now, that he may lack that motivation in that
21 doesn't make him incompetent. I think that Dr. Bittker
22 asked the wrong question. He seems to have been asking
23 himself whether this would be easy. I think Dr. Amezaga
24 had that part right. No, it wouldn't be easy. This is

gonna take some degree of patience, dedication and ability on the part of Mr. Vanisi's lawyers to extract his assistance from him. Fortunately, he has two lawyers who have that ability, that dedication and that patience.

I suggest to you, your Honor, that the question of competence is of no legal significance. If it is significant, the proper standard is a civil standard. If the proper standard is a criminal standard, that both experts agree he has the ability to assist his attorneys and both experts also agree that to the other conditions are met, therefore, this Court ought to declare that Mr. Vanisi is now presently competent.

THE COURT: Thank you. Anything further, Mr. Qualls?

MR. QUALLS: Very quickly, your Honor. Obviously, we argue the points that competence is not significant. Earl John says that competence is significant and that is our argument for the Court today. Our argument is also that a civil standard is not relevant and that is not the terms under which, or the law under which we have brought the current motion. It is, as Rohan recognizes, a federal Constitutional

1 right. This is not a civil case in the sense that we're
2 dealing with the competency of a child to testify. What
3 we're dealing with is a capital punishment case in which
4 a person's federal Constitutional rights to life,
5 liberty and due process are at stake. Therefore, the
6 standard should be the standard that's set forth in
7 Rohan, and it focuses specifically upon the ability to
8 communicate rationally and meaningfully assist counsel.
9 Therefore, and as we have argued, the 9th Circuit in its
10 interpretation of federal Constitutional rights is
11 controlling on this state and other states, and that's
12 the standard that we should use.

13 Additionally, very quickly, Mr. McCarthy
14 speculated as to what Dr. Bittker may have meant in his
15 testimony. One thing that we do know is what his
16 written report says, which is that Mr. Vanisi does not
17 currently have the requisite emotional stability to
18 prevent him -- excuse me, I've screwed that up again --
19 to permit him to cooperate with counsel or to understand
20 fully the distinction between truth and lying.

21 Again, he also states that Mr. Vanisi's
22 current medications are not ideally suited to assist him
23 in reestablishing competency, that, again, implicit in
24 itself is that he is not competent now, he needs to

1 reestablish it.

2 Finally, Vanisi's mental disease that prevents
3 cooperation is not a matter of motivation or willingness
4 to cooperate, and I think that's made pretty clear in
5 Dr. Bittker's report. So based upon that, this Court
6 should follow Dr. Bittker's evaluation and
7 recommendations and find that he is not currently
8 competent to assist counsel and find that either his
9 medication needs to be reevaluated and changed, or if
10 this Court still finds that it does not have the
11 authority to do that, that that is a necessary component
12 of his competency to move forward.

13 THE COURT: First with regard to his
14 medications, that motion has to be brought -- you have
15 to serve the prison, you have to give them an
16 opportunity to be heard, bring whoever they want to
17 bring to hear that. You can't just in a hearing without
18 giving any notice to medical staff at the prison say
19 change his medication.

20 Secondly, it probably is not appropriate to
21 bring it before me; it's where he's being housed that is
22 appropriate. It's like all prisoner litigation that
23 deals with the conditions under which he is confined.
24 It becomes relevant to me only if there is an issue of

1 his competency to be executed and forced medication is
 2 used attenuate to that, so it's only in the -- the only
 3 time I will be hearing such an issue is if we're at the
 4 point of an execution order and you are requesting that
 5 that execution order not be entered because of some
 6 issue with regard to medication or his competency at
 7 that time. So this is not the court to litigate that
 8 issue, and if you think it is important to litigate that
 9 issue, you need to do it wherever he's being housed.

10 Second. I know that State has opposed the
 11 Rohan case and the holding of the Rohan case, and has
 12 argued the jurisdiction decisions that this Court is
 13 cognizant of the 9th Circuit's ruling, and until it is
 14 modified, we must follow whatever that ruling is. If it
 15 is a ruling with regard to United States Constitution as
 16 it applies to cases coming out of the 9th Circuit,
 17 Nevada is in the 9th Circuit, therefore, we order these
 18 hearings so that it will be appropriate.

19 I do not contest the State's position that, in
 20 fact, somewhere down the road Rohan might not be
 21 overturned and it might not be overturned both in the
 22 9th Circuit as well as the Federal United States Supreme
 23 Court. But today, it isn't and so we ordered the
 24 competency hearings.

1 That gets us to the question of whether or not
 2 under the decision and the competency evaluations I have
 3 before me the defendant is able to assist counsel in a
 4 manner that counsel's appointment doesn't violate the
 5 right to have counsel and proceed. And it's the Court's
 6 opinion at this time, after having heard both
 7 Dr. Bittker and Dr. Amezaga, and seeing their written
 8 reports and the prison documents that have been
 9 submitted by the defense, and reading those medical
 10 records, as well as the history of this case and all
 11 information, and lastly, my opportunity to observe
 12 Mr. Vanisi during these hearings and his reaction to
 13 certain things, when a joke is made, Mr. Vanisi cracks
 14 his smile. He seems to be connecting to the
 15 proceedings. All of that put together, I find that
 16 Mr. Vanisi is competent at this time to proceed. I do
 17 find him to be competent to assist counsel. He
 18 understands the -- where he is, what he's doing, and
 19 what the possibilities are with regard to this
 20 litigation.

21 I am not going to get into a debate about
 22 whether it's a civil case or a criminal case. Clearly,
 23 in post conviction with death penalty cases, we have
 24 both components. The civil law controls, procedurally,

1 in the State of Nevada on habeas. However, the federal
2 Constitutional law with regard to death penalty cases
3 requires that you have meaningful assistance of counsel,
4 so under either standard, however, Mr. Vanisi is
5 competent to proceed.

6 Now, I know defense says the Court sua sponte
7 asked about the competency to testify. It's not my
8 memory as how it came up. I think counsel specifically
9 prior to argument said even if he is -- even if it is a
10 civil case, even if he doesn't have to be competent, how
11 can we proceed and put him on the witness stand? And I
12 think that's how it came up that we went forward and
13 asked for a competency with regard to Mr. Vanisi's
14 ability to testify, and I think it came up, in the
15 Court's opinion, pursuant to an implication at least,
16 that the defense may at some point want to call
17 Mr. Vanisi as a witness in the post conviction relief
18 hearing that needs to take place in the near future.
19 There is no indication, however, at this time that
20 Mr. Vanisi is incompetent to testify. The Court is --
21 has before it evidence that he does understand the
22 difference between a truth and a lie and if he chooses
23 to tell the truth he can do so. He's even specifically
24 made comments to Mr. -- Dr. Amezaga about his not ever

1 falsifying being sworn under oath which directly relates
 2 to his previous stance with regard to his religion and
 3 his strength of religion, and I think it's clear that he
 4 understands whether or not he's to tell the truth or a
 5 lie on the stand. He understands the difference and he
 6 can testify, so I don't think that's an issue based on
 7 the evaluations I have before me. Therefore, we may
 8 proceed directly with concluding the writ that we have
 9 pursuant to the pleadings that have been filed in this
 10 case. I don't know how long and what you want to do
 11 with regard to that. We stopped everything because of
 12 the evaluations.

13 MR. MCCARTHY: Your Honor, if I may?

14 MR. EDWARDS: I'd like to be heard on this
 15 too, your Honor.

16 MR. MCCARTHY: At this point there are no
 17 claims pending before the Court, you may recall that.
 18 It was a bare bones petition on file that says nothing
 19 and that was filed a little over three years ago,
 20 January 18th, 2002. The 30 days to supplement has
 21 passed, and then again, and again, and again for the
 22 last three years. On November 22nd, last year, this
 23 Court directed counsel to be prepared to file a
 24 supplemental petition today at the close of this

1 hearing. I'm ready to go forward.

2 MR. EDWARDS: Well, your Honor, I'd like to
3 hear that exact thing from the record. That's not
4 exactly what you said. You said -- I may tell you at
5 the next hearing if I deny this Rohan claim when to file
6 the petition, what I'd ask is you order us to file it
7 within 30 days of today. Obviously, we've indicated
8 that this determination given the state of the law here
9 in Nevada may need some review by the Nevada Supreme
10 Court, and I think the way to do that, when this
11 interlock -- on this interlocutory basis through
12 extraordinary writ petition which wouldn't take that
13 long to compose and file. There's no time limit on it
14 so we should do that right away. In a way, I'm asking
15 that 30-day window, so if there is injunctive relief
16 from the Nevada Supreme Court I haven't prejudiced my
17 client's position by filing something pursuant to your
18 order. Do you understand what I'm saying?

19 THE COURT: I understand your request.

20 MR. EDWARDS: Okay.

21 THE COURT: I don't remember not --
22 Mr. McCarthy has a transcript from our prior hearing and
23 I think he's prepared to maybe --

24 MR. MCCARTHY: Your Honor, I probably should

1 have wrote down what page it was so it will take me a
2 minute.

3 As to the possibility of injunctive relief,
4 your Honor, given the Court's ruling, I'd say that is so
5 remote that the Court should discount it. Had this
6 Court said Mr. Vanisi is incompetent and we are
7 proceeding, that is something the Supreme Court might
8 look into. You made a factual finding about the weight
9 of the evidence. That seems to be the end of it, and I
10 can't imagine the Court intervening, so if you'll give
11 me a moment, your Honor, I will try to look up the
12 appropriate page where this Court directed when the
13 supplement should be filed. It will just take me a
14 minute.

15 MR. EDWARDS: And I think we can set an
16 evidence hearing date, too, your Honor. Now, I'm not
17 opposed to that at all, in terms of getting the pleading
18 in. I just think there's some irreparable harm if it
19 turns out that the Nevada Supreme Court figures that the
20 proceedings should be stayed on the basis of Rohan.

21 Now, granted we're not dealing with you
22 rejecting the Rohan decision as much as we are your
23 discretionary factual determinations regarding
24 competency that will become an issue both, you know, in

1 this extraordinary writ petition and maybe in a later
2 appeal, but if I file the supplement to the petition
3 right now, I'm acknowledging the propriety of that
4 determination, okay, that it's okay to go forward with a
5 client who has incompetency issues. Do you understand
6 what I'm saying?

7 THE COURT: You always have a right to appeal
8 the decision with regard to my determination of
9 competency, but you aren't going to be able to delay the
10 proceedings based upon your belief that I reached an
11 inappropriate factual determination. In other words, if
12 I'm wrong and the Supreme Court wants to reverse me,
13 then the whole thing would be reversed and we'll be back
14 to square one anyway.

15 MR. EDWARDS: Well, yes and no, your Honor. I
16 mean, if the Supreme Court says you're wrong about this,
17 then they'll stay proceedings in accordance with Rohan.

18 THE COURT: Well, and if I've made decisions,
19 they'll reverse those decisions. If I was right, if I
20 can't -- if I was wrong in compelling you to move
21 forward because Mr. Vanisi, in fact, was incompetent and
22 my findings are wrong, then they will -- then whatever
23 we do while he's incompetent, if the Supreme Court tells
24 me I was wrong, which I kind of agree with Mr. McCarthy,

1 I think it's a pretty long shot, those things are
2 reversed, as with any other case, the Supreme Court
3 reverses, so I don't understand the issue that you're
4 raising. Mr. McCarthy.

5 MR. MCCARTHY: Your Honor, page 29 on November
6 22, this Court said, "I'm not going to make you file
7 anything, but I am ordering you to prepare it in
8 discussing the supplement, so that depending on my
9 ruling at the next hearing, you'll be prepared to file
10 it immediately". That sounds to me like get it ready.
11 I'm ready.

12 THE COURT: Okay. I'm going to take your
13 motion, your request as a motion to stay my decision
14 pending your going to the Supreme Court for a writ. I'm
15 going to deny that and I will allow you to go forward
16 with the oral motion, but my denial has to be in writing
17 so you have to prepare that if you want to go to the
18 Supreme Court on it. And then you can go to the Supreme
19 Court if you want, but in the interim I'm going to order
20 that you file the petition on Tuesday by 5:00.

21 MR. EDWARDS: Very good, your Honor.

22 THE COURT: Okay?

23 MR. MCCARTHY: Thank you, your Honor.

24 THE COURT: And now counsel, do you want to

1 set it in open court now or do you want to wait and get
2 together?

3 MR. EDWARDS: Your Honor, if we could set an
4 evidentiary hearing?

5 THE COURT: Mr. McCarthy will have 45 days to
6 respond. And then you will have a certain period of
7 time, maybe -- no, you don't get any response. No.

8 MR. MCCARTHY: That's a complaint and answer,
9 that's pretty much it.

10 THE COURT: Right. So we're looking at April.
11 Is that what we're looking at? And Mr. McCarthy, I'm
12 going to ask that you prepare order consistent with my
13 oral findings here today, so that we can have that in
14 writing also.

15 MR. MCCARTHY: I will do that.

16 THE COURT: Thank you.

17 MR. EDWARDS: Could we have that Tuesday by
18 five, too, your Honor?

19 THE COURT: My order?

20 MR. EDWARDS: Is that all right?

21 THE COURT: It has to be done so you can
22 appeal from it.

23 MR. EDWARDS: Right.

24 MR. MCCARTHY: Okay.

1 THE COURT: We're looking at sometime after
2 the first of April, so counsel, do you have any trial?
3 Mr. Edwards, do you have any trials set?

4 MR. EDWARDS: Your Honor, I have a case in Las
5 Vegas, but I believe it's the end of April.

6 COURT CLERK: Counsel, you originally set this
7 for two to three days.

8 MR. EDWARDS: I think so.

9 COURT CLERK: Is that still the case?

10 MR. EDWARDS: Yes.

11 COURT CLERK: May 2nd at nine a.m.

12 MR. EDWARDS: Your Honor, on May 3rd at 9:30 I
13 have a brief federal sentencing, so if we can -- I have
14 nothing around either side of it, though.

15 THE COURT: We can work around that, I'm sure.

16 MR. EDWARDS: That date's fine.

17 THE COURT: When you say brief, we're not
18 talking about Judge Reed.

19 MR. EDWARDS: No, your Honor, no, no.

20 THE COURT: Okay.

21 MR. EDWARDS: I've been through those, too.

22 THE COURT: Okay.

23 MR. MCCARTHY: Guidelines don't apply anymore
24 and there, actually, is a such a thing as a brief

1 federal sentencing.

2 THE COURT: Okay.

3 MR. MCCARTHY: What time?

4 THE COURT: We can work around that one, sure.

5 MR. MCCARTHY: What time we talking?

6 MR. EDWARDS: Nine a.m.

7 THE COURT: We'll start Monday morning at nine
8 a.m. and then we'll adjust Tuesday and, if necessary,
9 Wednesday's calendar depending on this hearing that
10 Mr. Edwards has. And we'll probably do a regular
11 criminal calendar on that Tuesday morning also.
12 Anything wrong with that date?

13 MR. EDWARDS: No, your Honor.

14 THE COURT: All right.

15 MR. EDWARDS: Thank you.

16 THE COURT: Thank you, counsel. Court's in
17 recess.

18 (Discussion held off the record.)

19 THE COURT: The record should reflect we're
20 back on the record and Mr. Vanisi is still present with
21 counsel. The State's represented by counsel.

22 Was there something additional?

23 MR. MCCARTHY: Yes, your Honor. I don't know
24 if you recall, when Dr. Amezaga was testifying he took

1 one of his charts down.

2 THE COURT: Yes.

3 MR. MCCARTHY: We forgot to ask that that be
4 admitted. I think the clerk has marked it.

5 COURT CLERK: Exhibit I.

6 MR. MCCARTHY: And we ask that that also be
7 admitted.

8 MR. EDWARDS: No objection.

9 THE COURT: That is identified as?

10 COURT CLERK: Exhibit I. It's a nonverbal
11 subtest.

12 MR. MCCARTHY: That was a sample of a
13 suppression, I think, right? Invalid/suppressed sample.

14 THE COURT: Okay.

15 MR. MCCARTHY: Right?

16 THE COURT: Is that your understanding,
17 Mr. Edwards?

18 MR. EDWARDS: Yes.

19 THE COURT: Okay. Exhibit I is admitted.

20 (Exhibit I is marked and admitted into
21 evidence.)

22 THE COURT: Anything else?

23 MR. EDWARDS: No, your Honor.

24 MR. MCCARTHY: That's it.

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

3 (Proceedings continued until May 2, 2005, at
4 9:00 a.m.)

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1 STATE OF NEVADA)
2 COUNTY OF WASHOE)

3 I, JULIE ANN KERNAN, official reporter of
4 the Second Judicial District Court of the State of
5 Nevada, in and for the County of Washoe, do hereby
6 certify:

7 That as such reporter I was present in
8 Department No. 4 of the above court on Friday,
9 February 18, 2005, at the hour of 1:45 p.m. of said day,
10 and I then and there took verbatim stenotype notes of
11 the proceedings had and testimony given therein upon the
12 Report on Psychiatric Evaluation of the case of SIAOSI
13 VANISI, Petitioner, vs. STATE OF NEVADA, Defendant, Case
14 No. CR98P0516.

15 That the foregoing transcript, consisting of
16 pages numbered 1 through 100, both inclusive, is a full,
17 true and correct transcript of my said stenotype notes,
18 so taken as aforesaid, and is a full, true and correct
19 statement of the proceedings had and testimony given
20 upon the Report on Psychiatric Evaluation of the
21 above-entitled action to the best of my knowledge, skill
22 and ability.

23 DATED: At Reno, Nevada, this 20th day of February, 2005.

24 
JULIE ANN KERNAN, CCR #427

SVANIS100683

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIAOSI VANISI,

Petitioner,

vs.

Case No.

45061

THE SECOND JUDICIAL DISTRICT

COURT OF THE STATE OF NEVADA,

HON. CONNIE STEINHEIMER, DISTRICT

JUDGE,

Respondents,

And

THE STATE OF NEVADA,

Real Party in Interest.

FILED

APR 13 2005

BY Janet M. Bloom
CLERK OF SUPREME COURT
DEPUTY CLERK

APPLICATION FOR WRIT OF MANDAMUS and/or WRIT OF PROHIBITION

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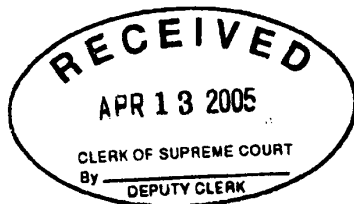
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INTRODUCTION

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This is a capital case. Pursuant to NRAP 21, Siaoisi Vanisi, Petitioner herein, requests that this Court grant his request and mandate that proceedings upon his district court Petition for Writ of Habeas Corpus (Post-Conviction) be stayed pending his return to competency. The district court's determination that Petitioner should proceed with a hearing upon the merits of his writ claims, despite the evidence of his inability to cooperate and assist counsel and his mental health, was an arbitrary and capricious exercise of discretion. (App. 251-54).¹ Presently compelled to proceed with a hearing on May 2, 2005, the Petitioner is without a plain, speedy and adequate remedy at law, absent intervention by this Court in its supervisory capacity.

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STANDARDS FOR GRANTING THE WRIT

A writ of mandamus should issue to control a court's arbitrary and capricious exercise of discretion. Marshall v. District Court, 108 Nev. 459, 466, 836 P.2d 47, 52 (1992). In Smith v. District Court, 113 Nev. 1343, 1344, 950 P.2d 280, 281 (1997), this Court explained that it will not exercise its discretion to consider a petition for a writ of mandamus unless considerations of sound judicial economy and administration militate in favor of granting a petition. In addition, this Court may exercise its discretion to grant a petition where an important issue of law requires clarification. Id. at 1345, 950 P.2d at 281. Further, a writ of prohibition or mandamus may properly lie where there is no plain, speedy and adequate remedy at law. Scrimmer v. Eighth Judicial Dist. Court, 116 Nev. 507, 998 P.2d 1190, 1193 (2000). See also, NRS 34.170, 34.330.

In this case, it is necessary to control a lower court's arbitrary and capricious exercise of discretion. Mandating a stay is in the interests of sound judicial economy. Moreover, the legal issue at the heart of the instant petition is one of first impression in the State of Nevada. Finally, without this

¹ "App." Stands for the Petitioner's Appendix which is bound separately and accompanies this Petition.

1 Court's present intervention, the Petitioner has no plain, speedy and adequate remedy as he will be
2 forced to move forward with the presentation of his post-conviction habeas petition and the prosecution
3 of the same, while he is incompetent to do so. The prejudice resulting from such an occurrence should
4 be obvious, but includes the likelihood of an incomplete habeas petition, incomplete claims within the
5 petition, incomplete and/or inadequate information with which to proceed on the petition to an
6 evidentiary hearing, as well as Petitioner's inability to participate in a meaningful way with the
7 proceedings, his inability to consult with and assist counsel with the proceedings, and quite possibly the
8 occurrence of ineffective assistance of counsel during those proceedings.
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11 **STATEMENT OF FACTS NECESSARY TO AN UNDERSTANDING OF THE ISSUES**

12 On November 22, 2004 the district court heard argument and received evidence (App. 29-59)
13 upon the Petitioner Siasos Vanisi's motion to stay post-conviction proceedings and have his competence
14 evaluated. (App. 1-15). Having duly considered the matter, the district court found and ordered that the
15 Petitioner should be evaluated regarding his present competency to maintain and participate in a capital
16 post-conviction habeas proceeding. Specifically the Petitioner's mental competence to assist and
17 communicate with counsel, understand and knowingly participate in the habeas proceeding as a litigant
18 and witness, were ordered evaluated by mental health experts. (App. 60-62). Further, the district court
19 perceived a need for an evaluation of the Petitioner's understanding of the difference between the truth
20 and a lie and the consequences of lying as a witness in court. (App. 60). Accordingly, it ordered that
21 pursuant to NRS 178.415, two psychiatrists, two psychologists, or one psychiatrist and one psychologist,
22 must examine the Petitioner in the Nevada prison facility and report back to the court with any and all
23 findings relative to the Petitioner's present mental competence. (App. 61). The experts appointed
24 pursuant to the district court order were given access to review all medical records of the Petitioner held
25 by the Department of Corrections. Those records, along with records relative to disciplinary infractions
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1 incurred by the Petitioner while in prison, were also lodged in the record for the district court to review.
2 (App. 31-34).

3 In furtherance of its order for competency evaluation, the district court appointed a medical
4 doctor (psychiatrist), Dr. Thomas E. Bittker, M.D. to examine the Petitioner. (App. 61). Doctor Bittker
5 did so and submitted a written report of his findings to the district court. (App. 88-96). Significant
6 among the written findings were:

7
8 ---Vanisi admitted feeling chronically suicidal. (App. 91)

9 --- Vanisi admitted to having nihilistic delusions. (App. 91)

10
11 ---Vanisi denied ever experiencing perceptual distortions, but did admit to being bothered by
12 thoughts inside of his head. (App. 92)

13 ---Vanisi's social judgment was compromised by his nihilistic delusional system and his
14 narcissistic sense of entitlement. (App. 94)

15 ---Vanisi's current presentation is consistent with a diagnosis of Bipolar Disorder, mixed type,
16 with psychosis. The psychotic manifestations are reflected in his bizarre behavior, his nihilistic
17 delusions, his narcissistic entitlement, and his marked ambivalence about such issues as life, death, and
18 the nature of reality. (App. 94)

19
20 ---Although Vanisi has a reasonable level of sophistication about the trial process, his
21 guardedness, manic entitlement and paranoia inhibit his ability to cooperate with counsel. (App. 95)

22 ---Mr. Vanisi does not currently have the requisite emotional stability to permit him to cooperate
23 with counsel or to understand fully the distinction between truth and lying. This latter deficit emerges
24 directly as a consequence of his incompletely treated psychotic thinking disorder. (App. 95)

25 ---Dr. Bittker recommended a modification of Vanisi's medication regimen and a reevaluation of
26 his competency after 90 days of treatment. (App. 96)

1 Doctor Bittker also presented his findings under oath to the district court in a hearing held
2 January 27, 2005. (App. 97-133). Notable in his testimony were the following:

3 ---He is a Distinguished Life Fellow of the American Psychiatric Association, a professor at the
4 University of Nevada School of Medicine and on the faculty of the National Judicial College. (App.
5 102)

6 ---He opined after examination that Vanisi is not currently competent to participate in trial
7 proceedings or to best assist counsel. (App. 103)

8 ---On the basis of his assessment, Vanisi is incompletely treated and has residual evidence of
9 psychosis. (App. 104)

10 ---Although Vanisi denies perceptual distortions—he says he doesn't hear or see things that
11 aren't there—Dr. Bittker was not so sure about that. (App. 106)

12 ---That traditional old-line medicines that Vanisi is receiving have so many side effects that he is
13 unable to represent himself spontaneously in the courtroom. There is a suppression of fluid thinking
14 with the traditional antipsychotic agents. (App. 107)

15 ---Vanisi was not malingering or faking his symptoms when Dr. Bittker examined him. (App.
16 109)

17 ---Vanisi's behavior is considerably influenced by delusions and serious impairment and
18 judgment. (App. 110)

19 --Vanisi's derailment of thinking is a much more important sign of his psychosis than is the sign
20 of perceptual distortion. (App. 113)

21 ---It would be difficult, if one was not a psychiatrist to make sense of what Vanisi was saying.
22 (App. 114)

1 ---The balance of evidence suggests that Vanisi is not forthcoming and is irrational based upon
2 his psychosis. (App. 118)

3 ---Vanisi is unique among all the people he has examined on death row in his closed demeanor.
4 (App. 121)

5 --Vanisi does not fully understand the role of defense counsel because of his paranoia. (App.
6 124)

7 The district court also selected a psychologist named A.M. Amezaga, Jr. to meet with Mr. Vanisi
8 and report back about his findings relative to his competence to assist attorneys and ability to testify
9 truthfully. (App. 61). On February 18, 2005, Mr. Amezaga, appeared in court and presented his
10 findings under oath. (App. 149-250). Significant among the matters he swore to in his written report
11 were as follows:

12 ---Vanisi's rational ability to assist his counsel with his defense was at most mildly impaired.
13 (App. 136)

14 --Vanisi's body posture at times was mechanical and robotic. (App. 136)

15 ---Vanisi admitted to delusion of memory. (App. 137)

16 ---Vanisi's short-term memory may be mildly impaired. (App. 137)

17 ---The results of a competency test indicated no effort to feign or exaggerate psychiatric
18 symptoms in order to suggest the possibility of in competency. Point of fact, Vanisi attempted to
19 minimize whatever stressors or legitimate complaints he may actually have, in an attempt to present
20 himself as one who does not require the regime of potent psychiatric medications he is now receiving
21 involuntarily. (App. 138-139)

22 ---Vanisi's ability to testify in a truthful manner or in a manner in which there was little chance
23 he might display a disruptive form of acting out behavior is seriously in doubt. (App. 142)

Dr. Amezaga further swore to the following notable facts during the hearing:

---He was licensed in psychology by Nevada in 1996 and does not sit on any professional boards.

He is not a medical doctor and does not have authority to prescribe medicine to treat mental illness.

(App. 152-153)

---He has previously testified in a criminal trial as an expert but could not recall when. (App. 154)

---He did not review the affidavits of counsel in support of the motion for a stay. Nor did he review the disciplinary actions in prison. (App. 157)

---He was aware that Vanisi was being treated with medication for "individuals who are severely psychotically impaired." (App. 160)

---He suspected that Vanisi was suffering from a psychotic disorder of some sort but was uncertain what that might be. (App. 161)

---Vanisi's behavior might suggest some sort of catatonic schizophrenia, but that it was "amusing" given the diagnosis of bipolar disorder. (App. 164)

---He was unwilling to deem Vanisi's behavior as malingering. (App. 165)

---Just because someone is psychotic does not mean he is incompetent. (App. 168)

---One test he administered to Vanisi consisted of secret questions that he would not divulge because it would be "unethical." (App. 187)

---Although he did not know Vanisi's IQ, he suspect he was very bright because of a sophisticated attempt to misrepresent his actual abilities on the secret test. Although, the test results could also be explained as an extended run of "bad luck." (App. 190)

---Vanisi was not likely to engage in truthful testimony. (App. 191)

---Mr. Amazaga admitted that part of his basis for questioning Vanisi's psychiatric symptoms was really just speculation. (App. 199)

It should be noted that both Doctor Bittker and Mr. Amezaga found Mr. Vanisi presently impaired in his ability to tell the truth under oath. (App. 95, 142, 191).

The district court made an oral ruling at the end of the hearing that went as follows:

It's the Court's opinion at this time after having heard both Dr. Bittker and Dr. Amezaga and seeing their written reports and the prison documents that have been submitted by the defense, and reading those medical records, as well as the history of this case and all information, and lastly my opportunity to observe Mr. Vanisi during these hearings and his reaction to certain things, when a joke is made, Mr. Vanisi cracks his smile. He seems to be connecting to the proceedings. All of that put together, I find that he is competent to proceed. I do find him competent to assist counsel.

(App. 238).

Almost a month later, the district court, with the able assistance of the prosecutor as scribe, filed a written order denying a motion for stay and finding the Petitioner competent to proceed. The order concluded:

Based upon the entirety of the evidence, the court finds that Vanisi understands the charges and the procedure. In addition, the court has given greater weight to the expert who administered objective tests and determined that Vanisi has the present capacity to assist his attorneys. The court agrees that Vanisi might present some difficulties for counsel. Nevertheless, the court finds that Vanisi has the present capacity, despite his mental illness, to assist his attorneys if he chooses to do so. In short, the court finds as a matter of fact that Vanisi is competent to proceed.

(App. 253)

STATEMENT OF ISSUES AND RELIEF SOUGHT

The issue before this Court is whether the factual determination of the district court regarding the competency of Siaoisi Vanisi to proceed with his capital habeas petition is an arbitrary and capricious abuse of discretion. The Petitioner respectfully maintains that the evidence of his present incompetency is substantial and far outweighs any evidence of competency. Accordingly, in accordance with the

precedent established by the Ninth Circuit Court of Appeals in the case of Rohan v. Woodford, 334 F.3d 803 (9th Cir. 2003), it was clearly erroneous of the district court not to stay habeas proceedings pending the Petitioner's return to competency. By forcing the obviously incompetent Petitioner to proceed with an evidentiary hearing upon his habeas claims, the district court has prejudiced the Petitioner in that he is now forced to proceed on a possibly incomplete and/or inadequate habeas petition, he will be unable to assist his attorneys in preparation of and during the evidentiary hearing, and will not be able to substantiate some of his factual allegations through competent testimony. Meritorious habeas claims thus risk being denied and procedurally barred in later proceedings. Further, judicial economy is not served by forcing the hearing at this time.²

STATEMENT OF REASONS WHY THE WRIT SHOULD ISSUE

In Rohan v. Woodford, 334 F.3d 803 (9th Cir. 2003), the Ninth Circuit reviewed a death row prisoner's right to receive a stay of post-conviction habeas proceedings while incompetent. The Court held that if a prisoner cannot communicate with counsel because of incompetency, the state must order a stay of proceedings. Id. at 803-804. Further, in Rohan, the Ninth Circuit held that a district court must stay capital habeas proceedings during the petitioner's incompetence, rather than appointing a "next friend" and requiring the friend to pursue the habeas petition on the petitioner's behalf. *See also* Calderon v. U.S. District Court, 163 F.3d 530 (9th Cir. 1998) (*en banc*).

In the present proceedings, the district court reluctantly adopted the Rohan precedent. (App. 237). However, to avoid affording Mr. Vanisi the remedy provided by that law, it disregarded the vast weight of competent evidence presented on the issue of incompetency and instead relied upon the

² Moreover, it would not prove a hardship for the State or the courts to follow the recommendations of Dr. Bittker regarding a modification of Vanisi's medication regimen and retesting of Vanisi's competence after 90 days of his recommended medication changes. Given the evidence presented of Vanisi's psychosis, such actions are appropriate and are not unreasonable.

1 questionable opinions of a non-medical professional who administered a secretive test of Mr. Vanisi.
2 The result of this factual gymnastics is that Mr. Vanisi will not be able to assist counsel in his defense
3 (the prosecution of his habeas petition). The determination that the hearing should proceed under these
4 circumstances is an abuse of discretion. A ruling that is without substantial evidentiary support is
5 arbitrary and capricious. SIIS v. Christensen, 106 Nev. 85, 88, 787 P.2d 408, 410 (1990). It should be
6 corrected with a writ of mandamus. Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637
7 P.2d 534, 536 (1981); NRS 34.160; see Wardleigh v. District Court, 111 Nev. 345, 350, 891 P.2d 1180,
8 1183 (1995)
9

10
11 To find, as the district court did: "The court agrees that Vanisi might present some difficulties for
12 counsel" (App. 253) is a supreme understatement. To pursue life-saving litigation with a client unable
13 to assist counsel or testify truthfully on his own behalf compromises the constitutional protections
14 afforded in death penalty cases by the Sixth Amendment right to counsel. It is an invitation to deadly
15 injustice. The legal claims at issue in the lower court habeas proceeding are substantial. (The claims
16 may be reviewed in the Supplement to the Petition filed under seal separate from the Appendix to this
17 Petition.) To require counsel to prove up and litigate the merits of such claims without the assistance of
18 the petitioner, does indeed present "some difficulties", if not ineffective assistance of counsel.
19
20 Moreover, it begs the question of why such proceedings should be forced forward. Certainly, questions
21 of finality and case closure are at issue. However, forcing an incompetent petitioner through a hearing
22 on the merits of his claims of legal ineligibility to be executed, does not serve that end. Even the State
23 would agree that executing incompetents offends the constitution. The matter acquires no more finality
24 by conducting a hearing. Forced lethal injection looms no closer.
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1 The present inquiry into Mr. Vanisi's mental competence arose when counsel met with him to go
2 over his habeas issues. Rather than a substantive discussion of legal and factual issues, they were
3 confronted with a client who took his clothes off and rolled on the floor, burst into spontaneous song,
4 thought of himself as an independent sovereign and Dr. Pepper. Vanisi was manic and agitated. He
5 claimed not to have slept in 8 days and related how he made snow angels while naked. He recited
6 gibberish poetry and snarled like a wild animal. (App. 7-14). Needless to say, the bizarre behavior
7 prompted further inquiry and prison disciplinary records were produced that revealed the vast scope of
8 Mr. Vanisi's descent into madness. The records revealed that over the past two years his mental health
9 and behavior had degenerated. Medical records produced for the hearing revealed that Mr. Vanisi was
10 being forcibly injected with powerful anti-psychotic medication that had the effect of rendering him
11 mute and zombie like during certain periods of each month.
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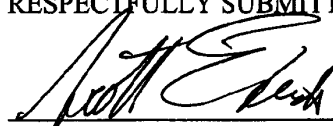
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14 Dr. Bittker recognized the precarious mental health of Vanisi and found him incompetent to
15 proceed. (App. 95-96). He recommended a short pause in the proceedings to adjust Vanisi's
16 medications in an attempt to return him to competency. (App. 96). Mr. Amezaga, not being a trained
17 medical doctor, paid no attention to the medications, even though he acknowledged they were powerful
18 drugs used to treat psychosis. (App. 152-53, 157, 160-61). Instead, he focused on the results of a
19 secretive test and admitted speculation to conclude that Vanisi was ready to proceed to hearing. (App.
20 187-190, 199). Notably, both experts found Vanisi *unable* to testify truthfully at such a hearing, a
21 finding that the district court refused to acknowledge. (App. 95, 142, 191).
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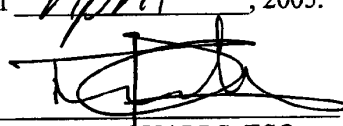
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The record is clear that the vast weight of the evidence supports a finding of Vanisi's present incompetence. To ignore such evidence is arbitrary and capricious. Pursuant to Rohan, supra, federal law requires that Vanisi's post-conviction proceedings be stayed until he is able to regain competence, if that is possible. It is requested that this Court act to correct the situation by immediately issuing a stay and granting Vanisi's extraordinary writ.

RESPECTFULLY SUBMITTED this 11th day of April, 2005.



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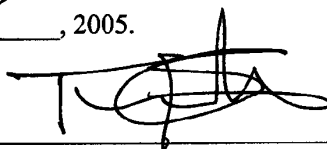
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VERIFICATION

The undersigned, as co-counsel for the petitioner, under penalty of perjury, being first duly sworn, depose and say: That each counsel has read the foregoing APPLICATION FOR WRIT OF MANDAMUS and/or WRIT OF PROHIBITION, and knows the contents thereof; that the same is true and correct of their own knowledge, except to those matters stated upon information and belief, as to such matters they believe them to be true. A Petition for relief pursuant to an extraordinary writ may be verified by the petitioner's attorneys if the facts on which the petition is based are within the attorney's knowledge and/or the petitioner is absent from the county or otherwise unable to verify the petition. Thompson v. First Judicial Dist. Court, 100 Nev. 352, 683 P.2d 17 (1984). The Petitioner is indeed absent from the County and the facts upon which the application is based are within the undersigned counsels' knowledge.

DATED this 11th day of April, 2005.

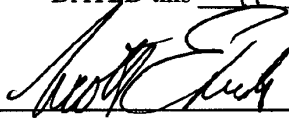

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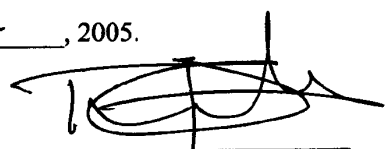

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of Nevada Rules of Appellate Procedure.

DATED this 11TH day of APRIL, 2005.


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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the law offices of Scott W. Edwards, and that on this date, I served the foregoing *Petition for Writ of Mandamus and/or*

Prohibition on the party(ies) set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collecting and mailing in the United States mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

XX _____ Reno/Carson Messenger service.

addressed as follows:

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Appellate Deputy District Attorney
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Nevada Attorney General
100 N. Carson Street
Carson City, Nevada 89701-4717

DATED this 12th day of April, 2005.

SVANIS100961

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIAOSI VANISI,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
CONNIE J. STEINHEIMER, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 45061

FILED

APR 19 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ribade*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION

We have considered the petition on file herein, and we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time.¹ Further, we deny petitioner's motion for a stay. Accordingly, we

ORDER the petition DENIED.

Rose J.
Rose

Gibbons J.
Gibbons

Hardesty J.
Hardesty

¹See NRS 34.160; NRS 34.320.

SVANIS100962

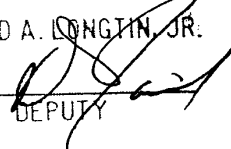
cc: Hon. Connie J. Steinheimer, District Judge
Scott W. Edwards
Thomas L. Qualls
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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ORIGINAL

FILED

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2005 APR 26 PM 4:41
RONALD A. LONGTIN, JR.
BY 
DEPUTY

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

SIAOSI VANISI,

Petitioner,

Case No. CR98P0516

vs.

Dept. No. 4

WARDEN, Ely State Prison;
and the STATE OF NEVADA,

DEATH PENALTY CASE

Respondents.
_____ /

MOTION TO CONTINUE EVIDENTIARY HEARING

COMES NOW, Petitioner SIAOSI VANISI, by and through appointed counsel, SCOTT W. EDWARDS and THOMAS L. QUALLS, and hereby moves this court for an order continuing the evidentiary hearing set for May 2, 2005 for a period of 60 days. This motion is based upon the following points and authorities and the attached affidavits of counsel.

POINTS AND AUTHORITIES

The evidentiary hearing upon this matter is scheduled for May 2, 2005. On April 22, 2005, the State filed a motion to dismiss the petition without an evidentiary hearing. This Court has not ruled on that motion and the Petitioner has yet to respond to it. Further, a motion for protective order relative to

1 the evidentiary hearing has been under submission with this Court and yet to be ruled upon. Former
2 Washoe County Public Defender, Michael Specchio, who represented the Petitioner and authored the
3 SCR 250 memorandum relative to the case, is unavailable to attend the evidentiary hearing. One of the
4 factual allegations made in the habeas petition relates to the failure to advise the Petitioner of his rights
5 to consultation with consular authorities pursuant to the Vienna Convention on Consular relations.
6
7 Representatives from the Tongan consulate have been repeatedly contacted and have yet to confirm their
8 agreement to participate in the evidentiary hearing. As of today, counsel for Petitioner are informed that
9 the Petitioner remains on death row in Ely, Nevada. Counsel are further informed that Petitioner is in a
10 drug induced state whereby he cannot perceive such simple things as the day of the week. Visiting with
11 death row inmates is allowed on Wednesday and Thursday only and must be arranged in advance. It
12 thus appears that there will be no opportunity to meet with the Petitioner before the hearing and discuss
13 the substance of his testimony. Under the present circumstances, there is a danger that counsel for the
14 Petitioner will be ineffective in pursuing the writ allegations if compelled to proceed with the
15 evidentiary hearing on May2, 2005.
16
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18 Pursuant to NRS 34.750(4) a Petitioner has 15 days after service to respond to a motion to
19 dismiss. That 15 day deadline does not run until May 7, 2005, after the present evidentiary is scheduled.
20 The Nevada Supreme Court has ruled:
21

22 **A defendant's rights to present witnesses in his own behalf, to**
23 **confront and to cross-examine the witnesses against him are**
24 **fundamental rights, secured by the Sixth Amendment, and**
25 **applicable to the states through the Fourteenth Amendment.**
26 Chambers v. Mississippi, 410 U.S. 284 (1973); Washington v.
27 Texas, 388 U.S. 14 (1967); Pointer v. Texas, 380 U.S. 400 (1965).
28 **The United States Supreme Court has held that the right to**

confront and cross-examine witnesses may, in appropriate cases, bow to 'accommodate other legitimate interests in the criminal trial process.' Chambers v. Mississippi, 410 U.S. at 295. But, the Court has cautioned, 'its denial or significant diminution calls into question the ultimate 'integrity of the fact-finding process' and requires that the competing interest be closely examined." (emphasis added)

Summit v. State, 101 Nev. 159, 162, 697 P.2d 1374 (Nev. 1985).

The importance of compulsory process in terms of the right to present witnesses material and vital to one's defense was recognized by the United States Supreme Court in Washington v. Texas, *supra*. The court held:

The right of an accused to have compulsory process for obtaining witnesses in his favor stands on no lesser footing than the other Sixth Amendment rights...The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so that it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

Washington v. Texas, 388 U.S. at 18-19. (emphasis added). Justice Harlan concurs:

[T]he State may not constitutionally forbid the petitioner, a criminal defendant, from introducing on his own behalf the important testimony of one indicted in connection with the same offense...

Id., 388 U.S. at 23.

Our Supreme court has had a number of occasions lately to reverse convictions for the improper restriction of a defendant's fundamental rights to present evidence in her defense and to confront the state's case. In Cosio v. State, 106 Nev. 327, 793 P.2d 836 (1990), the court reversed a perjury conviction, stating:

This court has previously held that the due process clauses of our constitutions guarantee a defendant "the right to introduce into evidence any testimony or documentation which would tend to prove the defendant's theory of the case." Vipperman v. State, 96 Nev. 592, 596, 614 P.2d 532, 534 (1980). Appellant's theory of defense was that he lacked the intent necessary for a perjury conviction. While reliance on the advice of counsel does not constitute a separate defense, under certain circumstances it may be relevant to show a defendant's intent. See Adler v. State, 95 Nev. 339, 346, 594 P.2d 725 (1979). Here, evidence of appellant's reliance on his counsel's advice would clearly have tended to prove his theory of the case, i.e., his lack of intent. Appellant was therefore entitled to present this evidence to the jury. The district court's failure to allow appellant to do so constituted error.

The jury, if presented with this additional evidence to support appellant's theory of defense, might have reached a different conclusion. We are therefore unable to conclude that the error was harmless. Accordingly, we reverse the judgment of conviction and remand this case to the district court for a new trial.

Supra, 106 Nev. at 330 (emphasis added).

Similar instances of reversals -- by the Nevada Supreme Court -- for failure to allow criminal defendants to adequately confront the case against them are available. In *Summers v. State*, 102 Nev. 195 (1986), the court recognized:

'In all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him.' U.S. Const. amend. VI.

Id., at 201. The court restated the rule of law firmly established in Nevada:

[R]eversal is mandated where the evidence of guilt is woven from circumstantial evidence and it is not established beyond a reasonable doubt that the admission of the statement was harmless error. *Stevens v. State*, 97 Nev. 443, 634 P.2d 662 (1981); *Corbin v. State*, 97 Nev. 245, 627 P.2d (1981); *Davies v. State*, 95 Nev. 553, 598 P.2d 636 (1979).

Id. In the instant matter, the exculpatory evidence which is available through Mr. Vanisi's testimony is not available from any other witness or source.

Several Circuit courts have addressed this issue. The Ninth Circuit has recognized that the Sixth Amendment compulsory process clause guarantees a criminal defendant the right to obtain witnesses in

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her favor. See Cacoperdo v. Demosthenes, 37 F.3d 504, 508 (1994). See also U.S. v. Fowlie, 24 F.3d 1059, 1069 (1994):

In deciding whether to grant a continuance a district court must balance 1) whether the continuance would inconvenience the witnesses, the court, counsel, or the parties; 2) whether other continuances have been granted; 3) whether legitimate reasons exist for the delay; 4) whether the delay is the defendant's fault; and 5) whether a denial would prejudice the defendant.

A continuance would not cause great inconvenience to the parties, witnesses or the court.

The Eleventh Circuit in Dickerson v. Alabama, 667 F.2d 1364 (11th Cir. 1982), has recognized the import of *Washington v. Texas* on this issue:

The constitutional right of the accused to have compulsory process to obtain witnesses in his defense is well established. See, e.g., *Washington v. Texas*, 388 U.S. 14, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967); *United States v. Melchor Moreno*, 536 F.2d 1042 (5th Cir. 1976). Holding this Sixth Amendment right to be applicable in state proceedings, the Supreme Court in *Washington* noted:

The right to offer testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense.... This right is a fundamental element of due process of law.

Id., at 1369.

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The granting of a continuance is generally a matter of discretion for the courts. See Zessman v. State, 94 Nev. 28, 31, 573 P.2d 1174, 1177 (Nev. 1978). However, the Nevada Supreme Court has ruled repeatedly that where it is clear from the record that the defendant's constitutional rights were violated, as in the instant matter, they will not hesitate to overturn the decision of the lower court.

While we show deference to the district court's exercise of discretion, we are not hesitant to reverse a case because a district judge abused that discretion in admitting outlandishly prejudicial evidence or refusing to grant a continuance which was clearly warranted.

Sims v. State, 107 Nev. 438, 441, 814 P.2d 63, 65 (1991).

Other courts have made it clear that in circumstances in which the defendant's constitutional rights are at stake, the courts may not deny the motion for continuance, especially where the availability of a material defense witness is in issue:

Not every denial of a motion for continuance to obtain witnesses violates the accused's right to compulsory process. See, e.g., McKinney v. Wainwright, 488 F.2d 28 (5th Cir.), cert. denied, 416 U.S. 973, 94 S.Ct. 1998, 40 L. Ed. 2d 562 (1974). A court may not, however, refuse to grant a reasonable continuance for the purpose of obtaining defense witnesses where it has been shown that the desired testimony would be relevant and material to the defense. Hicks v. Wainwright, 633 F.2d 1146 (5th Cir. 1981); Singleton v. Lefkowitz, 583 F.2d 618 (2d Cir. 1978). In Hicks this Court recently enunciated several factors which are to be considered in determining whether an accused was deprived of his right to compulsory process by a denial of a motion for continuance:

(T)he diligence of the defense in interviewing witnesses and procuring their presence, the probability of procuring their testimony within a reasonable time, the specificity with which the defense is able to describe their expected knowledge or testimony, the degree to which such testimony is expected to be favorable to the accused, and the unique or cumulative nature of the testimony.

633 F.2d at 1149 (*quoting* United States v. Uptain, 531 F.2d 1281, 1287 (5th Cir. 1976) (footnotes omitted)). *See also* Dickerson v. State of Alabama, 667 F.2d 364, 1368 (11th Cir. 1982).

A trial judge's discretionary power to deny a motion for continuance is necessarily limited by the Sixth Amendment right to compulsory process and any denial of an accused's attempt to present testimony in his behalf must be weighed against that right. United States v. Davis, 639 F.2d 239, 244 (5th Cir. 1981).

Id. (emphasis added)

The Nevada Supreme Court has ruled that where a material witness, essential to the defense's case was not available, a continuance was the proper remedy.

The decision to grant a continuance is within the discretion of the trial court. *Zessman v. State*, 94 Nev. 28, 31, 573 P.2d 1174, 1177 (1978). In exercising its discretion in ruling on a motion for a continuance, the district court is instructed by Rule 14 to

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consider 'whether or not the same facts can be proven by other witnesses . . . whose attendance . . . might have been obtained.' DCR 14(c). (Emphasis added.) Thus the rule contemplates not only the existence of witnesses who may testify to the same facts but also their availability.

Banks v. State, 101 Nev. 771, 773, 774, 710 P.2d 723 (Nev. 1985).

The court in *Banks* held that where a witness was essential to the case, and where no other witness could provide the same information, it was abuse of discretion for the district court to deny the motion for continuance.

The district court denied the motion to continue ... The record indicates, however, that defense counsel informed the court that he had been unable to procure other witnesses to testify to the substance of Vidakovich's testimony. . . Thus, we conclude that the district court either misapprehended counsel's statements or overlooked the relevant considerations outlined in Rule 14.

* * * * *

We further conclude that Vidakovich's testimony was material to appellant's defense. Vidakovich's testimony would have corroborated appellant's testimony and contradicted Christy's. Where, as here, the jury's determination of guilt or innocence heavily depends upon their assessment of the credibility of the defendant and the prosecutrix, testimony which corroborates one party and discredits the other is material and essential.

Id. See also Doleman v. State, 107 Nev. 409, 414; 812 P.2d 1287, 1290 (Nev. 1991).

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In sum, the *Banks* court states:

We conclude that the district court abused its discretion in refusing to grant a continuance. Because appellant was deprived of the opportunity to present testimony material to his defense, we cannot say that the abuse was harmless beyond a reasonable doubt. See *Zessman v. State*, 94 Nev. at 31, 573 P.2d at 1177. Accordingly, we reverse and remand for a new trial.

Banks v. State, 101 Nev. 771, 773, 774, 710 P.2d 723 (Nev. 1985).

The *Banks* court's decision has been consistently recognized and used by the court in the analysis of later cases involving the abuse of discretion in not granting continuances in cases where they are merited, such as Mr. Vanisi's.

This court has held denials of motions for reasonable continuances to be an abuse of discretion where the purpose of the motion is to procure important witnesses and the delay is not the particular fault of counsel or the parties. See, e.g., *Colgain v. State*, 102 Nev. 220, 719 P.2d 1263 (1986); *Banks v. State*, 101 Nev. 771, 710 P.2d 723 (1985).

Lord v. State, 107 Nev. 28, 42, 806 P.2d 548, 557 (Nev. 1991). Once again, in line with *Lord, et al.*, this Motion for Continuance is for the express purpose of procuring important witnesses, and the delay is in no way Mr. Vanisi's fault or the fault of the undersigned counsel. Therefore, the Motion to Continue should be granted.

In determining the materiality and the essential nature of a witness' testimony, the Nevada Supreme Court has held:

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The exclusion of a witness' testimony is prejudicial if there is a reasonable probability that the witness' testimony would have affected the outcome of the trial. (citation omitted) 'A reasonable probability is a probability sufficient to undermine confidence in the outcome of the case.' (citations omitted).

Bell v. State, 110 Nev. 1210, 1215 (1994). See also Haynes v. State, 103 Nev. 309, 315 (1987). More recently, see U.S. v. Beltran, 915 F.2d 487 (9th Cir. 1990):

[A] defendant cannot establish a violation of his right to compulsory process unless the defendant can show the testimony would have been 'both material and favorable to the defense' (citation omitted).

Id., at 489.

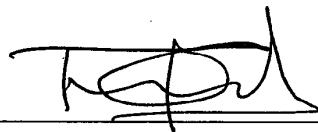
CONCLUSION

Wherefore, this Court is respectfully requested to grant a continuance of the evidentiary hearing in this matter for a period of 60 days.

RESPECTFULLY SUBMITTED, THIS 26th DAY OF April, 2005.



SCOTT W. EDWARDS
Attorney for Petitioner



THOMAS L. QUALLS
Attorney for Petitioner

8van1s12JDC05443

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

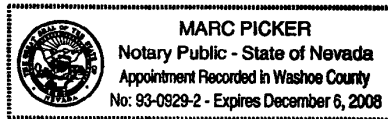
SCOTT W. EDWARDS, under penalty of perjury, being first duly sworn, deposes and says:
That he is counsel for the Petitioner in the above-entitled action; that he has read the foregoing
Motion for Continuance of the Evidentiary Hearing, and knows the contents thereof; that the same is
true and correct of his own knowledge, except to those matters stated upon information and belief, as to
such matters he believes them to be true, and that the motion is not made merely for the purpose of delay
or any improper purpose.

DATED this 26th day of April, 2005.

[Signature]
SCOTT W. EDWARDS

SUBSCRIBED AND SWORN to Before me this 26th day
of April, 2005.

[Signature]
NOTARY PUBLIC



VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

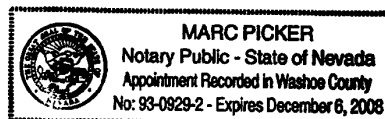
THOMAS L. QUALLS, under penalty of perjury, being first duly sworn, deposes and says:
That he is counsel for the Petitioner in the above-entitled action; that he has read the foregoing
Motion for Continuance of the Evidentiary Hearing, and knows the contents thereof; that the same is
true and correct of his own knowledge, except to those matters stated upon information and belief, as to
such matters he believes them to be true, and that the motion is not made merely for the purpose of delay
or any improper purpose.

DATED this 26th day of April, 2005.

[Signature]
THOMAS L. QUALLS

SUBSCRIBED AND SWORN to Before me this 26th day
of April, 2005.

[Signature]
NOTARY PUBLIC



SVant1s12JDC05444

CERTIFICATE OF SERVICE

I, Angela Lightner, hereby certify pursuant to N.R.C.P. 5, that on this 26th day of April, 2005, I caused to be delivered via Reno Carson Messenger Service a true and correct copy of the foregoing MOTION TO CONTINUE EVIDENTIARY HEARING addressed to:

WASHOE COUNTY DISTRICT ATTORNEY
APPELLATE DIVISION
P.O. BOX 30083
RENO, NV 89520-3083

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIAOSI VANISI,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE CONNIE J.
STEINHEIMER, DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

Supreme Court No. 45061

District Court Case No. CR980516

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on 04/19/05, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: May 17, 2005

Janette M. Bloom, Clerk of Court

By: _____

J. Richards
Chief Deputy Clerk

cc: Hon. Connie J. Steinheimer, District Judge
Ronald A. Longtin Jr., Washoe District Court Clerk
Washoe County District Attorney Richard A. Gammick
Scott W. Edwards
Thomas L. Qualls

05-07752

AA02848

ORIGINAL

CR98P0516
DC-9900002086-167
POST: SIAOSI VANISI (04) 3 Pages
District Court 11/28/2007 01:12 PM
Washoe County 2515
DC

CODE: ~~2010~~ 2515
Scott W. Edwards
Bar Number 3400
729 Evans Ave, Reno, NV 89512
(775) 786-4300
Attorney for Petitioner

FILED
2007 NOV 28 PM 1:12
HOWARD W. CONYERS
BY *[Signature]*
DEPUTY

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

SIAOSI VANISI,
Petitioner,
VS.
THE STATE OF NEVADA,
Respondent.

No. 50607
Case No. CR98P-0516
Dept. No. 4

FILED

NOV 30 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

NOTICE OF APPEAL TO SUPREME COURT
(DEATH PENALTY CASE)

COMES NOW, Petitioner, SIAOSI VANISI, by and through appointed counsel, SCOTT W. EDWARDS, and hereby appeals the district court denial of his petition for writ of habeas corpus (post-conviction) to the Nevada Supreme Court. Notice of Entry of the Order denying relief was mailed November 19, 2007.

DATED this 27th day of November, 2007.

[Signature]
SCOTT EDWARDS, ESQ.
Nevada Bar No. 3400
Attorney for Petitioner
729 Evans Avenue
Reno, Nevada 89512
Telephone: (775) 786-4300

RECEIVED
NOV 30 2007
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

CERTIFICATE OF SERVICE BY MAIL

I, Sherri Whelan, hereby certify pursuant to N.R.C.P. 5, that on this 28th day of November, 2007, I mailed a true and correct copy of the foregoing NOTICE OF APPEAL TO SUPREME COURT addressed to:

Siaosi Vanisi #63376

ESP

P.O. Box 1989

Ely, NV 89301

Washoe County District Attorney

Appellate Division

P.O. Box 30083

Reno, NV 89520

1 SCOTT W. EDWARDS, ESQ. (SBN 3400)
2 729 Evans Avenue
3 Reno, NV 89512
4 Telephone: (775) 786-4300
5 Facsimile: (775) 324-5444

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7
8 IN AND FOR THE COUNTY OF WASHOE

9 **AFFIRMATION**
10 **Pursuant to NRS 239B.030**

11 The undersigned does hereby affirm that the preceding document: NOTICE OF
12 APPEAL TO SUPREME COURT (DEATH PENALTY CASE) filed in case number: CR98P-
13 0516

14 ☒ Document does NOT contain the social security number of any person

15 OR

16 ☐ Document does contain the social security number of any person

17 OR

18 ☐ A specific state or federal law, to wit:


19 OR

20 ☐ For the administration of a public program

21 OR

22 ☐ For an application for a federal or state grant

23 **DATED** this 28th day of November, 2007.

24 
25 An Employee of Scott W. Edwards, Esq.

26 Attorney for: SIAOSI VANISI
27
28

ORIGINAL

FILED

2007 NOV 28 PM 1:12

HOWARD W. CONYERS

DEPUTY

CODE: 1310

Scott W. Edwards

Bar Number 3400

729 Evans Ave, Reno, NV 89512

(775) 786-4300

Attorney for Petitioner

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

SIAOSI VANISI,

Petitioner,

VS.

THE STATE OF NEVADA,

Respondent.

Case No. CR98P-0516

Dept. No. 4

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement: Siasosi Vanisi.
2. Identify the judge issuing the decision, judgment, or order appealed from: Honorable Connie Steinheimer.
3. Identify all parties to the proceedings in the district court (the use of et al. to denote parties is prohibited): Siasosi Vanisi, Petitioner, vs. The State of Nevada, Respondent, represented by Washoe County District Attorney.
4. Identify all parties involved in this appeal (the use of et al. to denote parties is prohibited): Siasosi Vanisi, Petitioner, vs. The State of Nevada, Respondent.
5. Set forth the name, law firm, address, and telephone number of all counsel on appeal and identify the party or parties whom they represent: Scott W. Edwards, 729 Evans Avenue, Reno, NV 89512, (775)786-4300, represents Appellant. District Attorney of Washoe County, P.O. Box 30083, Reno, NV 89520-3083, (775)328-3200, represents Respondent.
6. Indicate whether appellant was represented by appointed or retained counsel in the district court: Appellant was represented by appointed counsel in the district court.

1 7. Indicate whether appellant is represented by appointed or retained counsel on appeal: Appellant is
2 represented by appointed counsel on appeal.

3 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of
4 the district court order granting such leave: Appellant was granted leave to proceed in forma pauperis at
5 the time counsel was appointed to represent him in habeas proceedings.

6 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment,
7 information, or petition was filed): Original Petition for Writ of Habeas Corpus (Post-Conviction) filed
8 January 18, 2002.

9
10 Dated this 27th day of November, 2007.

11
12
13 

14 Scott W. Edwards

15 Attorney for Appellant

16 Nevada Bar Identification No. 3400

17 729 Evans Avenue

18 Reno, NV 89512

19 (775) 786-4300
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE BY MAIL

I, Sherri Whelan....., hereby certify pursuant to N.R.A.P. 25, that on this 28th day of November, 2007, I mailed a true and correct copy of the foregoing CASE APPEAL STATEMENT addressed to:

Siaosi Vanisi #63376

ESP

P.O. Box 1989

Ely, NV 89301

Washoe County District Attorney

Appellate Division

P.O. Box 30083

Reno, NV 89520

1 SCOTT W. EDWARDS, ESQ. (SBN 3400)
2 729 Evans Avenue
3 Reno, NV 89512
4 Telephone: (775) 786-4300
5 Facsimile: (775) 324-5444

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7
8 IN AND FOR THE COUNTY OF WASHOE

9 **AFFIRMATION**
10 **Pursuant to NRS 239B.030**

11 The undersigned does hereby affirm that the preceding document: CASE APPEAL
12 STATEMENT filed in case number: CR98P-0516

13 ☒ Document does NOT contain the social security number of any person
14

15 **OR**

16 ☐ Document does contain the social security number of any person
17

18 **OR**

19 ☐ A specific state or federal law, to wit:
20 _____

21 **OR**

22 ☐ For the administration of a public program
23

24 **OR**

25 ☐ For an application for a federal or state grant
26

27 **DATED** this 28th day of November, 2007.

28 
An Employee of Scott W. Edwards, Esq.

Attorney for: SIAOSI VANISI

NOT FOR DISTRIBUTION
TO THE PUBLIC

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE

Case History - CR98-0516

DEPT. D4

HON. CONNIE J. STEINHEIMER

Report Date & Time
11/28/2007
3:35:29PM

Case ID: CR98-0516	Case Description: STATE VS SIAOSI VANISI (D4) CRIMINAL	Initial Filing Date: 2/26/1998
Type: Parties		

PLTF	STATE OF NEVADA - STATE
DA	Richard Allen Gammick, Esq. - 1510
DEFT	SIAOSI VANISI - @104848
PD	Stephen Douglas Gregory, Esq. - 2217

Charges				
Charge No.	Charge Code	Charge Date		Charge Description
1	F720	2/26/1998	INF	MURDER IN THE FIRST DEGREE
2	F960	2/26/1998	INF	ROBBERY WITH THE USE OF A DEADLY WEAPON
3	F960	2/26/1998	INF	ROBBERY WITH THE USE OF A FIREARM
4	F960	2/26/1998	INF	ROBBERY WITH THE USE OF A FIREARM
5	F520	2/26/1998	INF	GRAND LARCENY

Plea Information			
Charge No.	Plea Code	Plea Date	Plea Description
1	F720	3/10/1998	PLED NOT GUILTY
2	F960	3/10/1998	PLED NOT GUILTY
3	F960	3/10/1998	PLED NOT GUILTY
4	F960	3/10/1998	PLED NOT GUILTY
5	F520	3/10/1998	PLED NOT GUILTY

Date	Charge No.	Charge Desc	Sentences Time Served	Sentence Text
11/22/1999	1 - Death		DEATH	
11/22/1999	2 - Nevada State Prison		NSP MAX 180 MOS, MIN PAROLE 72 MOS, W/CONSEC LIKE TERM FOR USE, CONSEC TO CT I + \$10,000 FINE + \$25 AAF + DNA TESTING	
11/22/1999	3 - Nevada State Prison		NSP MAX 180 MOS, MIN PAROLE 72 MOS W/CONSEC LIKE TERM FOR USE, CONSEC TO CTS I & II + \$750 ATTY FEE + \$250 DNA FEE	
11/22/1999	4 - Nevada State Prison		NSP MAX 180 MOS, MIN PAROLE 72 MOS, W/CONSEC LIKE TERM, CONSEC TO CTS I, II & III	
11/22/1999	5 - Nevada State Prison		NSP MAX 120 MOS, MIN PAROLE 48 MOS, CONSEC TO CTS I, II, III & IV	

-FOR INTERNAL COURT USE ONLY-
-NOT AN OFFICIAL DOCUMENT-
-REPORT MAY CONTAIN SEALED CASE INFORMATION-

Report Date & Time
11/28/2007
3:35:29PM

Case ID: CR98-0516	Case Description: STATE VS SIAOSI VANISI (D4) Case Type: CRIMINAL	Initial Filing Date: 2/26/1998
---------------------------	--	---------------------------------------

Release Information
Custody Status

Hearings

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>
1 D4	TRIAL - JURY	12/11/2001 11:00:00

Extra Text:

Disposition:
D895 12/11/2001 JURY TRIAL HELD SEPTEMBER 20,
1999 THROUGH OCTOBER 6, 1999
IN D4
FOUND GUILTY BY JURY ON
9/27/99 ON ALL COUNTS

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>
2 D4	HEARING...	1/18/2002 13:15:00

Extra Text: TO SET EXECUTION DATE

Disposition:
D435 1/18/2002 COURT ENTERED EXECUTION
DATE/MOTION FOR STAY
PENDING POST CONVICTION
MUST BE PLACED IN WRITING

Agency Cross Reference

<i>Code</i>	<i>Agency Description</i>	<i>Case Reference I.D.</i>
SC	Supreme Court	SCN 45061

Actions

<i>Action Entry Date</i>	<i>Code</i>	<i>Code Description</i>	<i>Text</i>
11/22/1999	1315	** Case Closed	
9/7/2001	CMS	**See CMS Prior to 12/13/99	
12/11/2001	1250	Application for Setting	1/18/02
12/11/2001	1325	** Case Reopened	
12/11/2001	1260	Application Produce Prisoner	
12/12/2001	3340	Ord to Produce Prisoner	
1/18/2002	1315	** Case Closed	NEW EXECUTION DATE SET
1/18/2002	3143	Order of Execution	
1/18/2002	3138	Order of Committal	
1/18/2002	4292	Warrant of Execution	
2/19/2002	4185	Transcript ...	IN-CHAMBERS HEARING & HEARING SETTING EXECUTION DATE JAN 18 2002

**-FOR INTERNAL COURT USE ONLY-
-NOT AN OFFICIAL DOCUMENT-
-REPORT MAY CONTAIN SEALED CASE INFORMATION-**

Report Date & Time
11/28/2007
3:35:29PM

Case ID:	CR98-0516	Case Description:	Case Type:	STATE VS SIAOSI VANISI (D4)	CRIMINAL	Initial Filing Date: 2/26/1998
<u>3/11/2002</u>	3370	Order ...		(FOR POST CONVICTION APPT OF COUNSEL) STAYING EXECUTION		
<u>2/20/2003</u>	4185	Transcript ...		02/05/03 - CONFERENCE CALL - IN CHAMBERS		
<u>3/9/2005</u>	3105	Ord Granting ...		COMPENSATION (QUALLS)		
<u>8/16/2005</u>	PAYRC	**Payment Received		A Payment of -\$52.97 was made on receipt DCDC147003.		

-FOR INTERNAL COURT USE ONLY-
-NOT AN OFFICIAL DOCUMENT-
-REPORT MAY CONTAIN SEALED CASE INFORMATION-

NOT FOR DISTRIBUTION
TO THE PUBLIC

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE

Case History - CR98P0516

DEPT. D4

HON. CONNIE J. STEINHEIMER

Report Date & Time
11/28/2007
3:36:08PM

Case ID:	CR98P0516	Case Description:	POST: SIAOSI VANISI (D4)	Initial Filing Date: 1/18/2002
		Case	POST CONVICTION	
		Type:	Parties	
PATY		Scott W. Edwards, Esq. - 3400		
RESP		STATE OF NEVADA - STATE		
APPE		SIAOSI VANISI - @104848		
PETR		SIAOSI VANISI - @104848		
DA		Richard Allen Gammick, Esq. - 1510		
DATY		Gary Howard Hatlestad, Esq. - 1525		
CAA		Scott W. Edwards, Esq. - 3400		
CAA		Thomas Qualls, Esq. - 8623		

Charges			
Charge No.	Charge Code	Charge Date	Charge Description

Plea Information			
Charge No.	Plea Code	Plea Date	Plea Description

Release Information	
Custody Status	

Hearings		
Department	Event Description	Sched. Date & Time
1 D4	Tickle Start Code	2/6/2002 07:00:00
Extra Text: pull file, check for petitioner's response, or verification of petition. do order appting counsel with pd to provide record to new counsel		Disposition: T200 2/6/2002

Department	Event Description	Sched. Date & Time
2 D4	STATUS HEARING	7/1/2002 13:30:00

-FOR INTERNAL COURT USE ONLY-
-NOT AN OFFICIAL DOCUMENT-
-REPORT MAY CONTAIN SEALED CASE INFORMATION-

Report Date & Time
11/28/2007
3:36:08PM

Case ID: CR98P0516	Case Description: POST: SIAOSI VANISI (D4) POST CONVICTION	Initial Filing Date: 1/18/2002
Extra Text:	Type:	Disposition: D435 7/1/2002 DISCUSSION ENSUED REGARDING RULE 250 MEMO AND DISCOVERY/IF PETITIONER'S COUNSEL DOES NOT RECEIVE ALL INFORMATION, MAY REQUEST A RECORDS DEPOSITION.

Department	Event Description
3 D4	CONFERENCE CALL

Sched. Date & Time
1/29/2003 15:00:00

Extra Text: COURT TO INITIATE

Disposition: D435 1/29/2003	DISCUSSION ENSUED REGARDING THE MOTION TO WITHDRAW AS COUNSEL/CNSL EDWARDS TO ATTEMPT TO FIND COUNSEL TO ASSIST HIM, PRIOR TO DECISION OF MTN TO WITHDRAW BEING DECIDED
---------------------------------------	---

Department	Event Description
4 D4	CONFERENCE CALL

Sched. Date & Time
2/5/2003 15:30:00

Extra Text: (MOTION TO WITHDRAW AS COUNSEL)

Disposition: D435 2/5/2003	MOTION TO WITHDRAW AS COUNSEL BY PICKER GRANTED/EDWARDS TO PROCEED WITH PARALEGAL ASSISTANCE/INTERIM BILLING TO BE ALLOWED/EDWARDS TO OBTAIN APPROVAL FOR PARALEGAL FEE FROM THE STATE PUBLIC DEFENDER
--------------------------------------	--

Department	Event Description
5 D4	Tickle Start Code

Sched. Date & Time
4/30/2004 07:00:00

Extra Text: HAS ORAL ARGUMENTS BEEN SET?

Disposition: T200 4/30/2004	HEARING SET
---------------------------------------	-------------

Department	Event Description
6 D4	PETITION FOR POST CONVICTION

Sched. Date & Time
11/22/2004 10:00:00

**-FOR INTERNAL COURT USE ONLY-
-NOT AN OFFICIAL DOCUMENT-
-REPORT MAY CONTAIN SEALED CASE INFORMATION-**

Report Date & Time
11/28/2007
3:36:08PM

Case ID: CR98P0516	Case Description: POST: SIAOSI VANISI (D4)	Initial Filing Date: 1/18/2002
Extra Text: (2 DAYS)	Case Type: POST CONVICTION	
	Disposition: D435 11/22/2004 MOTION FOR PSYCH. EVAL. OF PETITIONER GRANTED/MOTION FOR TRANSFER TO LAKE'S CROSSING DENIED/MOTION FOR PERMANENT STAY DENIED/PETITIONER'S COUNSEL ORDERED TO HAVE ANY SUPPLEMENT PETITION WITH REGARDS TO CLAIMS THAT THE PETITIONER'S ASSISTANCE IS NOT NEEDED PREPARED AND READY TO FILE AT NEXT HEARING	

Department	Event Description
7 D4	IN-CHAMBERS CONFERENCE

Sched. Date & Time
1/19/2005 15:45:00

Extra Text: RE: DR. AMAZAGA

Disposition:
D435 1/20/2005 UPON DR. AMEZAGA' REQUEST, COURT ORDERED PETITIONER'S COUNSEL TO FORWARD A COPY OF THE ORIGINAL ORDER FOR PSYCH. EVAL. TO THE DR. FOR EVALUATION PURPOSES AND REVIEW OF RECORDS/COURT ADVISED COUNSEL THAT THE PREVIOUSLY MARKED RECORDS WILL BE COPIED BY THE END OF THE WEEK/COURT FURTHER ORDERED THAT DR. ARE REQUIRED TO ATTEND THE HEARING ON 1/27/05 UPON REQUEST OF PETITIONER'S COUNSEL

Department	Event Description
8 D4	IN-CHAMBERS CONFERENCE

Sched. Date & Time
1/24/2005 13:30:00

Extra Text: RE: DR. AMEZAGA

Disposition:
D435 1/27/2005

Department	Event Description
9 D4	REPORT PSYCHIATRIC EVALUATION

Sched. Date & Time
1/27/2005 14:00:00

Extra Text:

Disposition:
D435 1/27/2005 TESTIMONY PRESENTED FROM DR. BITTKER/HEARING BIFURCATED FOR DR. AMEZAGA

**-FOR INTERNAL COURT USE ONLY-
-NOT AN OFFICIAL DOCUMENT-
-REPORT MAY CONTAIN SEALED CASE INFORMATION-**

Report Date & Time
11/28/2007
3:36:08PM

Case ID: CR98P0516 Case Description: POST: SIAOSI VANISI (D4)
Case Type: POST CONVICTION Initial Filing Date: 1/18/2002

Department **Event Description**
10 D4 REPORT PSYCHIATRIC EVALUATION

Sched. Date & Time
2/18/2005 13:30:00

Extra Text:

Disposition:
D414 2/18/2005 TO PROCEED WITH POST
CONVICTION
PROCEEDINGS/STATE MUST
PREPARE FINDINGS BY 5 PM ON
2/22/05
MOTION FOR STAY PENDING
APPEAL DENIED
SUPPLEMENTAL PETITION MUST
BE FILED BY 5 PM ON 2/22/05
STATE MUST RESPOND TO
SUPPLEMENT PETITION W/IN 45
DAYS

Department **Event Description**
11 D4 CONFERENCE CALL

Sched. Date & Time
4/25/2005 14:30:00

Extra Text: RE: SCHEDULE OF EVIDENTIARY HEARING

Disposition:
D435 4/25/2005 COURT AND COUNSEL
DISCUSSED SCHEDULE OF POST
CONVICTION HEARINGS SET FOR
5/2/05

Department **Event Description**
12 D4 PETITION FOR POST CONVICTION

Sched. Date & Time
5/2/2005 09:00:00

Extra Text:

Disposition:
D498 5/2/2005

Department **Event Description**
13 D4 HEARING ONGOING

Sched. Date & Time
5/18/2005 10:00:00

Extra Text: PETITION FOR POST CONVICTION/MOTION TO
DISMISS

Disposition:
D840 5/18/2005

Department **Event Description**
14 D4 Tickle Start Code

Sched. Date & Time
2/15/2006 07:00:00

Extra Text: HAS DECISION BEEN ENTERED?

Disposition:
T200 2/15/2006

**-FOR INTERNAL COURT USE ONLY-
-NOT AN OFFICIAL DOCUMENT-
-REPORT MAY CONTAIN SEALED CASE INFORMATION-**

Report Date & Time
11/28/2007
3:36:08PM

Case ID: CR98P0516 Case Description: POST: SIAOSI VANISI (D4)
Case Type: POST CONVICTION Initial Filing Date: 1/18/2002

Department Event Description
15 D4 PETITION FOR POST CONVICTION

Sched. Date & Time
4/2/2007 13:30:00

Extra Text: ORAL ARGUMENTS

Disposition:
D435 4/2/2007 STATE TO SUBMIT RESPONSE TO
DEFENSE BRIEF W/IN 10 DAYS.

Department Event Description
16 D4 Tickle Start Code

Sched. Date & Time
4/12/2007 07:00:00

Extra Text: PULL FILE FOR JUDGE (RESPONSE DUE FROM
STATE)

Disposition:
T200 4/12/2007

Department Event Description
17 D4 DECISION

Sched. Date & Time
9/7/2007 09:00:00

Extra Text: TELEPHONIC

Disposition:
D435 9/7/2007 PETITION FOR POST CONVICTION
DENIED AS TO ALL CLAIMS
STATE TO PREPARE FINDINGS OF
FACT, CONCLUSIONS OF LAW
AND ORDER
UPON ENTRY OF WRITTEN
DECISION A HEARING SHALL BE
HELD WHEREIN A NEW
EXECUTION DATE SHALL BE SET

Department Event Description
18 D4 Tickle Start Code

Sched. Date & Time
11/16/2007 07:00:00

Extra Text: HAS ORDER DENYING PETITION FOR POST
CONVICTION BEEN SIGNED?

Disposition:
T200 11/8/2007

Agency Cross Reference

Code	Agency Description	Case Reference I.D.
SC	Supreme Court	SCN 45061

Action Entry Date	Code	Code Description	Actions	Text
1/18/2002	2490	Motion ...		FOR APPOINTMENT OF POST CONVICTION COUNSEL
1/18/2002	3585	Pet Writ Habeas Corpus		
1/22/2002	3880	Response...		TO MOTION FOR APPOINTMENT OF POST-CONVICTION COUNSEL

**-FOR INTERNAL COURT USE ONLY-
-NOT AN OFFICIAL DOCUMENT-
-REPORT MAY CONTAIN SEALED CASE INFORMATION-**

Case ID: CR98P0516		Case Description: Case Type:	POST: SIAOSI VANISI (D4)	Initial Filing Date: 1/18/2002
<u>1/22/2002</u>	3862	**Criminal Submit	POST CONVICTION	DOCUMENT TITLE: POST CONVICTION PARTY SUBMITTING: VANISI DATE SUBMITTED: 1/22/02 SUBMITTED BY: P. MEACHAM DATE RECEIVED JUDGE'S OFFICE:1/23/02 PREMATURE SUBMIT
<u>2/1/2002</u>	3795	Reply...		FILED DATE & TITLE OF ORDER: TO MOTION FOR APPOINTMENT OF POST-CONVICTION COUNSEL AND VERIFICATION ADDENDUM TO WRIT
<u>2/4/2002</u>	3862	**Criminal Submit		DOCUMENT TITLE: REPLY TO MOTION FOR APPT PARTY SUBMITTING: VANISI DATE SUBMITTED: 2/4/02 SUBMITTED BY: P. MEACHAM DATE RECEIVED JUDGE'S OFFICE:2/5/02 FILED DATE & TITLE OF ORDER:3/11/02 ORDER APPOINTING
<u>2/6/2002</u>	T200	Tickle End Code		
<u>3/11/2002</u>	2745	Ord Appointing ...		MARC PICKER TO REPRESENT, FOR PD TO PROVIDE COPY OF FILE TO ATTORNEY, FOR 45 DAYS TO FILE SUPPLEMENT TO PET FOR WRIT AND FOR RESPONSE TO PET/NON PETITION AND TO STAY EXECUTION FOR EXTENSION OF TIME TO FILE SUPPLEMENT (DEADLINE10/01/02)
<u>3/18/2002</u>	3980	Stip and Order...		EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES AND COSTS TO APPOINTED COUNSEL & AFFIDAVID OF COUNSEL
<u>6/14/2002</u>	1670	Ex-Parte Mtn...		ORDER APPROVING FEES OF COURT-APPOINTED ATTORNEYS
<u>6/19/2002</u>	3105	Ord Granting ...		STATUS HEARING JULY 1 2002
<u>8/1/2002</u>	4185	Transcript ...		TO FILE SUPPLEMENTAL MATERIALS (POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS)
<u>10/23/2002</u>	2075	Mtn for Extension of Time		FOR EXTENSION OF TIME TO FILE SUPPLEMENTAL MATERIALS
<u>11/1/2002</u>	2645	Opposition to Mtn ...		TO WITHDRAW AS COUNSEL OF RECORD
<u>12/18/2002</u>	2490	Motion ...		TO WITHDDRAW AS COUNSEL OF RECORD
<u>12/23/2002</u>	2645	Opposition to Mtn ...		IN SUPPORT OF MOTION TO WITHDRAW AS COUNSEL OF RECORD
<u>12/27/2002</u>	3795	Reply...		DOCUMENT TITLE: MTN TO W/D AS COUNSEL PARTY SUBMITTING: DA DATE SUBMITTED: 1/6/03 SUBMITTED BY: P. MEACHAM DATE RECEIVED JUDGE'S OFFICE:1/8/03
<u>1/6/2003</u>	3860	Request for Submission		MOTION TO WITHDRAW AS COUNSEL OF RECORD AND APPOINTING THE PUBLIC DEFENDER'S OFFICE
<u>2/10/2003</u>	3105	Ord Granting ...		GRANTING MOTION TO WITHDRAW AS COUNSEL OF RECORD (MARK PICKER)
<u>2/10/2003</u>	3370	Order ...		RESCINDING ORDER RE: PUBLIC DEFENDER'S OFFICE
<u>2/10/2003</u>	3370	Order ...		
<u>2/14/2003</u>	4185	Transcript ...		1/28/03 POST CONVICTION

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Case ID: CR98P0516		Case Description:	Case Type:	POST: SIAOSI VANISI (D4)	Initial Filing Date: 1/18/2002
3/25/2003	3370	Order ...		GRANTING COMPENSATION FOR SERVICES RENDERED	
3/27/2003	2490	Motion ...		EX PARTE MOTION FILED UNDER SEAL TO PROVIDE COPIES OF SEALED ORDER AND TRANSCRIPTS (POST CONVICTION PET FOR WRIT) (DEATH PENALTY CASE) ***SEALED***	
4/2/2003	3105	Ord Granting ...		FEES OF COURT-APPOINTED ATTORNEYS (DEATH PENALTY CASE)	
4/2/2003	2010	Mtn for Attorney's Fee		2ND INTERIM BILL	
4/23/2003	3370	Order ...		GRANTING MOTION TO PROVIDE SEALED DOCUMENTS TO ATTORNEY SCOTT EDWARDS, ONLY	
7/1/2003	2010	Mtn for Attorney's Fee			
7/2/2003	3370	Order ...		GRANTING COMPENSATION FOR SERVICES RENDERED	
10/30/2003	2490	Motion ...		FOR ORDER APPOINTING CO-COUNSEL	
11/20/2003	3860	Request for Submission		DOCUMENT TITLE: MOTION FOR ORDER APPOINTING CO-COUNSEL PARTY SUBMITTING: SCOTT EDWARDS, ESQ. DATE SUBMITTED: 11-21-03 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE: 11-24-03 THOMAS QUALLS, ESQ. SECOND CHAIR	
12/23/2003	2745	Ord Appointing ...			
3/17/2004	3347	Order to Set			
4/1/2004	2605	Notice to Set			
4/21/2004	1250	Application for Setting		(NOVEMBER 22, 2004)	
4/30/2004	T200	Tickle End Code		HEARING SET	
5/6/2004	3340	Ord to Produce Prisoner			
5/6/2004	1260	Application Produce Prisoner			
11/9/2004	2195	Mtn for Stay ...		MOTION FOR STAY OF POST-CONVICTION HABEAS CORPUS PROCEEDINGS AND FOR TRANSFER OF PETITIONER TO LAKES CROSSING FOR PSYCHOLOGICAL EVALUATION AND TREATMENT (HEARING REQUESTED)	
11/15/2004	3880	Response...		RESPONSE TO MOTION FOR STAY OF POST-CONVICTION HABEAS PROCEEDINGS	
11/17/2004	3795	Reply...		REPLY TO RESPONSE TO MOTION FOR STAY OF POST CONVICTION PROCEEDINGS AND FOR TRANSFER OF PETITIONER TO LAKES CROSSING FOR PSYCH EVAL AND TREATMENT (HEARING REQUESTED)	
11/17/2004	3860	Request for Submission		DOCUMENT TITLE: MOTION FOR STAY OF POST-CONVICTION HABEAS CORPUS PROCEEDINGS PARTY SUBMITTING: SCOTT EDWARDS, ESQ. DATE SUBMITTED: 11-18-04 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE: OF SUPPLEMENTAL AUTHORITIES	
11/19/2004	2610	Notice ...			

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Case ID: CR98P0516		Case Description:	Case Type:	POST: SIAOSI VANISI (D4)	Initial Filing Date: 1/18/2002
11/22/2004	3370	Order ...		POST CONVICTION	
				NO PERSONS OTHER THAN SWORN PERSONNEL SPECIFICALLY ASSIGNED TO SECURITY FOR THIS HEARING SHALL BE ALLOWED TO BRING A WEAPON INTO THE COURT ROOM	
11/22/2004	1695	** Exhibit(s) ...		A and B - ADMITTED	
11/23/2004	4185	Transcript ...		POST-CONVICTION 11-22-04	
11/29/2004	4185	Transcript ...		POST-CONVICTION	
12/13/2004	2525	Notice of Change of Address		NOVEMBER 22, 2004	
12/14/2004	1670	Ex-Parte Mtn...		THOMAS L. QUALLS, ESQ.	
12/17/2004	2777	Order Approving ...		EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES AND COSTS TO APPOINTED COUNSEL & AFFIDAVIT OF COUNSEL	
12/27/2004	2960	Ord Psychiatric Evaluation		FEES OF COURT-APPOINTED ATTORNEYS	
1/14/2005	1670	Ex-Parte Mtn...		EX PARTE CLAIM FOR ATTORNEY COMPENSATION	
1/18/2005	3862	**Criminal Submit		DOCUMENT TITLE: EX PARTE CLAIM FOR ATTORNEY COMPENSATION	
				PARTY SUBMITTING: THOMAS QUALLS, ESQ.	
				DATE SUBMITTED: 1-18-05	
				SUBMITTED BY: GVELARDE	
				DATE RECEIVED JUDGE'S OFFICE:	
				C - ADMITTED UNDER SEAL	
1/19/2005	1695	** Exhibit(s) ...			
1/27/2005	4185	Transcript ...		01/24/05 - IN-CHAMBERS CONFERENCE	
1/28/2005	2777	Order Approving ...		TRANSCRIPTION FEES (2)	
1/31/2005	4185	Transcript ...		01/27/05 - REPORT ON PSYCHIATRIC EVALUATION	
2/4/2005	3105	Ord Granting ...		CLAIM FOR COMPENSATION (QUALLS)	
2/4/2005	1670	Ex-Parte Mtn...		FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES AND COSTS TO APPOINTED COUNSEL & AFFIDAVIT OF COUNSEL	
2/16/2005	4185	Transcript ...		IN CHAMBERS HEARING1-19-05	
2/16/2005	4505	Crt Ord Psych Eval - Conf. Env		DR AMEZAGA	
2/22/2005	4105	Supplemental ...		SUPPLEMENTAL POINTS & AUTHORITIES TO PETITION FOR POST CONVICTION	
				(UNSEALED BY ORDER OF COURT FILED 4/28/05)	
2/22/2005	3862	**Criminal Submit		DOCUMENT TITLE: SUPPLEMENTAL POINTS & AUTHORITIES TO PETITION FOR POST CONVICTION	
				PARTY SUBMITTING: SCOTT EDWARDS, ESQ.	
				DATE SUBMITTED: 2-22-05	
				SUBMITTED BY: GVELARDE	
				DATE RECEIVED JUDGE'S OFFICE:	
2/22/2005	4185	Transcript ...		02/18/05 - POST CONVICTION - REPORT ON PSYCHIATRIC EVALUATION	
2/23/2005	2165	Mtn for Protective Ord			

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Case ID: CR98P0516		Case Description:	Case Type:	POST: SIAOSI VANISI (D4)	Initial Filing Date: 1/18/2002
				POST CONVICTION	
<u>2/23/2005</u>	1670	Ex-Parte Mtn...		FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES AND COSTS TO APPOINTED COUNSEL & AFFIDAVIT OF COUNSEL	
<u>2/28/2005</u>	1670	Ex-Parte Mtn...		EX PARTE CLAIM FOR ATTORNEY COMPENSATION	
<u>3/1/2005</u>	3105	Ord Granting ...		FEES & COSTS (EDWARDS)	
<u>3/1/2005</u>	3862	**Criminal Submit		DOCUMENT TITLE: EX PARTE CLAIM FOR ATTORNEY COMPENSATION PARTY SUBMITTING: THOMAS QUALLS, ESQ. DATE SUBMITTED: 3-2-05 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE:	
<u>3/7/2005</u>	3105	Ord Granting ...		FEES & COSTS OF COURT APPOINTED ATTY (EDWARDS)	
<u>3/7/2005</u>	1670	Ex-Parte Mtn...		EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES AND COSTS TO APPOINTED COUNSEL & AFFIDAVIT OF COUNSEL	
<u>3/9/2005</u>	3105	Ord Granting ...		FEES & COSTS FOR ATTY (EDWARDS)	
<u>3/9/2005</u>	3880	Response...		RESPONSE TO MOTION FOR A PROTECTIVE ORDER	
<u>3/14/2005</u>	3860	Request for Submission		FOR PAYMENT OF TRANSCRIPTION FEES	
<u>3/16/2005</u>	3370	Order ...		ORDER FINDING PETITIONER COMPETENT TO PROCEED	
<u>3/16/2005</u>	3795	Reply...		REPLY TO STATE'S RESPONSE TO MOTION FOR PROTECTIVE ORDER	
<u>3/16/2005</u>	4105	Supplemental ...		SUPPLEMENTAL RESPONSE TO MOTION FOR A PROTECTIVE ORDER	
<u>3/18/2005</u>	3860	Request for Submission		DOCUMENT TITLE: MOTION FOR PROTECTIVE ORDER PARTY SUBMITTING: SCOTT EDWARDS, ESQ. DATE SUBMITTED: 3-21-05 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE: 3/30/05	
<u>4/14/2005</u>	3862	**Criminal Submit		DOCUMENT TITLE: EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES & COSTS PARTY SUBMITTING: SCOTT EDWARDS, ESQ. DATE SUBMITTED: 4-15-05 SUBMITTED BY: GVELARDE DATE RECEIVED JUDGE'S OFFICE:	
<u>4/14/2005</u>	1188	Supreme Court Receipt for Doc		SUPREME COURT CASE NO. 45061	
<u>4/14/2005</u>	1670	Ex-Parte Mtn...		FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES AND COSTS TO APPOINTED COUNSEL	
<u>4/14/2005</u>	1187	**Supreme Court Case No. ...		SUPREME COURT CASE NO. 45061	
<u>4/20/2005</u>	4128	Supreme Court Order Denying		SUPREME COURT CASE NO. 45061 ORDER DENYING PETITION	
<u>4/21/2005</u>	3105	Ord Granting ...		FEES AND COSTS OF COURT-APPOINTED ATTYS	
<u>4/21/2005</u>	1130	Answer ...		ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS AND SUPPLEMENTAL POINTS AND AUTHORITIES TO PETITION FOR HABEAS CORPUS (POST CONVICTION)	
<u>4/21/2005</u>	2300	Mtn to Dismiss Pet			

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Case ID: CR98P0516		Case Description:	Case Type:	POST: SIAOSI VANISI (D4)	Initial Filing Date: 1/18/2002
4/26/2005	2280	Mtn to Continue		POST CONVICTION	EVIDENTIARY HEARING
4/26/2005	4185	Transcript ...			04/25/05 - IN CHAMBERS CONFERENCE CALL
4/27/2005	3880	Response...			TO MOTION TO CONTINUE
4/28/2005	3370	Order ...			PETITIONER'S MOTION FOR PROTECTIVE ORDER IS DENIED. SUPPLEMENTAL POINTS & AUTHORITIES TO PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) AND THE ATTACHED EXHIBITS FILED UNDER SEAL ON 022205 IS HEREBY UNSEALED.
4/29/2005	3370	Order ...			PETITIONER'S MOTION TO CONTINUE EVIDENTIARY HEARING IS DENIED IN PART. THE HEARING WILL BEGIN 050205 AND MAY BE CONTINUED TO ANOTHER DATE.
5/3/2005	4185	Transcript ...			05/02/05 - POST-CONVICTION HEARING
5/6/2005	2645	Opposition to Mtn ...			TO DISMISS
5/6/2005	1670	Ex-Parte Mtn...			EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES TO EXPERT WITNESS
5/9/2005	3862	**Criminal Submit			DOCUMENT TITLE: EX PARTE CLAIM FOR ATTORNEY COMPENSATION
					PARTY SUBMITTING: THOMAS QUALLS, ESQ.
					DATE SUBMITTED: 5-9-05
					SUBMITTED BY: GVELARDE
					DATE RECEIVED JUDGE'S OFFICE:
5/9/2005	1670	Ex-Parte Mtn...			EX PARTE CLAIM FOR ATTORNEY COMPENSATION
5/12/2005	3105	Ord Granting ...			QUALLS .
5/18/2005	3370	Order ...			OF PMT OF TRANSCRIPTION FEES THROUGH STATE PD
5/18/2005	4133	Supreme Court Notice			SUPREME COURT CASE NO. 45061
5/20/2005	4185	Transcript ...			NOTICE IN LIEU OF REMITTITUR
5/25/2005	1670	Ex-Parte Mtn...			05/18/05 - CONTINUED POST-CONVICTION HEARING
5/31/2005	1665	Ex-Parte Application...			FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES AND COSTS TO APPOINTED COUNSEL
6/7/2005	3105	Ord Granting ...			EX PARTE CLAIM FOR ATTORNEY COMPENSATION
6/7/2005	3897	Return			FEES & COSTS OF COURT-APPOINTER ATTORNEYS (SCOTT EDWARDS, ESQ.)
6/14/2005	3105	Ord Granting ...			CLAIM FOR COMPENSATION (T. QUALLS)
7/15/2005	3060	Ord Granting Mtn ...			FOR ATTY'S FEES (MR EDWARDS FOR EXP WIT RICHARD CORNELL)
8/31/2005	3370	Order ...			PMT OF TRANSCRIPTION FEES IS GRANTED AND THE STATE PD TO PAY CAPTIONS UNLIMITED (051805 HRNG)
2/15/2006	T200	Tickle End Code			
3/14/2007	1260	Application Produce Prisoner			
3/15/2007	1250	Application for Setting		POST CONVICTION - ORAL ARGUMENTS - 4/2/07 AT 1:30 P.M.	
3/21/2007	3340	Ord to Produce Prisoner			

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Case ID: CR98P0516		Case Description:	Case Type:	POST: SIAOSI VANISI (D4)	Initial Filing Date: 1/18/2002
<u>3/28/2007</u>	3370	Order ...		POST CONVICTION	
				NO PERSONS OTHER THAN SWORN PERSONNEL SPECIFICALLY ASSIGNED TO SECURITY FOR THIS HEARING SHALL BE ALLOWED TO BRING WEAPONS INTO THE COURTROOM DURING THE HEARINGS OF THIS MATTER OF LAW REGARDING MCCONNELL ERROR	
<u>3/28/2007</u>	1960	Memorandum ...			
<u>4/2/2007</u>	MIN	**Minutes		PETITION FOR POST CONVICTION	
<u>4/3/2007</u>	4185	Transcript ...		04/02/07 - POST CONVICTION HEARING	
<u>4/6/2007</u>	1960	Memorandum ...		STATE'S MEMORANDUM OF LAW CONCERNING THE RETROACTIVE APPLICATION OF MCCONNELL EX PARTE CLAIM FOR ATTORNEY COMPENSATION	
<u>4/6/2007</u>	1670	Ex-Parte Mtn...		DOCUMENT TITLE: EX PARTE CLAIM FOR ATTORNEY COMPENSATION	
<u>4/6/2007</u>	3862	**Criminal Submit		PARTY SUBMITTING: THOMAS L. QUALLS DATE SUBMITTED: 4/13/07 SUBMITTED BY: YLLOYD DATE RECEIVED JUDGE'S OFFICE:	
<u>4/11/2007</u>	3370	Order ...			
<u>4/12/2007</u>	T200	Tickle End Code			
<u>4/16/2007</u>	3862	**Criminal Submit		DOCUMENT TITLE: EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES AND COSTS TO APPOINTED COUNSEL PARTY SUBMITTING: SCOTT EDWARDS DATE SUBMITTED: 4/18/07 SUBMITTED BY: JB DATE RECEIVED JUDGE'S OFFICE:	
<u>4/16/2007</u>	1670	Ex-Parte Mtn...		EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES AND COSTS TO APPOINTED COUNSEL & AFFIDAVIT OF COUNSEL (POST-CONVICTION FOR WRIT OF HABEAS CORPUS)-9TH INTERIM BILL (DEATH PENALTY CASE)	
<u>6/4/2007</u>	3105	Ord Granting ...		FEES AND COSTS OF COURT-APPOINTED ATTORNEY FOR SCOTT EDWARDS, ESQ. IN THE AMOUNT OF \$1,875.00	
<u>6/4/2007</u>	3105	Ord Granting ...		CLAIM FOR COMPENSATION OF ATTORNEY FEES FOR THOMAS QUALLS, ESQ. IN THE AMOUNT OF \$2,750.00	
<u>8/21/2007</u>	1250	Application for Setting		TELEPHONIC DECISION - 9/7/07 @ 9:00 A.M.	
<u>9/9/2007</u>	4185	Transcript ...		ORAL DECISION - SEPTEMBER 7, 2007 - Transaction 46553 -	
<u>9/18/2007</u>	3370	Order ...		Approved By: TPRINCE : 09-10-2007:07:22:36 PAYMENT OF TRANSCRIPTION FEES BE GRANTED AND THAT THE STATE PUBLIC DEFENDER PAY CAPTIONS UNLIMITED OF NEVADA, INC. THE SUM OF \$344.40	
<u>11/6/2007</u>	MIN	**Minutes		DECISION ON PETITION FOR POST CONVICTION (TELEPHONIC) - 9/7/07 - Transaction 80766 - Approved By:	
<u>11/8/2007</u>	1315	** Case Closed		NOREVIEW : 11-06-2007:16:31:16	
<u>11/8/2007</u>	1750	Findings, Conclusions & Judg		PETITION FOR WRIT OF HABEAS CORPUS DENIED	

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Report Date & Time
11/28/2007
3:36:08PM

Case ID:	CR98P0516	Case Description:	POST: SIAOSI VANISI (D4) POST CONVICTION	Initial Filing Date: 1/18/2002
<u>11/8/2007</u>	T200	Tickle End Court		
<u>11/19/2007</u>	2540	Notice of Entry of Ord		
<u>11/28/2007</u>	2515	Notice of Appeal Supreme Court		
<u>11/28/2007</u>	1365	Certificate of Transmittal		
<u>11/28/2007</u>	1350	Certificate of Clerk		
<u>11/28/2007</u>	1310	Case Appeal Statement		

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FILED

NOV 08 2007

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

CODE: 1750

CR98P0516
POST: SIAOSI VANISI (04)
District Court
Washoe County
DC-9900061956-239
15 Pages
11/08/2007 03:56 PM
1750

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

SIAOSI VANISI,

Petitioner,

v.

Case No. CR98P0516

WARDEN, ELY STATE PRISON,
AND THE STATE OF NEVADA,

Dept. No. 4

Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This cause is before the court upon a petition for writ of habeas corpus. Petitioner Vanisi was represented by the Washoe County Public Defender on charges including murder stemming from the attack on University Police Sergeant George Sullivan. The case has a lengthy procedural history including pre-trial writs and appeals. Ultimately, the case was tried and Vanisi was sentenced to death. He appealed but the judgment was affirmed. *Vanisi v. State*, 117 Nev. 330, 22 P.3d 1164 (2001). In the course of affirming, the Court noted, inter alia, that the evidence of Vanisi's guilt was "overwhelming."

1 Vanisi later filed a petition for writ of habeas corpus (post-conviction). This
2 court appointed counsel and allowed a supplemental petition. Before counsel filed
3 the supplement, however, counsel filed a motion in which they suggested that Vanisi
4 was incompetent and that the cause should be stayed indefinitely until he regained
5 competence. Counsel suggested that they should not be required to file a
6 supplement because there could be other claims that would come to light only if
7 Vanisi was competent. The State opposed the motion and suggested that even if
8 Vanisi were incompetent, that would not lead to indefinitely staying the proceedings.
9 On February 18, 2005, the court conducted a hearing on the issue. Upon
10 considering all the evidence, the court determined as a matter of fact that Vanisi
11 was not incompetent. Consequently, it was not necessary to decide the
12 consequences of the alleged incompetence. The court then directed counsel to file
13 the supplement. The original petition had no specific claims for relief and so the
14 only claims were presented in the supplement.
15

16 The State filed its motion to dismiss, but the court held that motion in
17 abeyance and allowed petitioner to present evidence concerning all of the claims.
18 At the close of that hearing, the court initially took the matter under advisement.
19 Before any ruling, however, the Supreme Court issued its ruling in *Bejarano v. State*,
20 ____ Nev. ____, 146 P.3d 265 (2006). Accordingly, the court called for additional
21 arguments relating to the application of that case to the instant case. Afterwards,
22 the court again took the matter under advisement. After careful consideration of all
23 the arguments and evidence, including the demeanor of the witnesses, the court
24 makes these findings.
25

26 ///

1 The first claim involved the Vienna Convention on Consular relations. Vanisi
2 alleged that he is a Tongan national and that when he was initially arrested in Salt
3 Lake City, officials failed to inform him of his right to contact the Tongan consulate.
4 There was evidence in earlier proceedings establishing that Vanisi was a citizen of
5 Tonga, and the State has not seriously disputed that allegation. However, the court
6 notes that there was no evidence presented in the habeas corpus hearing tending to
7 establish that he was not informed of his right to contact the consulate. He had a
8 full and fair opportunity to present whatever evidence he wished, but made no effort
9 to support this claim. Thus, the factual predicate for the claim remains unproven.
10 Nevertheless, the court will address some of the other issues.

12 The claim concerning the Vienna Convention was raised as a stand-alone
13 claim for relief as well as part of a claim of ineffective assistance of trial counsel and
14 of appellate counsel. The stand-alone claim will not be considered for reasons
15 presented in the State's motion to dismiss. The claim will be heard, however, in the
16 context of a claim of ineffective assistance of counsel. The claim of ineffective
17 assistance of counsel requires the petitioner to prove by a preponderance of the
18 evidence that the specific acts or omissions by counsel fell below an objective
19 standard of reasonableness. In addition, the petitioner must show resulting
20 prejudice. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). In the
21 case of trial counsel, the petitioner must show that but for the failings of counsel a
22 different result was reasonably likely. *Id.* In the case of claims omitted by appellate
23 counsel, the petitioner must show that the claim had a reasonable probability of
24 success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114
25 (1996). Here, the court finds that neither counsel was ineffective. Appellate counsel
26

1 testified credibly that he made a strategic choice concerning what issues to raise,
2 and did not wish to bury what he believed to be a viable issue within a pile of less
3 meritorious issues. The court also notes that petitioner's expert agreed that the
4 issue was not one that would inspire reasonable counsel to raise the issue. The
5 court also notes that the state of the law was such that reasonable counsel would
6 not be inclined to devote any resources to developing the claim. See *Garcia v.*
7 *State*, 117 Nev 124, 17 P.3d 994 (2001).
8

9 In addition, the court finds a lack of prejudice. Michael Specchio testified
10 credibly that very early on in the litigation his office contacted the Tongan consulate
11 but that the representative of Tonga expressed absolutely no interest in rendering
12 any sort of assistance to Vanisi or to his counsel. The court also notes that no
13 consular or diplomatic officials appeared at the habeas corpus hearing. There was
14 no evidence presented tending to show that this case would have been affected in
15 any way if Vanisi had been told upon his arrest that he had the right to contact the
16 consulate that had no interest in assisting him. Accordingly, this court finds as a
17 matter of fact that Vanisi was not prejudiced in any way due to the alleged lack of
18 advisement of his right to contact his consulate, or due to the failure of counsel to
19 raise an issue concerning the Vienna Convention in the trial court or on appeal.
20

21 Vanisi next claims that the death sentence must be set aside because the
22 charging document included a felony-murder theory and the jury found that same
23 underlying felony as an aggravating circumstance. The argument is dependent on a
24 change in the law occurring after the direct appeal in this matter. *McConnell v.*
25 *State*, 120 Nev. ___, 102 P.3d 606 (2004), *rehearing denied*, 120 Nev. ___, 107
26 P.3d 1287 (2005), marked a distinct change in the law. Nevertheless, the Supreme

1 Court subsequently ruled in *Bejarano* that the *McConnell* decision would be applied
2 retroactively.

3 There is little question that *McConnell* applies. The court finds however, that
4 application of the *McConnell* decision does not affect the outcome of this case.

5 The charging instrument alleged both premeditated murder and felony
6 murder. The felony murder stemmed from the robbery charge. The robbery charge
7 arose because when Vanisi attacked Sergeant Sullivan, he stole the officer's service
8 weapon. The jury did not return a special verdict. At sentencing, the jury found that
9 the aggravating circumstances included the same robbery allegation as was alleged
10 in the portion of the charging instrument alleging the felony-murder theory. In
11 *Bejarano*, however, the Court ruled that the error can be harmless. In *Brown v.*
12 *Sanders*, 546 U.S. 212, 126 S.Ct. 884 (2006), the Court indicated that the analysis
13 of harmlessness is akin to the traditional analysis of prejudice commonly applied by
14 Nevada trial courts in post-conviction actions. The Court ruled that where the facts
15 concerning the invalid aggravating circumstance are nevertheless available to be
16 considered when weighing a valid aggravating circumstance, then the invalidation of
17 the aggravating circumstance ought to be seen as non-prejudicial. Here, the invalid
18 aggravator involved robbery. The nature of the robbery involved the theft of the
19 service weapon of a uniformed police officer. Those facts were still available to the
20 jury even after eliminating the aggravating circumstance of robbery. The facts
21 concerning the invalid aggravator (robbery) could nevertheless be given aggravating
22 weight under the rubric of a valid aggravator (killing and mutilating an officer). The
23 ferocity of the attack, and its attendant mutilation, rendered Sergeant Sullivan
24 unable to resist the theft of his service weapon. The theft was part and parcel of the
25
26

1 killing and the killing included the theft. The theft, the killing and the mutilation were
2 all temporally and geographically contemporaneous and so the jury, in considering
3 what weight to assign to the valid aggravators, could certainly have considered the
4 facts and circumstances of those valid aggravators as they included the theft and
5 the officer's inability to resist the theft. The court also notes that the aggravator
6 involving the killing of a police officer required the State to prove that the defendant
7 knew or should have known that the victim was a police officer performing his
8 duties. The theft of the service weapon certainly is available as part of the proof that
9 Vanisi knew he was killing a police officer who was performing his duties. Thus,
10 under the analysis of *Brown v. Sanders*, this court finds that there is no likelihood of
11 a different result by the retroactive application of *McConnell*. Whether the nature of
12 the crime amounted to one aggravating circumstance or a dozen, the facts and the
13 attending weight remain unchanged. Therefore, the claim concerning the retroactive
14 application of *McConnell* is denied.
15

16 Vanisi next argues that this court erred in denying his motion for self-
17 representation. That claim was considered and rejected on direct appeal and thus
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14 Petitioner alleges that counsel revealed that little problem in chambers in an effort
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17 scheme is unconstitutional. To the extent that these are stand-alone claims, each is
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9 Furthermore, each argument has been repeatedly rejected. See *McConnell*
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9 Supreme Court have agreed to examine the question, but the court finds that the
10 fact that a reviewing court has agreed to hear a case has no precedential value.
11 Accordingly, that claim is denied.

12 Ground 11 mentions that Vanisi might someday become incompetent to be
13 executed but he seeks no relief based on that allegation. Therefore, no relief is
14 warranted.

15 Ground 12 is an assertion that the conviction and sentence are invalid
16 because the judicial officer presiding over the trial was an elected judge. The court
17 finds that counsel was not ineffective in failing to raise this issue and that it had no
18 reasonable likelihood of success. *See McConnell, supra*. Accordingly, that claim is
19 denied.

20 Vanisi next claims that the death sentence must be set aside because there
21 is a possibility that an innocent person might be executed. The court notes that
22 there is no doubt that Vanisi is not one of those innocent persons. The court finds
23 that counsel was not ineffective in failing to raise this issue and that it had no
24 reasonable likelihood of success. Accordingly, that claim is denied.
25
26

1 The 14th claim is an argument that the death penalty is prohibited by the Due
2 Process clause because it is not rationally related to any legitimate government
3 goal. This claim suffers from all the defects found in parts 7 through 13. It is also
4 legally wrong. In addition to the other factors, our legislature could legitimately
5 determine that the death penalty is a way to advance society's interests in deterring
6 others, in preventing future crimes by the murderer and in punishing the wrongdoer.

7 The 15th claim is a compilation of some of the arguments already discussed.
8 No further discussion is warranted.

9 Ground 16 includes the defects found in parts 7 through 15. The court finds
10 that counsel was not ineffective in failing to raise these arguments and that they had
11 no reasonable likelihood of success.

12 Ground 17 fares no better than grounds 7 through 16. It is an argument to the
13 effect that a "death qualified" jury, a jury that agrees to follow the law, prevents a fair
14 trial. This claim has been repeatedly rejected by the courts that have considered it.
15 The constitution does not demand that the jury pool be limited to those who will not
16 agree to follow the law presented by the judge. See *McKenna v. State*, 103 Nev.
17 227, 737 P.2d 508 (1987). Vanisi has not directed any of his arguments to the jury
18 that actually heard this case. He presents only generic arguments that ought to be
19 presented to the legislature. The Court finds that counsel was not ineffective in
20 failing to advance this argument and that it was not reasonably likely to be
21 successful.

22 Ground 18 is a claim that the death sentence was imposed due to passion,
23 prejudice or some arbitrary factor. That claim was considered and rejected on direct
24 appeal. This claim is barred by the doctrine of the law of the case.
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1 Ground 19 of the supplement is a claim that the conviction must be set aside
2 because the statutes in effect at the time of the trial precluded a defense based on
3 insanity and the decision of the Supreme Court invalidating that statute was not
4 issued until after Vanisi's trial. Trial counsel testified, however, that they were aware
5 of the potential challenges to the statute but did not attempt to present an insanity
6 plea because they had no basis for the plea. Furthermore, there was no evidence
7 presented in the habeas corpus hearing supporting such a defense. There was
8 some evidence that Vanisi was bi-polar, but nothing supporting a potential defense
9 of insanity. Therefore, the court remains confident of the verdict and finds that
10 neither trial counsel nor appellate counsel were ineffective. The court further finds
11 that Vanisi was not prejudiced by the alleged failings of counsel.
12

13 The next claim in the supplement asserts a claim of ineffective assistance of
14 counsel in that it is framed in terms of counsel's failure to investigate potential
15 mitigating evidence. The court finds that there was no significant additional
16 mitigating evidence presented in the habeas corpus hearing and thus finds that
17 there is no reason to believe that counsel could have obtained additional evidence
18 or that Vanisi was prejudiced by the alleged failure to investigate.
19

20 Vanisi also suggests that trial counsel should have retained a mitigation
21 specialist. However, there was no evidence presented tending to show that such a
22 person could have done more than was already done. Trial counsel testified to a
23 fairly extensive investigation and the court finds that there is no reason to believe
24 that someone else would have conducted the investigation differently or would have
25 discovered additional mitigating evidence. The record reveals that the defense
26 presented the testimony of Dr. Ole Theinhaus at sentencing. That witness

1 discussed Vanisi's mental illness. Other witnesses discussed his drug and alcohol
2 abuse and his declining condition in the months preceding the murder. However,
3 there is still no new significant mitigating evidence and so this claim is also denied.
4

5 The next claim is an assertion that but for the collective failures of counsel,
6 Vanisi would have mounted a more meaningful defense, although the nature of that
7 defense is still not identified. The court notes that Vanisi did not testify in the
8 habeas corpus hearing and thus there is no evidence tending to support this claim.
9 Instead, the testimony established that Vanisi prohibited any defense such as self-
10 defense, provocation and coercion and refused to cooperate in presenting any
11 defense except his false claim that he did not participate in the killing of Sergeant
12 Sullivan. The court finds no evidence supporting the notion that counsel's alleged
13 failings were the cause for the lack of a viable defense. Instead, the cause for the
14 lack of any viable defense was that no such defense existed and Vanisi refused to
15 cooperate in presenting any defense.

16 Ground 22 is a catch-all assertion that counsel was ineffective on appeal in
17 failing to raise each and every issue raised in the supplement. The court finds,
18 again, that appellate counsel made reasonable tactical decisions concerning the
19 issues to raise, and that none of the various potential issues were reasonably likely
20 to succeed.

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The court has considered all the evidence and the arguments of counsel but remains unpersuaded that Vanisi is entitled to relief. Vanisi bore the burden of proof and at the close of the evidence the court was not persuaded of the validity of any of the claims for relief. Because Vanisi failed in his burden, the petition is denied.

DATED this 8 day of November, 2007:

Connie J. Steinheim
DISTRICT JUDGE

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of SECOND JUDICIAL DISTRICT COURT; and that, on the 8th day of November, 2007, I deposited in the county mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing document, addressed as follows:

Scott W. Edwards, Esq.
729 Evans Avenue
Reno, NV 89512

Thomas L. Qualls, Esq.
216 E. Liberty Street
Reno, NV 89501

Siaosi Vanisi #63376
Ely State Prison
P.O. Box 1989
Ely, NV 89301

Terrence P. McCarthy, Esq.
Appellate Duty
District Attorney's Office
Via Inter-Office Mail



Tracy L. Purves
Judicial Assistant

CR98P0516
DC-990002046-049
POST: SIAOSI VANISI (D4)
District Court 11/19/2007 04:26 PM
Washoe County
2540
hac

1 CODE: 2540

2 ORIGINAL

FILED

2007 NOV 19 PM 4:26

HOWARD W. CONYERS
BY 
DEPUTY

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

8 ***

9 SIAOSI VANISI,

10 Petitioner,

CASE NO: CR98P0516

11 VS.

DEPT. NO.: 4

12 THE STATE OF NEVADA,

13 Respondent,
14 _____

15
16 **NOTICE OF ENTRY OF ORDER**

17 PLEASE TAKE NOTICE that on November 8, 2007 the Court entered a decision or
18 Order in this matter, a true and correct copy of which is attached to this notice.

19 You may appeal to the Supreme Court from the decision or order of the Court.
20 If you wish to appeal, you must file a notice of appeal with the Clerk of this Court within thirty-
21 Three (33) days, after the date this notice is mailed to you. This notice was mail on November 19,
22 2007.

23 HOWARD W. CONYERS

24 Clerk of the Court

25 By 

26 Deputy Clerk
27
28

ORIGINAL

FILED

CODE: 1750

NOV 08 2007

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

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

SIAOSI VANISI,

Petitioner,

v.

Case No. CR98P0516

WARDEN, ELY STATE PRISON,
AND THE STATE OF NEVADA,

Dept. No. 4

Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This cause is before the court upon a petition for writ of habeas corpus. Petitioner Vanisi was represented by the Washoe County Public Defender on charges including murder stemming from the attack on University Police Sergeant George Sullivan. The case has a lengthy procedural history including pre-trial writs and appeals. Ultimately, the case was tried and Vanisi was sentenced to death. He appealed but the judgment was affirmed. *Vanisi v. State*, 117 Nev. 330, 22 P.3d 1164 (2001). In the course of affirming, the Court noted, inter alia, that the evidence of Vanisi's guilt was "overwhelming."

1 Vanisi later filed a petition for writ of habeas corpus (post-conviction). This
2 court appointed counsel and allowed a supplemental petition. Before counsel filed
3 the supplement, however, counsel filed a motion in which they suggested that Vanisi
4 was incompetent and that the cause should be stayed indefinitely until he regained
5 competence. Counsel suggested that they should not be required to file a
6 supplement because there could be other claims that would come to light only if
7 Vanisi was competent. The State opposed the motion and suggested that even if
8 Vanisi were incompetent, that would not lead to indefinitely staying the proceedings.

9 On February 18, 2005, the court conducted a hearing on the issue. Upon
10 considering all the evidence, the court determined as a matter of fact that Vanisi
11 was not incompetent. Consequently, it was not necessary to decide the
12 consequences of the alleged incompetence. The court then directed counsel to file
13 the supplement. The original petition had no specific claims for relief and so the
14 only claims were presented in the supplement.

15 The State filed its motion to dismiss, but the court held that motion in
16 abeyance and allowed petitioner to present evidence concerning all of the claims.
17 At the close of that hearing, the court initially took the matter under advisement.
18 Before any ruling, however, the Supreme Court issued its ruling in *Bejarano v. State*,
19 ____ Nev. ____, 146 P.3d 265 (2006). Accordingly, the court called for additional
20 arguments relating to the application of that case to the instant case. Afterwards,
21 the court again took the matter under advisement. After careful consideration of all
22 the arguments and evidence, including the demeanor of the witnesses, the court
23 makes these findings.

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1 The first claim involved the Vienna Convention on Consular relations. Vanisi
2 alleged that he is a Tongan national and that when he was initially arrested in Salt
3 Lake City, officials failed to inform him of his right to contact the Tongan consulate.
4 There was evidence in earlier proceedings establishing that Vanisi was a citizen of
5 Tonga, and the State has not seriously disputed that allegation. However, the court
6 notes that there was no evidence presented in the habeas corpus hearing tending to
7 establish that he was not informed of his right to contact the consulate. He had a
8 full and fair opportunity to present whatever evidence he wished, but made no effort
9 to support this claim. Thus, the factual predicate for the claim remains unproven.
10 Nevertheless, the court will address some of the other issues.

12 The claim concerning the Vienna Convention was raised as a stand-alone
13 claim for relief as well as part of a claim of ineffective assistance of trial counsel and
14 of appellate counsel. The stand-alone claim will not be considered for reasons
15 presented in the State's motion to dismiss. The claim will be heard, however, in the
16 context of a claim of ineffective assistance of counsel. The claim of ineffective
17 assistance of counsel requires the petitioner to prove by a preponderance of the
18 evidence that the specific acts or omissions by counsel fell below an objective
19 standard of reasonableness. In addition, the petitioner must show resulting
20 prejudice. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). In the
21 case of trial counsel, the petitioner must show that but for the failings of counsel a
22 different result was reasonably likely. *Id.* In the case of claims omitted by appellate
23 counsel, the petitioner must show that the claim had a reasonable probability of
24 success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114
25 (1996). Here, the court finds that neither counsel was ineffective. Appellate counsel
26

1 testified credibly that he made a strategic choice concerning what issues to raise,
2 and did not wish to bury what he believed to be a viable issue within a pile of less
3 meritorious issues. The court also notes that petitioner's expert agreed that the
4 issue was not one that would inspire reasonable counsel to raise the issue. The
5 court also notes that the state of the law was such that reasonable counsel would
6 not be inclined to devote any resources to developing the claim. See *Garcia v.*
7 *State*, 117 Nev 124, 17 P.3d 994 (2001).
8

9 In addition, the court finds a lack of prejudice. Michael Specchio testified
10 credibly that very early on in the litigation his office contacted the Tongan consulate
11 but that the representative of Tonga expressed absolutely no interest in rendering
12 any sort of assistance to Vanisi or to his counsel. The court also notes that no
13 consular or diplomatic officials appeared at the habeas corpus hearing. There was
14 no evidence presented tending to show that this case would have been affected in
15 any way if Vanisi had been told upon his arrest that he had the right to contact the
16 consulate that had no interest in assisting him. Accordingly, this court finds as a
17 matter of fact that Vanisi was not prejudiced in any way due to the alleged lack of
18 advisement of his right to contact his consulate, or due to the failure of counsel to
19 raise an issue concerning the Vienna Convention in the trial court or on appeal.
20

21 Vanisi next claims that the death sentence must be set aside because the
22 charging document included a felony-murder theory and the jury found that same
23 underlying felony as an aggravating circumstance. The argument is dependent on a
24 change in the law occurring after the direct appeal in this matter. *McConnell v.*
25 *State*, 120 Nev. ___, 102 P.3d 606 (2004), *rehearing denied*, 120 Nev. ___, 107
26 P.3d 1287 (2005), marked a distinct change in the law. Nevertheless, the Supreme

1 Court subsequently ruled in *Bejarano* that the *McConnell* decision would be applied
2 retroactively.

3 There is little question that *McConnell* applies. The court finds however, that
4 application of the *McConnell* decision does not affect the outcome of this case.

5 The charging instrument alleged both premeditated murder and felony
6 murder. The felony murder stemmed from the robbery charge. The robbery charge
7 arose because when Vanisi attacked Sergeant Sullivan, he stole the officer's service
8 weapon. The jury did not return a special verdict. At sentencing, the jury found that
9 the aggravating circumstances included the same robbery allegation as was alleged
10 in the portion of the charging instrument alleging the felony-murder theory. In
11 *Bejarano*, however, the Court ruled that the error can be harmless. In *Brown v.*
12 *Sanders*, 546 U.S. 212, 126 S.Ct. 884 (2006), the Court indicated that the analysis
13 of harmlessness is akin to the traditional analysis of prejudice commonly applied by
14 Nevada trial courts in post-conviction actions. The Court ruled that where the facts
15 concerning the invalid aggravating circumstance are nevertheless available to be
16 considered when weighing a valid aggravating circumstance, then the invalidation of
17 the aggravating circumstance ought to be seen as non-prejudicial. Here, the invalid
18 aggravator involved robbery. The nature of the robbery involved the theft of the
19 service weapon of a uniformed police officer. Those facts were still available to the
20 jury even after eliminating the aggravating circumstance of robbery. The facts
21 concerning the invalid aggravator (robbery) could nevertheless be given aggravating
22 weight under the rubric of a valid aggravator (killing and mutilating an officer). The
23 ferocity of the attack, and its attendant mutilation, rendered Sergeant Sullivan
24 unable to resist the theft of his service weapon. The theft was part and parcel of the
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1 killing and the killing included the theft. The theft, the killing and the mutilation were
2 all temporally and geographically contemporaneous and so the jury, in considering
3 what weight to assign to the valid aggravators, could certainly have considered the
4 facts and circumstances of those valid aggravators as they included the theft and
5 the officer's inability to resist the theft. The court also notes that the aggravator
6 involving the killing of a police officer required the State to prove that the defendant
7 knew or should have known that the victim was a police officer performing his
8 duties. The theft of the service weapon certainly is available as part of the proof that
9 Vanisi knew he was killing a police officer who was performing his duties. Thus,
10 under the analysis of *Brown v. Sanders*, this court finds that there is no likelihood of
11 a different result by the retroactive application of *McConnell*. Whether the nature of
12 the crime amounted to one aggravating circumstance or a dozen, the facts and the
13 attending weight remain unchanged. Therefore, the claim concerning the retroactive
14 application of *McConnell* is denied.

16 Vanisi next argues that this court erred in denying his motion for self-
17 representation. That claim was considered and rejected on direct appeal and thus
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12

13 Ground 11 mentions that Vanisi might someday become incompetent to be
14 executed but he seeks no relief based on that allegation. Therefore, no relief is
15 warranted.

16 Ground 12 is an assertion that the conviction and sentence are invalid
17 because the judicial officer presiding over the trial was an elected judge. The court
18 finds that counsel was not ineffective in failing to raise this issue and that it had no
19 reasonable likelihood of success. *See McConnell, supra*. Accordingly, that claim is
20 denied.

21 Vanisi next claims that the death sentence must be set aside because there
22 is a possibility that an innocent person might be executed. The court notes that
23 there is no doubt that Vanisi is not one of those innocent persons. The court finds
24 that counsel was not ineffective in failing to raise this issue and that it had no
25 reasonable likelihood of success. Accordingly, that claim is denied.
26

1 The 14th claim is an argument that the death penalty is prohibited by the Due
2 Process clause because it is not rationally related to any legitimate government
3 goal. This claim suffers from all the defects found in parts 7 through 13. It is also
4 legally wrong. In addition to the other factors, our legislature could legitimately
5 determine that the death penalty is a way to advance society's interests in deterring
6 others, in preventing future crimes by the murderer and in punishing the wrongdoer.
7

8 The 15th claim is a compilation of some of the arguments already discussed.
9 No further discussion is warranted.

10 Ground 16 includes the defects found in parts 7 through 15. The court finds
11 that counsel was not ineffective in failing to raise these arguments and that they had
12 no reasonable likelihood of success.

13 Ground 17 fails no better than grounds 7 through 16. It is an argument to the
14 effect that a "death qualified" jury, a jury that agrees to follow the law, prevents a fair
15 trial. This claim has been repeatedly rejected by the courts that have considered it.
16 The constitution does not demand that the jury pool be limited to those who will not
17 agree to follow the law presented by the judge. *See McKenna v. State*, 103 Nev.
18 227, 737 P.2d 508 (1987). Vanisi has not directed any of his arguments to the jury
19 that actually heard this case. He presents only generic arguments that ought to be
20 presented to the legislature. The Court finds that counsel was not ineffective in
21 failing to advance this argument and that it was not reasonably likely to be
22 successful.
23

24 Ground 18 is a claim that the death sentence was imposed due to passion,
25 prejudice or some arbitrary factor. That claim was considered and rejected on direct
26 appeal. This claim is barred by the doctrine of the law of the case.

1 Ground 19 of the supplement is a claim that the conviction must be set aside
2 because the statutes in effect at the time of the trial precluded a defense based on
3 insanity and the decision of the Supreme Court invalidating that statute was not
4 issued until after Vanisi's trial. Trial counsel testified, however, that they were aware
5 of the potential challenges to the statute but did not attempt to present an insanity
6 plea because they had no basis for the plea. Furthermore, there was no evidence
7 presented in the habeas corpus hearing supporting such a defense. There was
8 some evidence that Vanisi was bi-polar, but nothing supporting a potential defense
9 of insanity. Therefore, the court remains confident of the verdict and finds that
10 neither trial counsel nor appellate counsel were ineffective. The court further finds
11 that Vanisi was not prejudiced by the alleged failings of counsel.
12

13 The next claim in the supplement asserts a claim of ineffective assistance of
14 counsel in that it is framed in terms of counsel's failure to investigate potential
15 mitigating evidence. The court finds that there was no significant additional
16 mitigating evidence presented in the habeas corpus hearing and thus finds that
17 there is no reason to believe that counsel could have obtained additional evidence
18 or that Vanisi was prejudiced by the alleged failure to investigate.
19

20 Vanisi also suggests that trial counsel should have retained a mitigation
21 specialist. However, there was no evidence presented tending to show that such a
22 person could have done more than was already done. Trial counsel testified to a
23 fairly extensive investigation and the court finds that there is no reason to believe
24 that someone else would have conducted the investigation differently or would have
25 discovered additional mitigating evidence. The record reveals that the defense
26 presented the testimony of Dr. Ole Theinhaus at sentencing. That witness

1 discussed Vanisi's mental illness. Other witnesses discussed his drug and alcohol
2 abuse and his declining condition in the months preceding the murder. However,
3 there is still no new significant mitigating evidence and so this claim is also denied.

4 The next claim is an assertion that but for the collective failures of counsel,
5 Vanisi would have mounted a more meaningful defense, although the nature of that
6 defense is still not identified. The court notes that Vanisi did not testify in the
7 habeas corpus hearing and thus there is no evidence tending to support this claim.
8 Instead, the testimony established that Vanisi prohibited any defense such as self-
9 defense, provocation and coercion and refused to cooperate in presenting any
10 defense except his false claim that he did not participate in the killing of Sergeant
11 Sullivan. The court finds no evidence supporting the notion that counsel's alleged
12 failings were the cause for the lack of a viable defense. Instead, the cause for the
13 lack of any viable defense was that no such defense existed and Vanisi refused to
14 cooperate in presenting any defense.
15

16 Ground 22 is a catch-all assertion that counsel was ineffective on appeal in
17 failing to raise each and every issue raised in the supplement. The court finds,
18 again, that appellate counsel made reasonable tactical decisions concerning the
19 issues to raise, and that none of the various potential issues were reasonably likely
20 to succeed.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

The court has considered all the evidence and the arguments of counsel but remains unpersuaded that Vanisi is entitled to relief. Vanisi bore the burden of proof and at the close of the evidence the court was not persuaded of the validity of any of the claims for relief. Because Vanisi failed in his burden, the petition is denied.

DATED this 8 day of November, 2007:

Connie J. Struheim
DISTRICT JUDGE

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Tracy L Purves
Tracy L. Purves
Judicial Assistant

1
2 CERTIFICATE OF SERVICE

3 Case No. CR98P0516

4 Pursuant to NRCP 5 (b), I certify that I am an employee of the Second
5 Judicial District Court, and that on the 19th day of November, 2007, I deposited in the
6 Washoe County mailing system for postage and mailing with the U.S. Postal Service in
7 Reno, Nevada, a true copy of the attached document, addresses to:

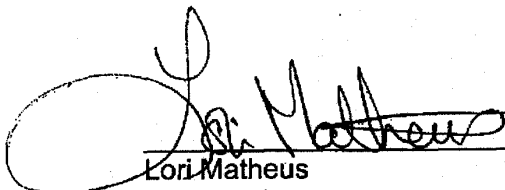
8 WASHOE COUNTY DISTRICT
9 ATTORNEY'S OFFICE
10 APPELLATE DIVISION
(Inter-office mail)

11 ATTORNEY GENERAL'S OFFICE
12 100 N. CARSON STREET
CARSON CITY, NV 89701-4717

13 SCOTT EDWARDS, ESQ.
14 729 EVANS AVENUE
15 RENO, NV 89512

16 THOMAS L QUALLS, ESQ.
17 216 E. LIBERTY STREET
RENO, NV 89501

18 SIAOSI VANISI #63376
19 ELY STATE PRISON
20 P.O. BOX 1989
ELY, NV 89301

21
22
23 
24 Lori Matheus
25 Deputy Clerk
26
27
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FILED

Electronically

11-06-2007:04:30:54 PM

Howard W. Conyers

Clerk of the Court

Transaction # 80766

CASE NO. CR98P0516

TITLE: SIAOSI VANISI VS. THE STATE OF NEVADA

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

9/7/07

DECISION ON PETITION FOR POST CONVICTION (TELEPHONIC)

HONORABLE

Counsel Scott Edwards, Esq., represented the Petitioner. Deputy District

CONNIE

Attorney Terrence McCarthy represented the State.

STEINHEIMER

Based on the arguments presented in the pleadings and at the hearing and

DEPT. NO.4

on finding that the State's arguments were more persuasive than the

M. Stone

Petitioners and further, the Court relied on the cases of *Later vs. Warden*

(Clerk)

and *Strickland*, **COURT ENTERED ORDER** denying the Petition for Post

Captions

Conviction.

Unlimited

Discussion ensued regarding this Court's Order finding the Petitioner competent to proceed with Petition for Post Conviction. Although the State indicates that it prepared a written order for this Court's signature, this Court did not receive the Order. This Court finds that a ruling that the Petitioner is competent and that ruling was made part of the record of the hearing through the minutes and the transcript.

(Reporter)

State's counsel shall prepare the written order denying the Petition for Post Conviction which shall include the procedural history of the case, the findings made by this Court in this hearing and a hearing date for this Court to set a new execution date.

Court advised counsel that a Motion to Stay Execution Date may be heard at that next hearing.

AA02903

CASE NO. CR98P0516 TITLE: POST: SIAOSI VANISI

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

4/2/07

PETITION FOR POST CONVICTION

HONORABLE
CONNIE

STEINHEIMER

DEPT. NO. 4

R. Cotter
(Clerk)

Captions

Unlimited

(Reporter)

Petitioner presented, being represented by Petitioner's counsel, Thomas Qualls, Esq., and Scott W. Edward, Esq. Terrence McCarthy, Esq., present on behalf of the State.

Discussion ensued regarding Petitioner's counsels briefs submitted by Petitioner.

Motion to Strike by State's counsel; presented argument; objection and argument by Plaintiff's counsel.

COURT ORDERED State's counsel to submit Response to Petitioner's Brief within ten (10) days of the date of this hearing, at which time briefs will be submitted to Court for decision.

CR98P0516
POST: SIAOSI VANISI (D4)
District Court
Washoe County
MIN
DC-9900001140-213
Page
04/02/2007 01:30 PM
RCOTTEP

By R. Cotter
6/13/2007

CASE NO. CR98P0516 TITLE: SIAOSI VANISI VS. THE STATE OF NEVADA

DATE, JUDGE
OFFICERS OF
COURT PRESENT

PAGE ONE

APPEARANCES-HEARING

CONT'D TO

5/18/05

ONGOING PETITION FOR POST CONVICTION/MOTION TO DISMISS

HONORABLE

Petitioner Siasosi Vanisi present with counsel Scott Edwards, Esq., and

CONNIE

Thomas Qualls, Esq. Deputy District Attorney Terrence McCarthy, Esq.,

STEINHEIMER

represented the State.

DEPT. NO.4

M. Stone

Michael Specchio called by Petitioner's counsel Edwards, sworn and testified; cross-examined; redirect examined; recross-examined; excused.

(Clerk)

D. Phipps

(Reporter)

Motion to Exclude Testimony of Richard Cornell by State's counsel Edwards; presented argument; objection and argument by State's counsel. COURT ENTERED ORDER allowing the Testimony of Richard Cornell. Should the State determine that a rebuttal witness is necessary, then a continuance would be granted.

Richard Cornell called by Petitioner's counsel Qualls, sworn and testified.

Request for Witness to be deemed an Expert as to Trial Counsels Effectiveness by Petitioner's counsel Qualls; presented argument; objection and argument by State's counsel. COURT ENTERED ORDER granting Motion as the answer only goes to the weight of the testimony.

Witness Cornell further direct examined; cross-examined; redirect examined; excused.

11:28 a.m. Court recessed.

11:37 a.m. Court reconvened with counsel and petitioner present.

State's counsel withdrew any Motion to Dismiss issues as to Appellate Counsel.

Motion to Dismiss by State's counsel; presented argument; objection and argument by Petitioner's counsel Edwards. COURT TOOK MATTER UNDER ADVISEMENT.

Petition for Post Conviction by Petitioner's counsel Edwards; presented argument; objection and argument by State's counsel.

Petitioner's counsel Qualls advised the Court that he is not available this afternoon due trial commencing in Department 10 at 1:00 p.m.

11:58 a.m. Court recessed.

AA02905

CASE NO. CR98P0516 TITLE: SIAOSI VANISI VS. THE STATE OF NEVADA

DATE, JUDGE
OFFICERS OF

PAGE TWO

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

5/18/05

ONGOING PETITION FOR POST CONVICTION/MOTION TO DISMISS

D. Phipps
(Reporter)

1:17 p.m. Court reconvened with respective counsel, except Petitioner's counsel Qualls, and Petitioner present.
Objection and argument by State's counsel; reply by Petitioner's counsel Edwards. COURT TOOK MATTER UNDER ADVISEMENT.
1:45 p.m. Court recessed.

CASE NO. CR98P0516 TITLE: SIAOSI VANISI VS. THE STATE OF NEVADA

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

5/2/05

PETITION FOR POST CONVICTION

HONORABLE
CONNIE
STEINHEIMER

Petitioner present with counsel Scott Edwards, Esq., and Thomas Qualls, Esq. Deputy District Attorney Terrence McCarthy, Esq., represented the State.

DEPT. NO.4
M. Stone
(Clerk)
D. Phipps
(Reporter)

Upon request of Defense counsel, COURT will allow another hearing to be set for testimony from Michael Specchio, Esq., and arguments on the Motion to Dismiss and Petition for Post Conviction.

5/18/05
10:00 a.m.
Ongoing
Petition for
Post
Conviction

Stephen Gregory, Esq., called by Petitioner's counsel Edwards, sworn and testified; cross-examined; redirect examined; recross-examined; excused, subject to recall on another day.

12:00 a.m. Court recessed.

2:20 p.m. Court reconvened with respective counsel and petitioner present.

Respective counsel stipulated to this Court taking Judicial Notice of the Rule 250 Memorandum filed by Stephen Gregory, Esq., and Jeremy Bosler, Esq., and further stipulated that the document be unsealed.

Jeremy Bosler, Esq., called by Petitioner's counsel, sworn and testified; cross-examined; redirect examined; excused.

3:22 p.m. Court recessed.

3:58 p.m. Court reconvened with respective counsel and petitioner present. COURT set ongoing hearing on Petition for Post Conviction for May 18, 2005, at 10:00 a.m.

EXHIBIT J marked, and upon no objection by counsel, ordered admitted under seal.

Laura Bielser called by State's counsel, sworn and testified; cross-examined by Petitioner's counsel Edwards; redirect examined; recross-examined; excused.

4:15 p.m. Court recessed.

AA02907

CASE NO. CR98P0516 TITLE: SIAOSI VANISI VS. THE STATE OF NEVADA

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

4/25/05

TELECONFERENCE REGARDING SCHEDULE OF EVIDENTIARY

HONORABLE

HEARING

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

D. Phipps

(Reporter)

Counsel Thomas Qualls, Esq., present on behalf of the Petitioner. Deputy District Attorney Terrence McCarthy, Esq., represented the State.

Defendant appearance waived for the purposes of this administrative hearing.

Court advised counsel that a Decision shall be made this week as to the Motion for Protective Order.

State's counsel advised that Court that Petitioner's counsel Edwards had agreed that the Answer to the Petition for Post Conviction could be filed after the deadline previously given by the Court.

COURT ORDERED Petitioner's counsel to file the Response to the Motion to Dismiss by April 29, 2005.

Petitioner's counsel advised the Court that a Motion to Continue Hearing may be filed by the Petitioner. State's counsel would not objection to a Motion for Order Shortening Time to File a Response to a Motion to Continue Hearing.

Respective counsel advised the Court that should it be determined that Michael Specchio's Testimony is necessary, they would stipulate to a bifurcated hearing, due to the Witnesses unavailability.

Court recessed.

5/2/05

9:00 a.m.

**Evidentiary
Hearing on
Petition for
Post
Conviction**

DATE, JUDGE
OFFICERS OF
COURT PRESENT

PAGE ONE

APPEARANCES-HEARING

CONT'D TO

2/18/05

REPORT ON PSYCHIATRIC EVALUATION

HONORABLE Petitioner present with counsel Scott Edwards, Esq., and Thomas Qualls,
CONNIE Esq. Deputy District Attorney Terrence McCarthy, Esq., represented the
STEINHEIMER State.

DEPT. NO.4 Court noted receipt of Evaluation from Dr. Alfredo Amezaga, Jr.

M. Stone

(Clerk)

J. Kernan

(Reporter)

EXHIBIT E marked by Court; offered by Petitioner's counsel; no objection
by State's counsel; ordered admitted into evidence under seal.

Dr. Alfredo Amezaga, Jr., called by Petitioner's counsel Edwards, sworn and
testified.

2:43 p.m. Court recessed.

2:53 p.m. Court reconvened with respective counsel and Petitioner present.

Dr. Amezaga, Jr., heretofore sworn, resumed stand and was cross-
examined; redirect examined.

EXHIBITS F, G and H marked and offered by Petitioner's counsel; no
objection by State's counsel; ordered admitted into evidence.

Petitioner for Defendant to be determined incompetent to proceed with post
conviction by Petitioner's counsel Qualls; presented argument; objection
and argument by State's counsel; reply by Petitioner's counsel Qualls.
COURT ENTERED FINDINGS that the Motion for change of Petitioner's
medications administered by the Prison should be brought before the Court
in the County in which the Petitioner is housed; that this Court must follow
all decisions made by the 9th Circuit Court of Appeals until they are
overturned; and that based upon review of the Petitioner's Medical Records,
testimony presented at each hearing and written evaluations, COURT
ENTERED ORDERED that the Petitioner is competent to proceed with the
Petition for Post Conviction and any hearing set in the matter.
Motion for Stay of Proceedings for Petitioner to appeal decision to the
Supreme Court by Petitioner's counsel Edwards; objection by State's
counsel. COURT ENTERED ORDER denying Stay of Proceedings.
Motion for an additional 30 days to file a Supplemental Petition for Post
Conviction by Petitioner's counsel Edwards; presented argument; objection
and argument by State's counsel. COURT ENTERED ORDER denying
Motion for Additional Time. COURT FURTHER ENTERED ORDER that
Petitioner's Supplemental Petition for Post Conviction must be filed by

CASE NO. CR98P0516

TITLE: SIAOSI VANISI VS. THE STATE OF NEVADA

DATE, JUDGE
OFFICERS OF

PAGE TWO

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

2/18/05

REPORT ON PSYCHIATRIC EVALUATION

J. Kernan
(Reporter)

February 22, 2205, at 5:00 p.m.; that the State shall have 45 days thereafter to file a responsive pleading; and that oral arguments on the Petition for Post Conviction is set for May 2, 2005, at 9:00 a.m.

5/2/05
9:00 a.m.
Petition for
Post
Conviction

EXHIBIT I marked and offered by State's counsel; no objection by Defense counsel; ordered admitted into evidence.

Court recessed.

AA02910

CASE NO. CR98P0516 TITLE: SIAOSI VANISI VS. THE STATE OF NEVADA

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

1/27/05

REPORT ON PSYCHIATRIC EVALUATION

HONORABLE Petitioner present with counsel Scott Edwards, Esq. Deputy District

CONNIE Attorney Terrence McCarthy, Esq., represented the State.

STEINHEIMER Court noted receipt of Evaluation from Dr. Thomas Bittker.

DEPT. NO.4

M. Stone

(Clerk)

D. Arnaud

(Reporter)

EXHIBIT D marked by Court; offered by Defense counsel; no objection by
State's counsel; ordered admitted into evidence under seal.

Dr. Thomas Bittker called by Petitioner's counsel Edwards, sworn and
testified; cross-examined.

2:50 p.m. Petitioner's counsel Thomas Qualls, Esq., present.

Dr. Bittker further cross-examined; redirect examined; recross-examined;
excused.

Motion to Bifurcate Hearing by Defense counsel; objection and argument by
State's counsel. COURT ENTERED ORDER granting Motion and
continued hearing for report from Dr. Amezaga.

2/18/05

1:30 p.m.

Rpt on

Psych. Eval.

AA02911

CASE NO. CR98P0516 TITLE: SIAOSI VANISI VS. THE STATE OF NEVADA

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

1/24/05 IN CHAMBERS CONFERENCE REGARDING LETTER FROM DR. A.M.
HONORABLE AMEZAGA, JR.
CONNIE Petitioner, whose appearance was waived upon this being a procedural
STEINHEIMER hearing, not present being represented by counsel Scott Edwards, Esq.,
DEPT. NO.4 and Thomas Qualls, Esq. Deputy District Attorney Terrence McCarthy,
M. Stone Esq., represented the State.
(Clerk) Court advised counsel of Letter from Dr. Amezaga indicating the Petitioner's
D. Arnaud unwillingness to meet for evaluation.
(Reporter) Discussion ensued regarding the Findings of Dr. Bittker.
 Motion to Vacate Hearing, change medications pursuant to Dr. Bittker's
 Report, and have the Defendant re-evaluation in 90 days by Petitioner's
 counsel Qualls; presented argument; objection and argument by State's
 counsel.
 COURT ENTERED ORDER denying continuance of hearing and denying
 motion for change of medication.
 Upon further discussions, Petitioner's counsel shall contact client and
 advise him of the importance of the evaluation by Dr. Amezaga; and Dr.
 Amezaga shall attempt to meet with the Defendant one more time and
 evaluate him.
 COURT FURTHER ENTERED ORDER that the hearing on January 31,
 2005, shall proceed as scheduled. If necessary it may be bifurcated to hear
 Dr. Amezaga's report at a later date.

CASE NO. CR98P0516 **TITLE: SIAOSI VANISI VS. THE STATE OF NEVADA**

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

1/19/05

TELEPHONIC CONFERENCE RE: LETTER FROM DR. A.M. AMEZAGA

HONORABLE

Petitioner Siasos Vanisi, not present being represented by counsel, Scott

CONNIE

Edwards, Esq. Deputy District Attorney Terrence McCarthy, Esq.

STEINHEIMER

DEPT. NO.4

Court advised counsel of Letter received by Dr. A.M. Amezaga requesting access to the Petitioner's medical records at the Nevada State Prison.

M. Stone

(Clerk)

J.Schonlau

EXHIBIT C marked by the Court; no objection respective counsel; ordered admitted into evidence under seal.

(Reporter)

COURT ENTERED ORDER that Petitioner's counsel shall facsimile a copy of the Original Order entered that allowed for access to the Petitioner's medical records at the Nevada State Prison.

COURT further advised counsel that the Clerk would have the copies of previously marked Exhibit A available for counsel by the end of the week.

Upon discussion regarding the testimony of the Doctors at the hearing

scheduled on January 27, 2005, and request of Petitioner's counsel,

COURT ENTERED ORDER requiring the Doctors to be present and that the bill for testimony shall be sent to Petitioner's counsel and paid by the State Public Defender.

CASE NO. CR98P0516

TITLE: SIAOSI VANISI VS. THE STATE OF NEVADA

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

11/22/04

PETITION FOR POST CONVICTION

HONORABLE

Petitioner, Siaoosi Vanisi, present with counsel, Scott Edwards, Esq., and

CONNIE

Thomas Qualls, Esq. Deputy District Attorney Terrence McCarthy, Esq.

STEINHEIMER

DEPT. NO.4

Motion for Psychiatric Evaluation of Petitioner and Stay of Proceedings by
Petitioner's counsel Edwards; presented argument.

M. Stone

(Clerk)

M. Ferrell

(Reporter)

EXHIBIT A and B marked and offered by Petitioner's counsel Edwards;
objection and argument by State's counsel; ordered admitted into evidence
of over objection.

1/27/05

2:00 p.m.

RPT ON

PSYCH.

EVAL.

Further argument by Petitioner's counsel Edwards; objection and argument
by State's counsel; reply by Petitioner's counsel Qualls; further argument by
respective counsel.

COURT ENTERED ORDER granting Petitioner's Motion for Psychiatric
Evaluation for determination of whether the Petitioner is competent to aid
and assist counsel in the preparation of the Petition and whether the
Petitioner is competent to testify as a Witness in these proceedings;
denying Petitioner's Motion for Transfer to Lake's Crossing; granting
Petitioner's Motion for Stay pending outcome of Psychiatric Evaluations;
and denying Petitioner's Motion for Permanent Stay.

Motion for Petitioner's counsel to file the Supplemental Petition as to Claims
that do not need the Petitioner's assistance or competency by State's
counsel; presented argument; objection and argument by Petitioner's
counsel Edwards.

COURT ORDERED Petitioner's counsel to prepare and have a
Supplemental Petition ready for filing at the next hearing.

AA02914

CASE NO. CR98P0516

TITLE: SIAOSI VANISI VS. THE STATE OF NEVADA

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

7/1/02

STATUS HEARING – IN CHAMBERS

HONORABLE Counsel Marc Picker, Esq., represented the Petitioner. Deputy District Attorney
CONNIE Terrence McCarthy, Esq., represented the State.
STEINHEIMER Petitioner's counsel advised Court of delaying the Discovery of this Case and receipt
DEPT. NO.4 of Rule 250 Memorandum.

M. Stone

(Clerk)

EXHIBIT Z1 marked by Petitioner's counsel.

Not Reported

State's counsel made statement.

COURT ADVISED counsel that if issues continue as to the receipt of records, a
records deposition may be allowed.

AA02915

STATE OF NEVADA

Case No. CR98-0516

-vs-

**SIAOSI VANISI, a.k.a.
"Pe", a.k.a. "George"**

Trial Date: September 20, 1999, through October 6, 1999

Judge: Connie J. Steinheimer

Dept. No. 4

D.A.: Richard Gammick and Dave Stanton

Deft's Atty: Stephen Gregory and Jeremy Bosler Type: Public Defender

Clerk: M. Stone

Reporter: Sierra Nevada Reporters

VERDICT(S):

Count I: Murder of the First Degree - Guilty/Jury sentenced Death

Count II: Robbery with the use of a Deadly Weapon - Guilty

Count III: Robbery with the use of a Deadly Weapon - Guilty

Count IV: Robbery with the use of a Deadly Weapon - Guilty

Count V: Grand Larceny - Guilty

Sentencing and Imposition of Death Warrant Date and Time:

November 22, 1999, at 10:00 a.m.

PSI request sent: October 7, 1999

CRIMINAL PROGRESS SHEET

Case No. CR98-0516

STATUS: Custody ☒ NIC ☐
Bail ☐ OR ☐

SIAOSI VANISI (TN)

Bail Amount: _____

aka "PE", aka "George"

Date Inf/Ind filed: 2-26-98

Amended Inf. filed: _____

Arraignment Date: 3-10-98

Dept. No: 4

Reporter: ~~Monica K. Bolman~~

True Name: ☒ Same as above

Handed Copy ☒

Not Guilty ☒ By: entered by Court

Waived Reading ☒

Requested Time to Plea ☐

Waived PSI ☐

Guilty ☐ Nolo ☐ To: _____

Waived 60 Day: Yes ☐

Juv. Ref. _____

P & P Ref. _____

Date _____ No ☐

Continued To: 3-19-98 9:00

For: mtm to set trial

11-10-98 11:00 hr

For: status conference

6-1-99 9:00 pre-trl mtm

For: pretrial mtms

8-30-99/9-2-99 jury panel

For: mtc/pretrial mtms

9-2-99 mtc

For: Jury Trial

9-7-99 10:00 trial

Sentencing Date: 11-22-99 Dept. No. 4 Reporter: E. Nelson

Disposition: \$2500 atty fees; \$10,000 fine; \$250 DNA fee; DNA testing;
Ct I- Death; Ct II- max 180 mos, min 72 mos, w/consec. like term, some
w/Ct I; Ct III- max 180 mos, min 72 mos, w/consec. like term, consec w/Ct
I & II; Ct IV- max 180 mos, min 72 mos, w/consec. like term, consec w/Cts
I, II & III; Ct V- max 120 mos, min 48 mos, consec ^{Ct 6}
1,2,3,4 Time Served: 667 Bail Exonerated ☐

Motions: 3-10-98 Deft w/stand mute + ct entered nq plea
3-19-98 trial + Briefing schedule set. All unol determin
to qualify to -by death penatty case purs. to
Rule 250

11-6-98 deft ind competent to aid & assist cml; Ct set
matter for hrg re: private counsel/proper

11-10-98 deft req that P.D. Specchio & his office remain
as attorney of record; Ct indicated that any future req
would be denied if creates a cont of trial unless
there is a legal basis

11-24-98 orders entered (see minutes)

12.10.98 orders entered (Please see separate minutes)
12.30.98 teleconference; Juror excused; deft's ^{presence} waived
~~presence~~ at 1.4.99 by (jury questionnaire); cnrl to
provide exh list to CLK + exhibits to be marked
1.8.99 at 2:00
1.15.99 mistrial declared
1.19.99 trial set
5.12.99 deft to remain at MSP until 6.1.99 at which
time housing shall be re-evaluated
6.1.99 request for psych eval granted
6.23.99 deft found competent; orders entered
8.3.99 order for meds w/d
8.10.99 mtn for self representation under submission
8.11.99 mtn for self representation denied; mtn for release
of psych. evals. ~~denied~~ under submission
8.26.99 mtn to w/d as cnrl ~~denied~~ under submission
8.30.99 mtn to w/d as cnrl denied; contd trial
for 2 wks; all witnesses upheld to subpoenas
9.13.99 jury panel filled out questionnaires
9.17.99 3 jurors excused; orders entered
9.27.99 jury verdicts: Guilty all 5 Counts
10.6.99 jury verdict; Death - Ct T

CASE NO. CR98-0516

TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI, also known as
"GEORGE", also known as "PE"

DATE, JUDGE
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APPEARANCES-HEARING

CONT'D TO

11/22/99

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

E. Nelson

(Reporter)

District Attorney Richard Gammick represented the State. Defendant present with counsel, Deputies Public Defender, Stephen Gregory and Jeremy Bosler. Probation Officer Robert Tucker also present.

Court noted receipt of report. Defense counsel Gregory had no factual corrections to the report and submitted matter on the Report. State's counsel concurred with the recommendation. Probation Officer Tucker stood on recommendation. Respective counsel made statement regarding entry of the Order for Execution. Defendant declined to make a statement on his own behalf.

COURT ORDERED JUDGMENT ENTERED and sentenced defendant to the punishment of Death for Count I; by imprisonment in the Nevada Department of Prisons for the maximum term of one hundred eighty (180) months with the minimum parole eligibility of seventy-two (72) months, with a consecutive like term for the use of a deadly weapon, for Count II, to be served consecutively to sentence in Count I; by imprisonment in the Nevada Department of Prisons for the maximum term of one hundred eighty (180) months with the minimum parole eligibility of seventy-two (72) months, with a consecutive like term for the use of a firearm, for Count III, to be served consecutively to sentences in Counts I and II; by imprisonment in the Nevada Department of Prisons for the maximum term of one hundred eighty (180) months with the minimum parole eligibility of seventy-two (72) months, with a consecutive like term for the use of a firearm, for Count IV, to be served consecutively to sentences in Counts I, II and III; and by imprisonment in the Nevada Department of Prisons for the maximum term of one hundred twenty (120) months with the minimum parole eligibility of forty-eight (48) months, for Count V, to be served consecutively to sentences in Counts I, II, III and IV. Defendant shall receive credit for six hundred sixty seven (667) days time served. Defendant is further punished by payment of a fine in the amount of Ten Thousand Dollars (\$10,000.00); and by submission to a DNA Analysis Test for the purpose of determining genetic markers. Defendant shall reimburse the Washoe County Public Defender attorney's fees in the amount of Seven Hundred Fifty Dollars (\$750.00). Defendant is further ordered to pay a Twenty-Five Dollar (\$25.00) administrative assessment fee and a Two Hundred Fifty Dollar (\$250.00) DNA analysis fee to the Clerk of the Second Judicial District Court.

AA02919

CASE NO. CR98-0516

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"GEORGE", also known as "PE"

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CONT'D TO

11/22/99

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

HONORABLE

COURT FURTHER ORDERED that the sentence of Death take place during
the week commencing on Monday, the 24th day of January, 2000.

CONNIE

STEINHEIMER

Upon request by defense counsel, COURT ENTERED ORDER staying
execution pending direct appeal.

DEPT. NO.4

M. Stone

(Clerk)

E. Nelson

(Reporter)

AA02920

DATE, JUDGE
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COURT PRESENT

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APPEARANCES-HEARING

CONT'D TO

9/20/99

JURY TRIAL

HONORABLE
CONNIE
STEINHEIMER
DEPT. NO.4

M. Stone
(Clerk)
SNR
(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Deputies Public Defender, Steve Gregory and Jeremy Bosler.

9:53 a.m. Court reconvened outside the presence of the jury.

Court canvassed Defendant regarding waiver of presence when Court excused Jurors Boynton, Faehling and Kidder and during side bars during the course of the trial. Defendant waive right.

Court advised counsel of additional issues with regard to Jurors Carsten, Rameriz, Scrottish and Barrientos. Upon no objections, COURT ENTERED ORDER excusing Jurors Carsten and Rameriz, upon receipt of medical releases.

Discussion ensued regarding the lack of Defense Witnesses. Court advised Defense counsel that Robert Bare, Legal Counsel for the State Bar of Nevada, is available to them for advice anytime during this trial.

Request of In-Camera Hearing by Defense counsel Gregory.

10:01 a.m. Court recessed.

10:11 a.m. Court reconvened with respective Defense counsel Gregory, Bosler and John Petty present.

Defense counsel Petty requested matter sealed. COURT ENTERED ORDER sealing hearing.

Defense counsel made statement regarding the representation of the Defendant.

Matter unsealed. State's counsel Gammick and Stanton present.

Rule of Exclusion invoked. Upon discussion regarding witnesses, COURT ORDERED that all Penalty Phase witnesses and Carolyn and Meghan Sullivan are excluded from the Rule of Exclusion.

Discussion ensued regarding voir dire questions regarding Aggravators and Mitigators. COURT ENTERED ORDER that Defense counsel Bosler may not ask specific questions of each juror in this regard, but may ask a general question of the entire panel.

10:31 a.m. Court recessed.

10:58 a.m. Court reconvened with respective counsel and Defendant present. Prospective jurors present.

Court personnel, respective counsel and Defendant introduced to the jury panel.

Roll taken of prospective jurors; all present except Barrientos and Doiron.

All prospective jurors sworn as to their qualifications to serve as trial jurors.

Thirty-Six names drawn (James, Kersbergen, Patch, Ziler, N. Jones,

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SNR

(Reporter)

Caramella, Grate, Minassian, Mullins, Ralston, Ashley, Sheahan, Sharkey, Bell, Jones, Grider, Johnson, Ayers, O'Keefe, Kruse, Salais, Buck, S. Butler, Scolari, Hodges, Estes, Tower, Carmichael, Hullin, Petrilak, Magnin, Whitmore, Beers-Diaz, Williams, D. Smith and Webb); jurors seated and generally questioned by the Court.

Juror Caramella challenged for cause by Defense counsel Bosler; objection by State's counsel Stanton; examined by the Court; challenge denied.

Jury panel further generally examined by the Court.

Juror Williams challenged for cause by Defense counsel Bosler; no objection by State's counsel Stanton; challenge granted.

Another name drawn. Lori T. Frazer called, seated and generally examined by Court.

Jury panel further generally examined by the Court.

Upon stipulation of respective counsel, Court excused Juror N. Jones due to language barrier.

Another name drawn. Tish A. Kelly called, seated and generally examined by the Court.

Jury panel further generally examined by the Court.

Upon no objection by respective counsel, Court excused Juror Caramella due to Husband's scheduled surgery.

Juror Grate challenged for cause by Defense counsel Bosler; objection by State's counsel Stanton; examined by the Court; challenge denied.

Another name drawn. Nettie Horner called and seated.

Jury panel further generally examined by the Court.

Juror Sharkey challenged for cause by Defense counsel Bosler; no objection by State's counsel Stanton; challenge granted.

Another name drawn. William R. Meyers called and seated.

Jury panel further generally examined by the Court.

Juror O'Keefe challenged for cause by Defense counsel Bosler; traversed by State's counsel Stanton; examined by the Court; challenge denied.

Jury panel further generally examined by the Court.

Juror Hullin challenged for cause by Defense counsel Bosler; objection by State's counsel Stanton; challenge granted.

Another name drawn. Marria L. Knight called and seated.

Jury panel further generally examined by the Court.

Juror Meyer challenged for cause by Defense counsel Bosler; no objection by State's counsel Stanton; challenge granted.

Another name drawn. Mary E. Callahan called, seated and generally examined by the Court.

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APPEARANCES-HEARING

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SNR

12:41 p.m. Jury admonished. Court recessed.

(Reporter)

1:48 p.m. Court reconvened with respective counsel and Defendant present.

Clerk called roll; all present, except Juror Gilmore.

Upon stipulation of respective counsel, COURT excused Juror Ray.

Court waited for the presence of Juror Gilmore.

2:01 p.m. Juror Gilmore present.

Jury panel further generally examined by the Court.

Upon discussion at the bench, COURT excused Juror Beers-Diaz.

Another name drawn. Joann Shively called and seated.

Jury panel further generally examined by the Court.

Upon discussion at the bench, COURT excused Juror Whitmore.

Another name drawn. Donna J. Marting called and seated.

Jury panel further generally examined by the Court.

Upon direction of the Court, State's counsel Stanton specifically examined the panel.

Juror Magnin challenged for cause by State's counsel Stanton; examined by Defense counsel Bosler; challenge granted.

Jury panel further specifically examined by State's counsel Stanton.

Juror Morris challenged for cause by State's counsel Stanton; no objection by Defense counsel Bosler; challenge granted.

Two additional name drawn. Pete S. Costello and Dianne M. Smith called, seated and generally examined by Court.

Jury panel further specifically examined by State's counsel Stanton.

Juror Kelley challenged for cause by State's counsel Stanton; examined and submitted by Defense counsel Bosler; challenge granted.

Jury panel further specifically examined by State's counsel Stanton.

Jurors Ashley, Salais and Hodges challenged for cause by State's counsel Stanton; objection by Defense counsel Bosler; challenge granted as to Jurors Ashley and Salais, denied as to Juror Hodges.

Three additional names drawn. John E. Kennedy, James D. McMorran and Bruce C. Miller called, seated and generally examined by the Court and State's counsel Stanton.

4:00 p.m. Court recessed.

4:21 p.m. Court reconvened with respective counsel, Defendant and Jurors present.

Upon direction of the Court, Defense counsel Bosler specifically examined the panel.

Juror Knight challenged for cause by Defense counsel Bosler; traversed by State's counsel Stanton.

CASE NO. CR98-0516 TITLE: THE STATE OF NEVADA VS. SIAOSI VANISL a.k.a. "PE", a.k.a. "GEORGE"

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COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

9/20/99

JURY TRIAL

SNR

4:55 p.m. Jury panel admonished. Court recessed.

(Reporter)

5:08 p.m. Court reconvened with respective counsel and Defendant present. Court addressed respective counsel regarding an Instruction regarding Mitigating and Aggravating Circumstances.

Request to Specifically examined the Jury panel regarding Information received from Outside Resources.

Discussion ensued regarding schedule of witnesses and use of peremptory challenges.

5:20 p.m. Court recessed. Defendant remanded to the custody of the Sheriff.

9/21/99

CONTINUED JURY TRIAL

M. Stone

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant, Siasosi Vanisi, present with counsel, Deputies Public Defender, Stephen Gregory and Jeremy Bosler.

(Clerk)

SNR

10:29 a.m. Court reconvened.

(Reporter)

Clerk called roll; all present.

Court read Instruction regarding Mitigators and Aggravators.

Jury panel further specifically examined by Defense counsel Bosler.

Juror Grate challenged for cause by Defense counsel Bosler; objection and examination by State's counsel Stanton; challenge denied.

Jury panel further specifically examined by Defense counsel Bosler.

12:05 p.m. Jury panel admonished. Court recessed.

1:11 p.m. Court reconvened with respective counsel and Defendant present.

Clerk called roll; all present.

Jury panel further specifically examined Defense counsel Bosler.

Juror O'Keefe challenged for cause by Defense counsel Bosler; no objection by State's counsel Stanton; challenge granted.

Another name drawn. Connie E. Ryan called, seated and generally examined by the Court and State's counsel Stanton.

Juror Ryan challenged for cause by State's counsel Stanton; no objection by Defense counsel Bosler; challenge granted.

Another name drawn. Kevin M. Stevens called, seated and generally examined by the Court and State's counsel Stanton.

Jury panel further specifically examined by Defense counsel Bosler.

Juror Butler challenged for cause by defense counsel Bosler; examination

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and no objection by State's counsel Stanton; challenge granted.

Another name drawn. Shawna L. Mefford called, seated and generally examined by the Court and State's counsel Stanton.

Juror Mefford challenged by State's counsel Stanton; examination by Defense counsel Bosler; challenge granted.

Another name drawn. Raul V. Frias called, seated and generally examined by the Court, State's counsel Stanton and Defense counsel Bosler.

Juror Frias challenged by State's counsel Stanton; examination and objection by State's counsel; challenge granted.

Another name drawn. Susan E. Johnson called, seated and generally examined by the Court.

3:03 p.m. Court recessed.

3:20 p.m. Court reconvened with respective counsel and Defendant present. Motion for Material Witness Order by State's counsel Gammick; present argument. COURT ENTERED ORDER granting Material Witness Warrant and setting the bail at \$50,000.00.

3:23 p.m. Court recessed.

3:31 p.m. Court reconvened with respective counsel, Defendant and Jury panel present.

Juror Johnson specifically examined by State's counsel Stanton.

Jury panel further specifically examined by Defense counsel Bosler.

Juror Petrilak challenged for cause by Defense counsel Bosler; examined and no objection by State's counsel Stanton; challenge granted.

Another name drawn. Kerry L. Humphries called, seated and generally examined by the Court and State's counsel Stanton.

Juror Humphries challenged for cause by Defense counsel Bosler; no objection by State's counsel Stanton; challenge granted.

Another name drawn. Holly R. Jenkins called, seated and generally examined by the Court, State's counsel Stanton and Defense counsel Bosler.

Panel further specifically examined by Defense's counsel Bosler.

Jurors Grate, Ziler and Patch challenged for cause by Defense counsel Bosler; traversed by State's counsel Stanton; challenge denied.

Respective counsel passed the jury panel for cause.

Court thanked and excused un-selected jurors.

4:55 p.m. Jury admonished. Court recessed.

5:15 p.m. Court reconvened with respective counsel and Defendant present.

Respective counsel stipulated to the presence of the jury.

Respective counsel exercised, silently, 8 peremptory challenges each as to the jury and 2 peremptory challenges each as to alternate jury.

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JURY TRIAL

SNR

(Reporter)

EXHIBIT G marked by the Court.

The following twelve persons and four alternates were sworn to try this case:

Bonnie K. James

Lauren Ziler

Nettie Horner

Shaylene J. Grate

Jeannette L. Minassian

Larry F. Mullins

James D. McMorran

Michael Sheahan

Alice J. Bell

Leslie C. Johnson

James L. Ayers

Robert T. Buck

Alternates: Richard A. Tower, Shaun L. Carmichael, Pete S. Costello
and Lori T. Frazier

5:50 p.m. Jury admonished; said admonishment administered prior to each recess throughout the trial. Jury excused.

Outside the presence of the jury, Defense counsel Bosler set forth objections to Jury panel as sworn.

Motion for Objection to Jury panel and/or Mis-Trial by Defense counsel Bosler; presented argument; objection and argument by State's counsel. COURT ENTERED ORDER denying Motion.

Discussion ensued Motion for Change of Venue.

5:57 p.m. Court recessed. Defendant remanded to the custody of the Sheriff.

9/22/99

CONTINUED JURY TRIAL

SNR

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton. Defendant, Siasosi Vanisi, present with counsel, Deputies Public Defender, Stephen Gregory and Jeremy Bosler.

9:11 a.m. Court reconvened outside the presence of the jury.

Court read letter from Juror Ziler.

Juror Ziler entered, seated, examined by Court, and excused.

Defense counsel Bosler objected to the release of the Juror.

State's counsel Stanton had no objection to release of Juror.

COURT ENTERED ORDER releasing the Juror from any further service due to the stress creating a serious mental state.

Defense counsel Bosler did not have a Motion to Mis-Trial to present.

Respective counsel had no objection to Information as shown being read.

9:20 a.m. Court recessed.

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(Reporter)

10:13 a.m. Court reconvened with respective counsel and Defendant present.
Respective counsel stipulated to the presence of the jury.
Court Clerk read the Information aloud and indicated that pleas of not guilty had previously been entered by the defendant.

State's counsel Gammick presented opening statement.
Defense counsel Gregory waived opening statement.

Ellen Clark called by State's counsel Gammick, sworn and testified.

EXHIBIT 9 offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Clark further direct examined.

EXHIBITS 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4J, 4K and 4L offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Clark further direct examined.

EXHIBITS 5 offered by State's counsel Gammick for demonstrative purposes; submitted by Defense counsel Gregory; ordered admitted into evidence for demonstrative purposes only.

Witness Clark further direct examined; excused.

11:18 a.m. Jury admonished. Court recessed. Defendant remanded to the custody of the sheriff.

11:34 a.m. Court reconvened with respective counsel and defendant present.
Respective counsel stipulated to the presence of the jury.

Brenda Martinez called by State's counsel Gammick, sworn and testified.

EXHIBIT 7 offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Martinez further direct examined.

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(Reporter)

EXHIBITS 41A and 41B offered by State's counsel Gammick; submitted by Defense counsel; ordered admitted into evidence.

Witness Martinez further direct examined.

EXHIBIT 6 offered by State's counsel Gammick; submitted by Defense counsel; ordered admitted into evidence.

Witness Martinez further direct examined; cross-examined by Defense counsel Gregory; excused.

11:56 a.m. Jury admonished. Court recessed. Defendant remanded to the custody of the sheriff.

1:42 a.m. Court reconvened with respective counsel and Defendant present. Respective counsel stipulated to the presence of the jury.

Carl Smith called by State's counsel Gammick, sworn and testified.

EXHIBIT 8 offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Smith further direct examined.

***Record reflected identification of the Defendant.

Witness Smith further direct examined.

EXHIBIT 12 offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBIT 17A offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBITS 10A and 10B offered by State's counsel Gammick; submitted by

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Defense counsel Gregory; ordered admitted into evidence.

(Reporter)

Witness Smith further direct examined.

EXHIBITS 16, 16A and 16B offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBITS 14A and 14B offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBIT 18 offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBIT 17B offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence,

Witness Smith further direct examined; cross-examined by Defense counsel Gregory; redirect examined; excused.

Andrew Ciocca called by State's counsel Gammick, sworn and testified.

EXHIBIT 17C offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Ciocca further direct examined; excused.

Willie Stephenson called by State's counsel Gammick, sworn and testified.

EXHIBIT 19 offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Stephenson further direct examined.

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(Reporter)

EXHIBIT 17D offered by State's counsel Gammick; submitted by defense counsel Gregory; ordered admitted into evidence.

Witness Stephenson further direct examined.

EXHIBIT 30 offered by State's counsel Gammick; stipulated by Defense counsel Gregory; ordered admitted into evidence.

Witness Stevenson further direct examined; excused.

3:27 p.m. Jury admonished. Court recessed.

3:56 p.m. Court reconvened with respective counsel and Defendant present. Respective counsel stipulated to the presence of the jury.

Jeff Riolo called by State's counsel Stanton, sworn and testified.

EXHIBIT 40 offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Riolo further direct examined.

EXHIBITS 43A - 43G offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Riolo excused.

Mele Maveni called by State's counsel Stanton, sworn and testified.

EXHIBIT 24A offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Maveni further direct examined; excused, subject to recall.

4:55 a.m. Jury admonished and excused. Outside the presence of the jury, discussion ensued regarding transcript of exhibit 18. Upon no objection of respective counsel, COURT ORDERED exhibit 18 released to State's Investigator for copying. Once tape transcribed, the Transcript shall be marked and admitted into evidence.

CASE NO. CR98-0516 TITLE: THE STATE OF NEVADA VS. SIAOSI VANISL, a.k.a. "PE", a.k.a. "GEORGE"

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JURY TRIAL

SNR

5:00 p.m. Court recessed. Defendant remanded to the custody of the sheriff.

(Reporter)

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CONTINUED JURY TRIAL

M. Stone

(Clerk)

SNR

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Deputies Public Defender, Steve Gregory and Jeremy Bosler.

2:09 p.m. Court reconvened with respective counsel and defendant present. Respective counsel stipulated to the presence of the jury.

Makaleta Kauapalu called by State's counsel Stanton, sworn and testified; excused.

Sateki Taukieuvea called by State's counsel Stanton, sworn and testified.

***Record reflects identification of the Defendant.

Witness Taukieuvea further direct examined; excused.

Renee Peaua called by State's counsel Stanton, sworn and testified.

***Record reflects identification of the Defendant.

Witness Peaua further direct examined; excused, subject to recall.

3:37 p.m. Jury admonished. Court recessed. Defendant remanded into the custody of the Sheriff.

4:06 p.m. Court reconvened with respective counsel and Defendant present. Respective counsel stipulated to the presence of the jury.

Maria Louis called by State's counsel Stanton, sworn and testified.

***Record reflects identification of the Defendant.

Witness Louis further direct examined.

EXHIBITS 23A and 23B offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

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HONORABLE

Witness Louis further direct.

CONNIE

STEINHEIMER

EXHIBIT 27 offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

DEPT. NO.4

M. Stone

(Clerk)

Witness Louis further direct examined.

SNR

(Reporter)

EXHIBIT 24B offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Louis further direct examined.

EXHIBIT 26 offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Louis further direct examined; cross-examined by defense counsel Gregory; redirect examined; recross-excused; excused.

William Louis called by State's counsel Stanton, sworn and testified.

***Record reflects identification of the Defendant.

Witness Louis further direct examined.

EXHIBITS 20A and 20B offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Louis further direct examined; excused.

Priscilla Endemann called by State's counsel Stanton, sworn and testified.

***Record reflects identification of the Defendant.

Witness Endemann further direct examined; excused.

Manaoui Peaua called by State's counsel Stanton, sworn and testified.

***Record reflects identification of the Defendant.

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Witness Pecua further direct examined; excused.

(Reporter)

5:05 p.m. Jury admonished and excused. Outside the presence of the jury, Court set forth for the record that when the Defense requested the Court indulgence, Defense counsel was having a conversation with the Defendant. Discussion ensued regarding the admission of exhibits 33A. COURT ORDERED that the Exhibit shall not be admitted in the State's case-in-chief, but may be re-addressed for Rebuttal Witnesses.

5:17 p.m. Court recessed.

CONTINUED JURY TRIAL

9/24/99

M. Stone

(Clerk)

SNR

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney Dave Stanton represented the State. Defendant, Siasoi Vanisi, present with counsel, Deputies Public Defender, Stephen Gregory and Jeremy Bosler.

9:10 a.m. Court reconvened. Respective counsel stipulated to the presence of the jury.

Jim Duncan called by State's counsel Gammick, sworn and testified.

EXHIBIT 11 offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBIT 25 offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBIT 21 offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBIT 29A and 29B offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

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HONORABLE

Witness Duncan further direct examined.

CONNIE

STEINHEIMER

EXHIBIT 24C offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

DEPT. NO.4

M. Stone

(Clerk)

Witness Duncan further direct examined.

SNR

(Reporter)

EXHIBIT 15A, 15B and 15C offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Duncan further direct examined; excused.

Fernando Moreira called by State's counsel Gammick.

EXHIBITS 31E and 31F offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Moreira further direct examined.

EXHIBITS 31A and 31B offered by State's counsel Gammick; submitted by Defense counsel Gregory; exhibit 31A ordered admitted into evidence.

Witness Moreira further direct examined.

EXHIBITS 31C, 31D and 31G offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Moreira further direct examined; excused.

Louis Hill called by State's counsel Gammick, sworn and testified.

EXHIBITS 32A and 32B offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Hill excused.

10:07 a.m. Jury admonished. Court recessed.

10:26 a.m. Court reconvened with respective counsel and Defendant present. Respective counsel stipulated to the presence of the jury.

CASE NO. CR98-0516 TITLE: THE STATE OF NEVADA VS. SIAOSI VANISL a.k.a. "PE", a.k.a. "GEORGE"

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JURY TRIAL

SNR

Patricia Masito called by State's counsel Gammick, sworn and testified.

(Reporter)

***Record reflects identification of the Defendant.

Witness Masito further direct examined.

EXHIBIT 42 offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Masito further direct examined; excused.

Kaleb Bartelheim called by State's counsel Gammick, sworn and testified.

***Record reflects identification of the Defendant.

Witness Bartelheim cross-examined by Defense counsel Gregory; redirect examined; recross-examined; excused.

Dianna Shouse called by State's counsel Gammick, sworn and testified.

***Record reflects identification of the Defendant.

Witness Shouse excused.

10:51 a.m. Jury admonished and excused. Outside the presence of the jury, Court made additional record regarding the Defense's "Court's Indulgence". Discussion ensued regarding Jury Instructions.

10:52 a.m. Court recessed. Defendant remanded into the custody of the Sheriff.

1:24 Court reconvened outside the presence of the jury with respective counsel and Defendant present. Respective counsel and Court settled Jury Instructions. Defendant offered three Instructions; presented argument; objection and argument by State's counsel Stanton. COURT ENTERED ORDER marking the Instructions "Defendant's Offered Instructions A, B and C" and denied their use.

Respective counsel had no additional instructions to offer.

Discussion ensued regarding Defense Witnesses. COURT ORDERED the District Attorney's Investigator and the Public Defender's Investigator to meet and exchange contacts with the Defense Witness to assist in locating all

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M. Stone

Witnesses.

(Clerk)

Court advised counsel of Question No. 1 received for a Juror.

SNR

2:18 p.m. Court recessed. Defendant remanded into the custody of the

(Reporter)

Sheriff.

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CONTINUED JURY TRIAL

M. Stone

District Attorney Richard Gammick and Deputy District Attorney Dave Stanton represented the State. Defendant, Siaoisi Vanisi present with counsel, Deputies Public Defenders, Stephen Gregory and Jeremy Bosler.

(Clerk)

SNR

9:20 a.m. Court reconvened. Respective counsel stipulated to the presence of the Jury.

(Reporter)

David Kinikini called by State's counsel Stanton, sworn and testified.

EXHIBITS 33C and 33D offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Kinikini further direct examined; excused, subject to recall.

Keith Stevens called by State's counsel, sworn and testified.

***Record reflects identification of Defendant.

Witness Stevens further direct-examined.

EXHIBIT 28 offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Stevens further direct-examined; excused.

Craig Meyer called by State's counsel, sworn and testified.

EXHIBITS 34A and 34B offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Meyer further direct examined.

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SNR

(Reporter)

EXHIBIT 33B offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Meyer further direct examined.

***Record reflects identification of the Defendant.

Witness Meyer further direct examined; cross-examined; excused.

Vainga Kinikini called by State's counsel Stanton, sworn and testified.

10:39 a.m. Jury admonished. Court recessed.

10:58 a.m. Court reconvened outside the presence of the jury with respective counsel and Defendant present.

State's counsel notified the Court and Defense counsel that Witness Kinikini is the last State's Witness.

Court canvassed Defendant as to his 5th Amendment Right.

Defendant made statement and waived right to testify.

Court further canvassed the Defendant.

Defense counsel Gregory requested an In-Camera Hearing.

11:03 a.m. Jury entered. Respective counsel stipulated to the presence of the Jury.

Witness Kinikini, heretofore sworn, resumed stand and was further direct examined.

EXHIBITS 15C and 15D offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Kinikini further direct examined; excused.

EXHIBITS 35, 36 and 37 offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence.

State rested.

11:35 a.m. Jury admonished and excused. Outside the presence of the jury, discussion ensued at the Bench.

11:37 a.m. Court recessed. Defendant remanded to the custody of the

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SNR

Sheriff.

(Reporter)

11:52 a.m. Court reconvened in-camera outside the presence of the Jury with Defense counsel Gregory and Bosler and Defendant present.

Discussion ensued regarding the Defense of this case.

Court canvassed the Defendant.

12:06 p.m. Jury entered. State's counsel also entered. Respective counsel stipulated to the presence of the Jury.

Defense counsel Gregory waived opening statement.

Defense rested.

12:09 p.m. Jury admonished and excused. Outside the presence of the jury, further discussion ensued regarding the Jury Instruction.

Defense counsel Bosler had no additional Instructions to offer, with the exception of the Instruction regarding the Defendant's right to not testify.

Respective counsel had no further Instructions or Objections to offer to the Instructions.

12:15 p.m. Court recessed. Defendant remanded to the custody of the Sheriff.

1:29 p.m. Court reconvened outside the presence of the jury with respective counsel and Defendant present.

Court reviewed order of Instructions.

Respective counsel had no further Instructions nor Objections to offer.

Respective counsel had no objection to the Verdict forms.

1:32 p.m. Court recessed. Defendant remanded to the custody of the Sheriff.

1:41 p.m. Court reconvened outside the presence of the jury with respective counsel and Defendant present.

EXHIBIT 18A (transcript of Exhibit 18) marked and offered by State's counsel Gammick; submitted by Defense counsel Gregory; ordered admitted into evidence, but not to jury.

Court advised respective counsel of the procedure used regarding the evidence that is ammunition.

1:44 p.m. Jury entered. Respective counsel stipulated to the presence of the jury.

Court read answer to Question No. 1 aloud to the Jury.

Court read Instructions to the Jury.

State's counsel Gammick presented opening argument.

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Defense counsel waived answering argument.

(Reporter)

2:38 p.m. Bailiff and Law Clerk sworn and jury retired for deliberations.

Outside the presence of the jury, Court advised counsel of clerical errors in the Instructions.

2:40 p.m. Court recessed. Defendant remanded to the custody of the Sheriff.

3:23 p.m. Court reconvened in chambers with respective counsel present.

Defense counsel Gregory waived Defendant's appearance for the purpose of answering a question from the Jury.

Court read Question to counsel. Upon agreement of counsel, COURT ORDERED answer to Question No. 2 delivered to the Jury.

3:30 p.m. Court recessed.

4:31 p.m. Court reconvened with respective counsel and Defendant present.

Respective counsel stipulated to the presence of the jury.

Clerk called Roll.

Jury returned the following verdicts:

VERDICT

We, the jury in the above-entitled matter, find the defendant, SIAOSI VANISI, also known as "PE", also known as "GEORGE", GUILTY of MURDER.

DATED this 27th day of September, 1999.

(Sgd) James L. Ayres
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?

X Murder of the First Degree
X Murder of the Second Degree

(Sgd) James L. Ayres
FOREPERSON

If you have found the defendant the defendant guilty of Murder, you must answer the following question: Was a deadly weapon used in the

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commission of this Murder as defined in these instructions?

(Reporter)

Yes X No

(Sgd) James L. Ayres
FOREPERSON

VERDICT

We, the jury in the above-entitled matter, find the defendant, SIAOSI VANISI, also known as "PE", also known as "GEORGE", GUILTY of COUNT II. ROBBERY.

DATED this 27th day of September, 1999.

(Sgd) James L. Ayres
FOREPERSON

If you have found the defendant guilty of Robbery, you must answer the following question: Was a deadly weapon used in the commission of this Robbery as defined in these instructions?

Yes X No

(Sgd) James L. Ayres
FOREPERSON

VERDICT

We, the jury in the above-entitled matter, find the defendant, SIAOSI VANISI, also known as "PE", also known as "GEORGE", GUILTY of COUNT III. ROBBERY.

DATED this 27th day of September, 1999.

(Sgd) James L. Ayres
FOREPERSON

If you have found the defendant guilty of Robbery, you must answer the following question: Was a deadly weapon used in the commission of

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this Robbery as defined in these instructions?

(Reporter)

Yes X No

(Sgd) James L. Ayres
FOREPERSON

VERDICT

We, the jury in the above-entitled matter, find the defendant, SIAOSI VANISI, also known as "PE", also known as "GEORGE", GUILTY of COUNT IV. ROBBERY.

DATED this 27th day of September, 1999.

(Sgd) James L. Ayres
FOREPERSON

If you have found the defendant guilty of Robbery, you must answer the following question: Was a deadly weapon used in the commission of this Robbery as defined in these instructions?

Yes X No

(Sgd) James L. Ayres
FOREPERSON

VERDICT

We, the jury in the above-entitled matter, find the defendant, SIAOSI VANISI, also known as "PE", also known as "GEORGE", GUILTY of COUNT V. GRAND LARCENY.

DATED this 27th day of September, 1999.

(Sgd) James L. Ayres
FOREPERSON

Court inquired of the jurors as a whole if this was the verdict to which they

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agreed and there were no negative responses.

(Reporter)

Neither counsel requested the Jury polled.

COURT ORDERED jurors to contact the Court's Chambers on September 28, 1999, between 4:00 p.m. and 5:00 p.m. for further instructions regarding when they must report back to Court for the Penalty Phase of the Trial.

4:50 p.m. Jury admonished and excused. Outside the presence of the jury, COURT ORDERED respective counsel to return to Court on September 28, 1999, at 1:30 p.m. to give the Court a report on the availability of witnesses.

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CONTINUED JURY TRIAL

M. Stone

District Attorney Richard Gammick and Deputy District Attorney Dave

(Clerk)

Stanton represented the State. Defendant, Siasosi Vanisi, present with

SNR

counsel, Deputies Public Defender, Stephen Gregory and Jeremy Bosler.

(Reporter)

1:38 p.m. Court reconvened outside the presence of the Jury.

Court advised counsel of her conversations with the Judge handling the Motions to Compel Witnesses to Testify in San Mateo.

Defense counsel Bosler made statement.

Upon request by State's counsel Gammick and no objection by the Defense, COURT ENTERED ORDER that the Penalty Phase shall begin on October 1, 1999, at 9:00 a.m.

COURT FURTHER ENTERED ORDER that respective counsel must submit their Penalty Phase Instructions to the Court by 4:00 p.m. on September 30, 1999.

Upon Request by State's counsel Gammick, COURT ORDERED Defense counsel to provide the State with all defense witnesses immediately following this hearing.

1:55 p.m. Court recessed. Defendant remanded to the custody of the sheriff.

9/30/99

CONTINUED JURY TRIAL

M. Stone

District Attorney Richard Gammick and Deputy District Attorney Dave

(Clerk)

Stanton represented the State. Defendant, Siasosi Vanisi, present with

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counsel, Deputies Public Defender, Stephen Gregory and Jeremy Bosler.

(Reporter)

3:40 Court reconvened outside the presence of the jury.

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Court advised respective counsel that all but one witnesses was Ordered by the California Judge to appear for trial.

State's counsel Gammick made statement regarding Defense witnesses.

EXHIBITS H and I marked by State's counsel Gammick.

State's counsel Gammick presented argument regarding Notice and timeliness of Defense Witnesses. Defense counsel Gregory presented argument. State's counsel Gammick presented further argument.

EXHIBIT J marked by State's counsel Gammick.

State's counsel Gammick presented further argument.

UPON COURT ORDER, Defense counsel Gregory presented the names of which Witnesses where to be called and the general topic of their testimony.

Motion in Limine to exclude Defense Witnesses from testifying as to the sentence the Defendant should receive by State's counsel Gammick; presented argument; no objection by Defense counsel Gregory. COURT ENTERED ORDER granting Motion.

State's counsel Stanton provided Court with proposed Jury Instructions. Discussion ensued regarding Victim Impact Statements.

EXHIBITS K & L marked by State's counsel Gammick.

Upon discussion regarding redactions to the Victim Impact Statements, COURT ORDERED counsel to be prepared to argue the issues at 8:30 a.m. on October 1, 1999.

Defense counsel Bosler provided Court with proposed Jury Instructions. Discussion ensued regarding the admissibility of Exhibit 33A. State's counsel put the Defense on notice of potential use of that exhibit. Discussion ensued regarding the photograph taken of the Defendant at the Washoe County Jail.

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(Reporter)

EXHIBIT 44 marked by State's counsel Stanton.

COURT ENTERED ORDER that in light of all the other evidence the State has against the Defendant, exhibit 44 is not admitted into evidence.

EXHIBIT 45 marked and offered by State's counsel Gammick; objection by Defense counsel Gregory; Court reserved ruling pending review of the video tape and the Defense providing the law their objections are based on.

EXHIBITS 46A - 46E marked and offered by State's counsel Gammick; no objection by Defense counsel Gregory; ordered admitted into evidence upon the testimony.

Discussions ensued regarding the Victim Impact Statements and the testimony of Deputy Ellis.

4:50 p.m. Court recessed. Defendant remanded to the custody of the sheriff.

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M. Stone
(Clerk)

SNR

(Reporter)

CONTINUED JURY TRIAL

District Attorney Richard Gammick and Deputy District Attorney Dave Stanton represented the State. Defendant, Siasos Vanisi, present with counsel, Deputies Public Defender, Stephen Gregory and Jeremy Bosler.

8:30 a.m. Court reconvened outside the presence of the jury.

Discussion ensued regarding Victim Impact Statement. Upon no objections, all redactions were made by the Court to Exhibit K by interlineation.

Motion in Limine to exclude State's counsel Gammick of making comments about his law enforcement background during closing arguments by Defense counsel Gregory; presented argument; no objection by State's counsel Stanton. COURT ENTERED ORDER granting Motion.

Upon review of all cases provided by the Defense and arguments made by respective counsel, COURT ENTERED ORDER finding the victim impact

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statements admissible as redacted.

(Reporter)

Defense counsel Gregory made statement regarding the number of uniformed police officers in the Courtroom. Court indicated that the number of uniformed Police Officers in the Courtroom was not noticeable with the number of civilian Persons.

EXHIBIT 47 - 52 marked by Defense counsel Bosler.

9:22 a.m. Jury entered. Respective counsel stipulated to the presence of the jury.

State's counsel Stanton presented opening statement.
Defense counsel Gregory presented opening statement.

EXHIBITS PREVIOUSLY ADMITTED offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence for the Penalty Phase.

Michael Wiley called by State's counsel Stanton, sworn and testified; cross-examined by Defense counsel Gregory.

EXHIBIT 53 marked and offered by Defense counsel Gregory; one objection by State's counsel Stanton; ordered admitted into evidence.

Witness Wiley further cross-examined; redirect examined; recross-examined; excused.

David Molnar called by State's counsel Stanton, sworn and testified; cross-examined by Defense counsel Gregory; excused.

Debra Mann called by State's counsel Stanton, sworn and testified; cross-examined; excused.

10:39 a.m. Jury admonished. Court recessed.

11:01 a.m. Court reconvened with respective counsel and Defendant present. Respective counsel stipulated to the presence of the jury.

Deputy James Ellis called by State's counsel, sworn and testified; cross-

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examined by Defense counsel Gregory; excused.

(Reporter)

Viang Kinikini, heretofore sworn, called by State's counsel Stanton and direct examined; cross-examined by Defense counsel Gregory; redirect examined; excused, subject to recall.

11:40 a.m. Jury admonished. Court recessed.

1:09 p.m. Court reconvened with respective counsel and Defendant present. Respective counsel stipulated to the presence of the jury.

Lt. Geoffrey Wise called by State's counsel Stanton, sworn and testified; cross-examined by Defense counsel Gregory; redirect examined; recross-examined; excused.

Sue Millard called by State's counsel Stanton, sworn and testified.

EXHIBIT 46A - 46E offered by State's counsel Stanton; no objection by Defense counsel Gregory; ordered admitted into evidence.

Witness Millard further direct examined; excused.

Steve Sauter called by State's counsel, sworn and testified; excused.

2:16 p.m. Jury admonished. Outside the presence of the jury, Defense counsel Gregory set forth for the record that the last two witnesses and gallery were emotional.

Discussion ensued regarding the Victim impact statement. COURT ORDERED that the word "savagely" be stricken from the statement.

2:30 p.m. Court recessed.

2:45 p.m. Court reconvened with respective counsel and Defendant present. Respective counsel stipulated to the presence of the jury.

Carolyn Sullivan called by State's counsel Stanton, sworn and testified.

EXHIBIT 45 offered by State's counsel Stanton; submitted by Defense counsel Gregory; ordered admitted into evidence.

Witness Sullivan further direct examined.

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3:38 p.m. Jury admonished. Court recessed.

(Reporter)

3:56 p.m. Court reconvened outside the presence of the jury with
respective counsel and Defendant present.

Defense counsel set forth for the record the emotional state of the
witnesses, the Jury and the Audience during last testimony.

3:57 p.m. Jury entered. Respective counsel stipulated to the presence of
the jury.

Witness Sullivan, heretofore sworn, resumed stand and was further direct
examined; excused.

Meaghan Sullivan called by State's counsel Stanton, sworn and testified;
excused.

State's counsel rested.

Sione Peaua called by Defense counsel Bosler, sworn and testified.

EXHIBIT 51B offered by Defense counsel Bosler; no objection by State's
counsel; ordered admitted into evidence.

Witness Peaua cross-examined by State's counsel Stanton; redirect
examined; excused.

Renee Peaua, heretofore sworn, called by Defense counsel Gregory and
direct examined.

EXHIBIT 51A offered by Defense counsel Gregory; no objection by State's
counsel Gammick; ordered admitted into evidence.

Witness further direct- examined; cross-examined; excused.

4:36 Jury admonished and excused. Outside the presence of the jury,
Discussion ensued regarding the schedule of witnesses. Defense counsel
provided the Court and the State with a list of witnesses.

4:40 p.m. Court recessed.

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(Reporter)	*** Record reflects identification of the Defendant.	

Witness Tonga further direct examined.

EXHIBIT 33A offered by Defense counsel Gregory; no objection by State's counsel Stanton; ordered admitted into evidence.

Witness Tonga further direct examined; cross-examined by State's counsel Stanton; redirect examined; excused.

11:59 a.m. Jury admonished and excused. Outside the presence of the jury, Court advised respective counsel that Tui Finau will be sworn to interpret the proceedings for the witnesses if necessary.

12:03 p.m. Court recessed.

1:35 p.m. Court reconvened with respective counsel and Defendant present. Respective counsel stipulated to the presence of the jury.

Brian Verna called by Defense counsel Bosler, sworn and testified.

*** Record reflects identification of the Defendant.

Witness Verna further direct examined; cross-examined by State's counsel Stanton; excused.

Kurt Krueger called by Defense counsel Bosler, sworn and testified.

EXHIBIT 38 offered by Defense counsel Bosler; no objection by State's counsel Stanton; ordered admitted into evidence.

Witness Krueger further direct examined; cross-examined by State's counsel Stanton; redirect examined; excused.

Judith Celeste called by Defense counsel Bosler, sworn and testified.

*** Record reflects identification of the Defendant.

Witness Celeste further direct examined; excused.

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(Reporter)

6:38 p.m. Court reconvened outside the presence of the jury with respective counsel and Defendant present.

Upon review of case law, Respective counsel and Court settled Jury Instructions. COURT ENTERED ORDER denying use of Offered Instructions F and H.

Defendant offered seven additional Instructions; presented argument; objection and argument by State's counsel Stanton. COURT ENTERED ORDER marking the Instructions "Defendant's Offered Instructions I, J, K, L, M, N and O" and denied their use.

Upon arguments, COURT ENTERED ORDER allowing for a modification of Defendant's Offered Instruction H.

Defense counsel Bosler objected to the verdict forms as offered by the State.

7:55 p.m. Court recessed. Defendant remanded to the custody of the sheriff.

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CONTINUED JURY TRIAL

M. Stone

(Clerk)

SNR

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant, Siasosi Vanisi, present with counsel, Deputies Public Defender, Stephen Gregory and Jeremy Bosler. 10:41 a.m. Court reconvened. Respective counsel stipulated to the presence of the jury.

Kathy Peaua called by Defense counsel Gregory, sworn and testified.

***Record reflects Identification of the Defendant.

Witness Peaua further direct examined; cross-examined by State's counsel Stanton; excused.

Renee Peaua, heretofore sworn, called by Defense counsel Gregory and direct examined; cross-examined by State's counsel Stanton; redirect examined; excused.

Sateki Taukieuvea, heretofore sworn, called by Defense counsel Gregory and direct examined; cross-examined by State's counsel Stanton;

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Ole Thienhaus called by Defense counsel Gregory, sworn and testified;
cross-examined by State's counsel Stanton; redirect examined; recross-
examined; further examined by Defense counsel Gregory; excused.

3:04 p.m. Jury admonished and excused. Outside the presence of the Jury,
Discussion ensued regarding the Interpreter.

3:05 p.m. Court recessed.

3:30 p.m. Court reconvened outside the presence of the jury with
respective counsel and Defendant present.

Tui Finau sworn to interpret the proceedings for any witness needing the
services.

3:35 p.m. Court recessed.

3:50 p.m. Court reconvened with respective counsel and Defendant
present. Respective counsel stipulated to the presence of the jury.

Deanne Vanacey called by Defense counsel Bosler, sworn and testified;
cross-examined; redirect examined; recross-examined; excused.

Toa Vimahi called by Defense counsel Bosler, assisted by an Interpreter,
sworn and testified; excused.

Louisa Tafuna called by Defense counsel Bosler, sworn and testified;
cross-examined by State's counsel Stanton; excused.

5:02 p.m. Jury admonished and excused. Outside the presence of the jury,
State's counsel Stanton set forth a standing objection to further testimony
regarding the Defendant's Sister's wedding, the custom of raising children
and the use of first names. COURT ENTERED ORDER that all witnesses
must be addressed by their Sir-Names.

5:05 Court recessed.

5:37 p.m. Court reconvened outside the presence of the jury with
respective counsel and Defendant present.

Court set forth order of Instructions. Respective counsel and Court settled
Jury Instructions. Defendant offered five Instructions; presented argument;
objection and argument by State's counsel Stanton. COURT ENTERED
ORDER marking the Instructions "Defendant's Offered Instructions D, E, F,
G and H" and denied use of Offered Instructions D, E and G.

6:24 p.m. Court recessed.

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CONTINUED JURY TRIAL

M. Stone

(Clerk)

SNR

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney Dave Stanton represented the State. Defendant, Siasosi Vanisi, present with counsel, Deputies Public Defender, Steven Gregory and Jeremy Bosler. 9:40 Court reconvened. Respective counsel stipulated to the presence of the jury.

Matthew McGinn called by Defense counsel Bosler, sworn and testified.

EXHIBIT 52 offered by Defense counsel Bosler; no objection by State's counsel Stanton; ordered admitted into evidence.

Witness McGinn further direct examined.

***Record reflects identification of the Defendant.

Witness McGinn cross-examined by State's counsel Stanton; excused.

LeAnn Jones called by Defense counsel Bosler, sworn and testified; cross-examined by State's counsel Stanton; excused.

Tupouhea Lue called by Defense counsel Bosler, sworn and testified; cross-examined by State's counsel Stanton; excused.

Sitiveni Tafuna called by Defense counsel Bosler, sworn and testified; cross-examined; excused.

Anna Marie Jones called by Defense counsel Bosler, sworn and testified; excused.

Sela Oto Ota DeBruce called by Defense counsel Bosler, sworn and testified; excused.

11:08 a.m. Jury admonished. Court recessed.

11:33 a.m. Court reconvened with respective counsel and Defendant present. Respective counsel stipulated to the presence of the Jury.

Nifai Tonga called by Defense counsel Gregory, sworn and testified.

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OFFICERS OF
COURT PRESENT APPEARANCES-HEARING

CONT'D TO

10/5/99 JURY TRIAL
SNR excused.
(Reporter)

Mele Mauveni, heretofore sworn, called by defense counsel Gregory and direct examined.

11:00 a.m. Jury admonished and excused.

Witness Mauveni examined by State's counsel Gammick; excused.

Motion for Sanctions and a Curative Instruction by State's counsel Gammick; presented argument; objection and argument by Defense counsel Gregory.

COURT HELD matter under abeyance pending receipt of the transcript of Witness Mauveni's direct examination.

11:25 a.m. Court recessed.

11:56 a.m. Court reconvened with respective counsel and defendant present. Respective counsel stipulated to the presence of the jury.

Court admonished and excused jury for lunch.

11:57 a.m. Court recessed.

1:43 p.m. Court reconvened outside the presence of the jury with respective counsel and Defendant present. Court noted receipt of the Transcript of Witness Mauveni's direct examination.

1:44 p.m. Jury entered. Respective counsel stipulated to the presence of the jury.

Witness Mauveni, heretofore, resumed stand and was cross-examined by State's counsel Gammick; redirect-examined; recross-examined; further examined by Defense counsel Gregory; excused.

David Kinikini, heretofore sworn, called by Defense counsel Gregory and direct examined; cross-examined by State's counsel Stanton; redirect examined; excused.

Toeumu Tafuna called by Defense counsel Gregory, assisted by an interpreter, sworn and testified; cross-examined by State's counsel Stanton; excused.

Crystal Calderon called by Defense counsel Gregory, sworn and testified;

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CONT'D TO

10/5/99

JURY TRIAL

SNR

cross-examined by State's counsel Gammick; excused.

(Reporter)

Defense rested.

2:27 p.m. Jury admonished and excused. Outside the presence of the jury, COURT canvassed the Defendant as to his right to testify. Defendant advised the Court of his wish to not testify, but make a Statement in Allocation.

2:33 p.m. Jury entered. Respective counsel stipulated to the presence of the jury.

David Jenkins called in rebuttal by State's counsel Stanton, sworn and testified; cross-examined by Defense counsel Gregory; redirect examined; excused.

State's counsel rested rebuttal.

3:00 p.m. Jury excused. Outside the presence of the jury, COURT advised the Defendant of the parameters of a Statement in Allocation.

3:03 Court recessed.

3:26 p.m. Court reconvened outside the presence of the jury with respective counsel and Defendant present.

Defendant advised Court further of his wish to make a Statement in Allocation.

3:29 p.m. Jury entered. Respective counsel stipulated to the presence of the jury.

Defendant made Statement in Allocation.

3:31 p.m. Jury admonished. Court recessed.

3:53 p.m. Court reconvened outside the presence of the jury with respective counsel and Defendant present to finalize jury instructions.

Court review order of Instructions.

Defense counsel Bosler withdrew request for 5th Amendment Instruction.

Respective counsel had no further Instruction or Objections to offer.

Defense counsel Bosler had one Verdict form to offer; presented argument; objection and argument by State's counsel Stanton. COURT ORDERED proposed Verdict marked "Defendant Offered Verdict Form P" and denied request.

Upon stipulation of respective counsel, COURT ORDERED packet of

AA02953

CASE NO. CR98-0516 TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI a.k.a. "PE", a.k.a.
"GEORGE"

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JURY TRIAL

SNR

(Reporter)

Instructions, Verdict form and all admitted exhibits to be delivered to the jury upon their deliberations.

Discussion ensued regarding whether or not the Guilt Phase Jury Instructions should be delivered to the Jury for their deliberations.

4:30 p.m. Court recessed.

4:54 p.m. Court reconvened outside the presence of the jury with respective counsel and Defendant present.

State's counsel presented the Court with a Corrected Verdict Form.

Upon agreement of counsel, COURT ENTERED ORDER that the Guilt Phase Jury Instructions will not be delivered to the Jury.

5:00 p.m. Court recessed. Defendant remanded to the custody of the Sheriff.

10/6/99

CONTINUED JURY TRIAL

M. Stone

(Clerk)

SNR

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant, Siasosi Vanisi, present with counsel, Deputies Public Defender, Stephen Gregory and Jeremy Bosler.

9:12 a.m. Court reconvened outside the presence of the jury.

Discussion ensued regarding the State's Closing Arguments.

Motion to Seal Courtroom by Defense counsel Gregory; presented argument; objection and argument by State's counsel.

COURT ENTERED ORDER that the State may not commit prosecutorial mis-conduct and that if a person from the gallery leaves the Courtroom they may not re-enter until the next recess.

Court advise counsel of a clerical correction made to Instruction No. 7.

9:17 a.m. Jury entered. Respective counsel stipulated to the presence of the jury.

Court read instructions aloud.

State's counsel Stanton presented opening argument.

Defense counsel Bosler presented answering argument.

EXHIBIT 54 marked and offered at bench conference by Defense counsel Bosler; objection by State's counsel Stanton; denied.

Defense counsel Bosler further presented answering argument.

11:00 a.m. Jury admonished. Court recessed.

AA02954

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"GEORGE"

DATE, JUDGE
OFFICERS OF

PAGE THIRTY-FOUR

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

10/5/99

JURY TRIAL

SNR

(Reporter)

11:25 a.m. Court reconvened with respective counsel and Defendant present. Respective counsel stipulated to the presence of the jury. State's counsel Stanton presented closing argument.

12:05 p.m. Bailiff and Law Clerk sworn and jury retired for deliberations. Outside the presence of the jury, Court advised counsel of clerical errors in the Instructions.

Court advised gallery that they must leave the fourth floor during the jury's deliberations.

12:09 p.m. Court recessed. Defendant remanded to the custody of the Sheriff.

2:31 p.m. Court reconvened outside the presence of the jury with respective counsel and Defendant present.

Court read Question to counsel. Upon agreement of counsel, COURT ORDERED answer to Question No. 3 delivered to the Jury.

10/6/99

2:39 p.m. Court recessed.

M. Stone

(Clerk)

SNR

(Reporter)

4:07 p.m. Court reconvened with respective counsel and Defendant present. Respective counsel stipulated to the presence of the jury. Clerk called Roll.

Jury returned the following verdict:

VERDICT

We, the jury in the above-entitled matter, having previously found the defendant, SIAOSI VANISI, also known as "PE", also known as "GEORGE", guilty of murder in the first degree, find that the following aggravating circumstance exists, to wit:

1. The murder of SGT. GEORGE SULLIVAN was committed by defendant SIAOSI VANISI, also known as "PE", also known as "GEORGE", in the commission of or attempt to commit the crime of Robbery With the Use of a Deadly Weapon.

Yes X No

2. The murder of SGT. GEORGE SULLIVAN was committed by defendant SIAOSI VANISI, also known as "PE", also known as "GEORGE", upon a peace officer who was engaged in the performance of his official

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APPEARANCES-HEARING

CONT'D TO

10/5/99

JURY TRIAL

SNR

(Reporter)

duty and the defendant knew or reasonably should have known that the victim was a peace officer.

Yes X No

3. The murder involved mutilation of SGT. GEORGE SULLIVAN.

Yes X No

4. The murder of SGT. GEORGE SULLIVAN was committed by defendant SIAOSI VANISI, also known as "PE", also known as "GEORGE", because of the actual or perceived race, color, religion or national origin of SGT. GEORGE SULLIVAN.

Yes No X

The jury further finds that there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found, and, therefore, set the penalty to be imposed upon the defendant at DEATH.

DATED this 6th day of October, 1999.

(Sgd) James L. Ayres
FOREPERSON

Court inquired of the jurors as a whole if this was the verdict to which they agreed and there were no negative responses.

Upon motion by defense counsel Gregory, COURT ORDERED THE JURY POLLED. To the question, "Is this your verdict as read?", posed to each of the jurors individually, as to each Defendant, each responded "Yes".

Court thank and excused the Jurors from further jury service.

Motion to Waive PSI by Defense counsel Gregory; presented argument; no objection by State's counsel.

COURT ENTERED ORDER denying motion. The Division of Parole and Probation may contact the Defendant through the Shift Supervisor at the Washoe County Jail. The Defendant may refuse to talk to the Division of Parole and Probation.

COURT ORDERED Defendant referred to Probation Department for PSI on Counts II, III, IV and V and continued for entry of judgment, consideration of probation report and imposition of sentences on Counts I, II, III and IV.

COURT FURTHER ORDERED that the imposition of the Death Sentence shall be held in abeyance pending sentencing on the other charges.

Discussion ensued regarding Motion for Sanctions and Motions for

AA02956

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"GEORGE"

DATE, JUDGE
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PAGE THIRTY-FOUR

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

10/5/99

JURY TRIAL

SNR

(Reporter)

Prosecutorial Misconduct. COURT ORDERED that all motions must be filed and personally served by October 18, 1999, at 4:00 p.m., all Responses must be filed and personally served by October 22, 1999, at 5:00 p.m., and all Replies must be filed and personally served by October 26, 1999, at 4:00 p.m. If counsel wants oral arguments on the Motions, then Counsel must request an hearing in their pleadings.
4:35 p.m. Court recessed. Defendant remanded to the custody of the sheriff.

11/22/99

10:00 a.m.

Sentencing/
Imposition of
Death
Sentence

AA02957

CASE NO. CR98-0516

TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

9/17/99

PRE-TRIAL MOTIONS/STATUS HEARING

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

D. Phipps

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Deputies Public Defender Stephen Gregory and Jeremy Bosler. Discussion ensued regarding releasing Jurors. Upon stipulation of respective counsel, COURT ENTERED ORDER releasing Jurors Boynton, Faehling and Kidder. Defense counsel Bosler informed the Court that he had completed the appropriate CLE Classes for the Rule 250 requirements. Discussion ensued regarding the Exhibits. Defense counsel Gregory would not stipulate to any evidence being admitted into evidence.

EXHIBITS 40 - 43G marked by State's counsel Gammick.

Discussion ensued regarding stipulations entered during the First Trial. COURT ORDERED that all previously entered Stipulations shall remain in effect unless notified otherwise.

Court recessed.

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DATE, JUDGE
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COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

9/13/99

VOIR DIRE (JURY SELECTION)

HONORABLE
CONNIE
STEINHEIMER
DEPT. NO. 4

M. Stone

(Clerk)

E. Nelson

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant not present, appearance previously waived, being represented by counsel, Public Defender Michael Specchio and Deputies Public Defender Steve Gregory and Jeremy Bosler.

9:58 a.m. Court convened outside the presence of the jury.

Defense counsel Bosler set forth objections to Question Nos. 4 and 9 of the Juror Questionnaire. State's counsel Gammick made statement. Upon finding that the Defense did not object to Question No. 4 in the previous trial nor was an objection made in a timely fashion, COURT ENTERED ORDER denying the Request for Modification of the Juror Questionnaire.

10:05 a.m. Court recessed.

10:11 a.m. Court reconvened with respective counsel present.

First panel of prospective jurors present.

Court addressed prospective jurors. Court personnel and respective counsel introduced to the jury panel.

Roll taken of prospective jurors; all present except jurors Billbao, Easterly, Hite, Lombardo, Ohotto, Phillips, Prater, Shutts, Simpson and Vermeys.

All prospective jurors sworn as to their qualifications to serve as trial jurors.

First panel of prospective jurors excused to complete Special Juror Instruction "A" and Special Juror Questionnaire.

10:20 a.m. Court recessed.

10:36 a.m. Court reconvened with respective counsel present.

Second panel of prospective jurors present.

Court addressed prospective jurors. Court personnel and respective counsel introduced to the jury panel.

Roll taken of prospective jurors; all present except jurors Basinger, Doreen, Flechtl, Germano, Leonard, McKittrick, Oberg, Rosa, Salley, Smith and Tsatso.

All prospective jurors sworn as to their qualifications to serve as trial jurors.

First panel of prospective jurors excused to complete Special Juror Instruction "A" and Special Juror Questionnaire.

10:50 a.m. Court recessed.

2:20 p.m. Court reconvened in chambers with District Attorney Gammick and Deputy Public Defender Gregory present via telephone.

Defense counsel Gregory waived Defendant's right to be present.

Court advised counsel as to issues regarding Juror Boynton's Questionnaire.

Defense counsel Gregory set forth objection to release of Juror. State's counsel Gammick presented non-objection to release of Juror. Upon objection by Defense counsel, COURT ENTERED ORDER that Juror Boynton

AA02959

CASE NO. CR98-0516 TITLE: THE STATE OF NEVADA VS. SIOASI VANISL a.k.a. "PE", a.k.a. "GEORGE"

DATE, JUDGE

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OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

9/13/99

VOIR DIRE (JURY SELECTION)

HONORABLE must remain on the Jury Panel.

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

E. Nelson

(Reporter)

AA02960

CASE NO. CR98-0516

TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

8/30/99

MOTION TO WITHDRAW AS COUNSEL

HONORABLE

District Attorney Richard Gammick and Deputy District Attorney David

9/13/99

CONNIE

Stanton represented the State. Defendant present with counsel, Deputies

10:00 a.m.

STEINHEIMER

Public Defender Steve Gregory and Jeremy Bosler.

Jury Selection

DEPT. NO.4

COURT ENTERED ORDER denying Motion to Withdraw as Counsel made

M. Stone

by Defense counsel. COURT FURTHER ENTERED ORDER that the Trial is

9/20/99

(Clerk)

continued for a period of two weeks for Defense counsel to file documents

10:00 a.m.

E. Nelson

with the Supreme Court of Nevada or be prepared for Trial.

Jury Trial

(Reporter)

State's counsel Gammick made statement. COURT FURTHER ORDERED
that all witnesses are held to their subpoenas.

AA02961

CASE NO. CR98-0516

TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

8/26/99

EX-PARTE MOTION TO WITHDRAW AS COUNSEL

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

E. Nelson

(Reporter)

District Attorney Richard A. Gammick and Deputy District Attorney David L. Stanton represented the State. Defendant present with counsel, Deputies Public Defender Steve Gregory and Jeremy Bosler.

7:00 a.m. Court convened.

Discussion ensued regarding whether or not the Courtroom should be sealed for the following proceedings.

Request for In-Camera Inspection by Defense counsel Gregory; objection by State's counsel.

Motion to continue by Representative Mike Henderson, on behalf of Reno Newspaper, Inc. COURT ENTERED ORDER denying Motion to Continue upon counsel of record not being present to provide legal basis.

7:15 a.m. Court recessed.

7:21 a.m. Court reconvened with respective counsel and Defendant present.

Upon finding that an Ex-Parte Hearing is needed for Defense counsel to set forth the ethical consideration for the Motion, COURT ENTERED ORDER granting the Request for a sealed hearing.

Court admonished Court Security and personnel as to confidentiality of the following proceedings.

COURTROOM SEALED.

Motion to Withdraw as Counsel of Record by Defense counsel Gregory and Bosler; presented argument.

COURT took matter under advisement.

8:15 a.m. Court recessed.

AA02962

CASE NO. CR98-0516

TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

8/11/99

MOTION FOR RELEASE OF PSYCHIATRIC EVALUATIONS

HONORABLE

District Attorney Richard Gammick and Deputy District Attorney David

CONNIE

Stanton represented the State. Defendant present with counsel, Deputies

STEINHEIMER

Public Defender Steven Gregory and Jeremy Bosler. Reno Newspapers,

DEPT. NO.4

Inc., represented by counsel, Phillip Bartlett.

M. Stone

COURT ENTERED ORDER denying Motion for Self Representation.

(Clerk)

D. Phipps

Request for Stay pending Decision whether or not to file a Writ of

(Reporter)

Mandamus by Defense counsel Gregory; presented argument; objection
and argument by State's counsel Gammick. COURT ENTERED ORDER
denying Request for Stay.

Motion for Release of Psychiatric Evaluations by counsel Bartlett;
presented argument; objection and argument by State's counsel
Gammick; Defense counsel Bosler stood on written Opposition; reply by
counsel Bartlett.

COURT took matter under advisement.

Discussion ensued regarding letter requesting a hearing prior to any in
chambers/closed hearings by Reno Newspapers, Inc.

Motion for Request to be submitted in writing by Defense counsel Gregory.

COURT took motion under advisement.

Request for a Hearing prior to any In chambers/Closed Hearings by
counsel Bartlett. Upon issues involved in the Request, COURT ORDERED
counsel to reduce the request to writing, with responses to follow. If
requested, Court will allow for a shortened Briefing Schedule.

11:00 a.m. Court recessed.

AA02963

CASE NO. CR98-0516

TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

8/10/99

MOTION FOR SELF REPRESENTATION

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

K. Yates

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Deputies Public Defender Steven Gregory and Jeremy Bosler.

Court made inquiries of the Defendant pursuant to Rule 256. Upon direction of the Court, State's counsel Stanton suggested additional questions for the Court. Defense counsel Gregory declined to make any suggestions to the Court.

11:55 a.m. Court recessed. Defendant remanded to the custody of the sheriff.

12:02 p.m. Court reconvened with respective counsel and Defendant present.

Respective counsel Stanton and Gregory made statements regarding the Motion

EXHIBIT A marked and offered by State's counsel Stanton; objection by Defense counsel Gregory; ordered admitted into evidence over objection only for the purpose of the intent of the statement, not the demeanor of the Defendant.

Respective counsel Stanton and Gregory made further statements.

12:23 p.m. Court recessed. Defendant remanded to the custody of the sheriff.

3:10 p.m. Court reconvened with respective counsel and Defendant present.

Dr. Ole Thienhaus called by Court, sworn; examined by State's counsel; excused.

Defendant made statement regarding statements made on video tape (Exhibit A).

Respective counsel Stanton and Gregory made further statements regarding the Motion.

COURT took matter under advisement.

8/11/99

10:00 a.m.

Motions Re:

Media

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DATE, JUDGE
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COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

8/3/99

HEARING REGARDING MEDICATIONS

HONORABLE

District Attorney Richard Gammick and Deputy District Attorney David

CONNIE

Stanton represented the State. Defendant present with counsel, Deputies

STEINHEIMER

Public Defender Steven Gregory and Jeremy Bosler.

DEPT. NO.4

Discussion ensued regarding the Ex-Parte Order for Medication.

M. Stone

Court canvassed Defendant regarding the Voluntariness of taking

(Clerk)

Medication.

K. Yates

Upon withdraw of the Ex-Parte Order by Defense counsel Gregory, COURT

(Reporter)

advised Defense counsel to consider a Release of Information for Dr. Lind to release information to the Washoe County Jail Personnel and, if requested, Court would visit the issue of medication for the Defendant at a later date.

Upon request by Defense counsel Gregory, COURT ORDERED the Courtroom closed and sealed the transcript.

All personnel admonished regarding the confidentiality of the following proceedings.

Motion for Self Representation by Defendant; presented argument.

COURT ORDERED Defendant to place the Motion in writing and a hearing would be set.

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COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

6/23/99

REPORT ON PSYCHIATRIC EVALUATION/PRE-TRIAL MOTIONS

HONORABLE

District Attorney Richard A. Gammick and Deputy District Attorney David

CONNIE

L. Stanton represented the State. Defendant present with counsel, Public

STEINHEIMER

Defender, Michael R. Specchio, and Deputies Public Defender Jeremy

DEPT. NO.4

Bosler.

M. Stone

Court noted receipt of Psychiatric Evaluations. Upon no objections,

(Clerk)

COURT ENTERED ORDER finding the Defendant competent to aid and

E. Nelson

assist counsel in preparation of trial.

(Reporter)

COURT ORDERED Courtroom closed and following proceedings sealed.

Court Security Detail and Personnel sworn as to the rules of a sealed hearing.

Motion to Dismiss Counsel by Defendant; presented argument. Defense counsel Specchio made statement.

EXHIBIT V1 marked by Defense counsel Specchio.

Defense counsel Specchio made further statement.

Defendant presented further argument. COURT ENTERED ORDER denying Motion to Dismiss Counsel.

Upon request of Defense counsel Gregory, COURT ENTERED ORDER denying any Request for Medication to be Administered to Defendant. If the NSP and/or WCJ Medical Personnel examine the Defendant and decide it is necessary to medicate the Defendant, Counsel must request a hearing.

2:27 p.m. Court recessed.

2:50 p.m. Court reconvened with respective counsel and Defendant present. Courtroom unsealed.

Upon submission on the pleadings by respective counsel, COURT took the Motion for Additional Peremptory Challenges and the Motion to Declare Adverse Witnesses under advisement.

Motion for Sequestered Individual Voir Dire by Defense counsel Bosler; presented argument; objection and argument by State's counsel Stanton; Reply by Defense counsel Bosler. COURT ENTERED ORDER denying Motion.

Request for Challenges of the Jury Panel to be made outside the presence of the Jury made by Defense counsel Bosler denied.

Motion for Defendant to be transported back to the Washoe County Jail by Defense counsel Gregory; present argument; response by State's counsel

AA02966

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DATE, JUDGE
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COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

6/23/99

REPORT ON PSYCHIATRIC EVALUATION/PRE-TRIAL MOTIONS

HONORABLE

Stanton; reply by Defense counsel Gregory. COURT ENTERED ORDER

8/5/99

CONNIE

that the Defendant be transported back to the Washoe County Jail on July

2:00 p.m.

STEINHEIMER

15, 1999, where he shall remain until the completion of this case. The

Hearing Re:

DEPT. NO.4

Washoe County Sheriff has the authority to transport the Defendant back

Press

M. Stone

to the Nevada State Prison, if it is deemed by him that the Defendant is a

(Clerk)

threat to his facility or that of this community.

E. Nelson

3:14 p.m. Court recessed. Defendant remanded to the custody of the

(Reporter)

sheriff.

3:36 p.m. Court reconvened with respective counsel and Defendant present.

Motion to Reconsider use of Photographs by State's counsel Gammick; presented argument; no objection by Defense counsel. COURT ENTERED ORDER allowing the use of Exhibits 4B, 4C, 4D, 4G, 4H, 4I, 4J, 4K and 4L; and that the Photographs be displayed on the poster board without the use of the DOAR System, for purposes of Dr. Ellen Clark's Testimony.

Upon discussion, COURT ORDERED that counsel brief the issue regarding whether or not the Psychiatric Evaluations should be released to the Press and whether or not the press should be allowed to attend In-Chambers Meetings; and set the matter for hearing.

3:50 p.m. Court recessed. Defendant remanded to the custody of the sheriff.

AA02967

CASE NO. CR98-0516

TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

6/1/99

PRE-TRIAL MOTIONS

6/23/99

HONORABLE

District Attorney Richard Gammick and Deputy District Attorney David L.

1:15 p.m.

CONNIE

Stanton represented the State. Defendant present with counsel, Deputy

Report on

STEINHEIMER

Public Defenders Steven Gregory and Jeremy Bosler.

Psych. Eval./

DEPT. NO.4

Motion for Psychiatric Evaluation by defense counsel Gregory; presented

Pre-Tri Mtgs

M. Stone

argument; no objection by State's counsel Stanton. Court canvassed

(Clerk)

Defendant.

E. Nelson

COURT ENTERED ORDER granting the Motion for Psychiatric Evaluation;

(Reporter)

and appointing two Doctors to evaluate the Defendant.

Court informed counsel that any motions could be submitted without oral

argument.

AA02968

CASE NO. CV98-0516

TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

5/12/99

IN CHAMBERS REVIEW HEARING

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

N. Alexander

(Reporter)

District Attorney Richard Gammick represented the State. Defendant not present being represented by counsel, Deputy Public Defenders Steve Gregory and Jeremy Bosler.

Discussion ensued regarding the Defendant's actions at the Washoe County Jail

Upon stipulation, COURT ORDERED Defendant to remain at the Nevada State Prison until 6/1/99, at which time the Defendant's Housing shall be re-evaluation.

Respective counsel Gammick and Gregory made further statements.

CASE NO. CR98-0516 TITLE: THE STATE OF NEVADA VS. SIAOSI VANISL a.k.a. "PE", a.k.a. "GEOR

DATE,JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTD TO
1/19/99	<u>HEARING TO RESET TRIAL</u>	
HONORABLE CONNIE STEINHEIMER DEPT. NO.4 M. Stone (Clerk) K. Bokelmann (Reporter)	District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Public Defender Michael Specchio and Deputy Public Defender Steve Gregory. Upon discussion regarding trial date, COURT ENTERED ORDER setting the trial for September 7, 1999, for a period of 3 weeks. Discussion ensued regarding the new Rule 250. COURT ORDERED that all parties must comply with the rules as set forth in the new Rule 250 and all deadlines must be met with the starting date of January 30, 1999, as set forth in the Rule. Upon discussion, COURT set out the new briefing schedule. COURT FURTHER ORDERED that all new motions must be filed by April 15, 1999. Upon request of respective counsel, COURT ENTERED ORDER that all witnesses are held to their original subpoenas. COURT FURTHER ENTERED ORDER that all prior Motions and their Rulings will remain. Upon request by the State and no objection by Defense counsel, COURT ENTERED ORDER that the tapes marked B and C are released to the State's Investigator for copying and then returned to the Clerk of the Court. Discussion ensued regarding discovery, COURT ORDERED all video and audio tapes to be copied and provided to the defense, then it is the Defenses responsibility to check if the transcript matches the actual tape. 11:00 a.m. Court recessed. Defendant remanded to the custody of the Sheriff.	6/1/99 9:00 a.m. Pre-Trial Mtns 8/30/99 9/2/99 at 10:00 a.m. Jury Quest. 9/2/99 11:00 a.m. Mtn to Confirm 9/2/99 2:00 p.m. Exhibits 9/7/99 10:00 a.m. Jury Trial

AA02970

CASE NO. CR98-0516 TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI, a.k.a. "PE", a.k.a. "GEORGE"

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waived right
to be present.

HONORABLE

9:50 a.m. Court convened in chambers with respective counsel Stanton and Bosler. Discussion ensued regarding voir dire questions.

CONNIE

STEINHEIMER

10:00 a.m. Court recessed.

DEPT. NO.4

M. Stone

(Clerk)

E. Nelson

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Public Defender Michael Specchio, and Deputy Public Defenders, Steve Gregory and Jeremy Bosler.

10:15 a.m. Court reconvened outside the presence of the jury.

Court canvassed Defendant regarding waiver of presence when Court excused Jurors Lyle (a.k.a. Agee) and Peak and during side bars during the course of the trial. Defendant waive right.

Discussion ensued regarding security of the Courtroom.

10:30 a.m. Court recessed.

10:55 a.m. Court reconvened with respective counsel and defendant present.

Prospective jurors present.

Court personnel, respective counsel and defendant introduced to the jury panel.

Roll taken of prospective jurors; all present. All prospective jurors sworn as to their qualifications to serve as trial jurors. Thirty-Six names drawn (Mueller, Guiler, Aguirre, Adamson, Hill, Hinxman, Kominek, Lafond, Burkholder, Sepahpour, Saputo, Judson, Gerbetz, Thomas, Getz, Stephenson, Barger, Arlitz, Lyman, Viernes, Kenny, Cadena, Frandsen, L. Jones, Battaglia, Furrie, Timmerman, Estey, Kizis, Imasaki, Turnage, Geach, Frankel, Booth, Burke and Dunn); jurors seated and generally questioned by the Court.

12:20 p.m. Jury excused. Seated Jury Panel to Department 9's Courtroom. Unselected Jury Panel to Department 3's Courtroom.

Outside the presence of the jury, Defense counsel Bosler objection to the jury selection process. State's counsel Stanton made statement. COURT ENTERED ORDER denying Motion regarding Jury Selection, with leave to renew at another time.

12:33 p.m. Court proceeded with individual voir dire.

Juror Aguirre entered; examined by Court, State's counsel Stanton and Defense counsel Bosler; challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; excused for cause.

Court addressed defendant about his presence during the excusing of the panels for lunch and roll call following the lunch. Defendant and counsel

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E. Nelson
(Reporter)

Juror Geach entered; examined by Court; challenged for cause by defense counsel Bosler; no objection by State's counsel Stanton; excused for cause.

12:46 p.m. Court recessed. Defendant remanded to the custody of the sheriff.

12:50 p.m. Court reconvened in Department 3 with panel of un-selected jurors. Court excused panel for lunch to return at 1:45 p.m. in Department 9.

12:58 p.m. Court reconvened in Department 9 with panel of selected jurors. Court excused panel for lunch to return at 1:45 p.m. in Department 3's juryroom.

2:00 p.m. Court recessed.

1:45 p.m. Court reconvened in Department 3's juryroom; roll called, all 34 present of selected jury panel.

1:50 p.m. Court reconvened in Department 9; roll called, all present of un-selected jury panel, except Meidell.

2:00 p.m. Court reconvened with respective counsel and defendant present in Department 4.

Outside the presence of the jury, Court informed respective counsel of missing juror.

Juror J. Thomas entered; examined by Court and State's counsel Stanton; challenged for cause by defense counsel Bosler; no objection by State's counsel Stanton; excused for cause.

2:08 Juror Meidell present and excused to Department 9.

Juror Burke entered; examined by Court and defense counsel Bosler; challenged for cause by defense counsel Bosler; traversed by State's counsel Stanton; further examined by Court; challenge denied.

Juror Getz entered; examined by Court and State's counsel Stanton; challenged for cause by defense counsel Bosler; no objection by State's counsel Stanton; excused for cause.

Juror Adamson entered; examined by Court, State's counsel Stanton and defense counsel Bosler; challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge denied.

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(Reporter)

Juror Hill entered; examined by Court, State's counsel Stanton and defense counsel Bosler; challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge renewed by State's counsel Specchio; excused.

Juror Sepahpour entered; examined by Court and State's counsel Stanton challenged for cause by defense counsel Bosler; no objection by State's counsel Stanton; excused.

Juror Gerbatz entered; examined by Court, State's counsel Stanton and defense counsel Bosler; challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge denied.

Juror Cadena entered; examined by Court, State's counsel Stanton and defense counsel Bosler; challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge denied.

Outside the presence of the jury, Motion for Court to Modify Jury Selection by defense counsel Bosler granted. The Defense would be allowed to examine panel before the State.

Juror Battaglia entered; examined by Court and defense counsel Bosler; challenged for cause by defense counsel Bosler; traversed and objection by State's counsel Stanton; challenge denied.

Juror Kizis entered; examined by Court and defense counsel Bosler; challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge denied.

Juror Turnage entered; examined by Court and defense counsel Bosler; challenged for cause by defense counsel Bosler; traversed and no objection by State's counsel Stanton; excused.

Juror Kenny entered; examined by Court; stipulation to excuse by respective counsel Stanton and Bosler; excused.

3:45 p.m. Court recessed. Defendant remanded to the custody of the sheriff.
4:07 p.m. Court reconvened with respective counsel and defendant present.
Entire prospective panel present.

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CASE NO. CR98-0516 TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI a.k.a. "PE", a.k.a. "GEORGE"

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E. Nelson
(Reporter)

Law Clerk Davis and Jury Commissioner Lopshire indicated that no jurors left their assigned room since roll was last taken. Respective counsel stipulated to the presence of the jury panel.

Eight additional names drawn. Frank X. Sotero, John W. Auld, Bo H. Larsson, Mary H. Schultz, Grace B. Mills, Randall A. McCargar, Alan R. Golbov and Stephen L. Sowers called, seated and generally examined by Court. Jury panel further generally examined by Court.

Upon discussion at the bench and no objection by respective counsel, COURT excused Jurors Schulz, Larsson, Burkeholder, Saputo, Judson, Timmerman, Sowers, Burke and Auld.

Nine additional names drawn. James G. Rumbaugh, Preston, E. O'Daye, George A. Decker, Rayetta Buckley, Rebeka A. Hilliary, John J. Giordano, Doris E. Roberts, Rhonda D. Pembroke and Peter G. Thomas called.

5:13 p.m. Court admonished and excused panel until January 12, 1999, at 9:30 a.m.

Outside the presence of the jury, respective counsel invoked the rule of exclusion with the exception of the witnesses to be used in penalty phase of the trial. If any person display any emotion whatsoever during the course of the trial, they will be removed from the courtroom and not allowed back in for the duration of the trial.

Discussion ensued regarding security.

EXHIBIT 7 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

5:30 p.m. Court recessed.

1/12/99

E. Nelson
(Reporter)

CONTINUED JURY TRIAL

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Public Defender Michael Specchio, and Deputy Public Defenders, Steve Gregory and Jeremy Bosler.

9:37 a.m. Court reconvened with all prospective jurors present except Juanita

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(Reporter)

Pierce.

Upon the Court being notified that Juror Pierce was hospitalized and no objection by respective counsel, COURT excused juror Pierce.

Upon discussion at the bench with juror Pembroke, COURT excused Pembroke.

Another name drawn. Jerome A. Moss called and seated.

Jury panel further generally examined by the Court.

Juror Rumbaugh challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge denied.

Jury panel further generally examined by Court.

Juror Giordano excused due to hearing impairment.

Another name drawn. William V. King called, seated and generally examined by the Court.

Jury panel further generally examined by Court.

Juror Hilliary challenged for cause by State's counsel Stanton; objection by defense counsel Bosler; challenge granted; excused.

Another name drawn. Anita J. Cason called, seated and generally examined by the Court.

Upon discussion at the bench, Juror Cason excused.

Another name drawn. Paul E. Damoth called, seated and generally examined by the Court.

Upon direction of the Court, State's counsel Stanton specifically examined the panel.

Juror Mills challenged for cause by defense counsel Bosler; no objection by State's counsel Stanton; challenge granted.

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(Reporter)

Juror Buckley challenged for cause by defense counsel Bosler; no objection by State's counsel Stanton; challenge granted; excused.

Juror Gerbatz challenged for cause by defense counsel Bosler; objection by State's counsel; challenge denied.

Two additional name drawn. Menandro H. Domingo and Robin W. Sheets called, seated and generally examined by Court.

Juror Domingo challenged for cause by defense counsel Bosler; stipulation by State's counsel Stanton; challenge granted; excused.

Another name drawn. Sandra J. Ellin called, seated and generally examined by the Court.

Juror Ellin challenged for cause by defense counsel Bosler; traversed and no objection by State's counsel Stanton; challenge granted; excused.

Another name drawn. Gordon D. Berg called, seated and generally examined by the Court.

Jury panel further specifically examined by State's counsel.

Juror Rumbaugh challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge denied.

11:47 a.m. Jury admonished and excused. Outside the presence of the jury, defense counsel set forth arguments for certain challenges.

Juror Mueller challenged for cause by defense counsel Bosler; stipulation by State's counsel Stanton; challenge granted; excused.

Juror Rumbaugh challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge denied.

Court informed respective counsel of voir dire questions that could be asked during specific voir dire.

Exhibit C marked by the Court.

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E. Nelson
(Reporter)

12:25 p.m. Court recessed. Defendant remanded to the custody of the sheriff.
1:13 p.m. Court reconvened with respective counsel and defendant present.
Clerk called roll; all prospective jurors present.
Based upon hearing outside the presence of the jury, Court excused Jurors Mueller and Rumbaugh.

Two additional names drawn. Shelby A. Denton and Julie C. Springer called, seated and generally examined by the Court.
Panel further specifically examined by State's counsel Stanton.
Upon direction of the Court, Defense counsel Bosler specifically examined the panel; passed for cause.
Court thanked and excused un-selected jurors.

Respective counsel exercised, silently, 8 peremptory challenges each as to the jury and 2 peremptory challenges each as to alternate jury.

EXHIBIT D marked by the Court.

The following twelve persons and four alternates were sworn to try this case:

Shelby Y. Denton	Cheryl L. Kominek	George A. Decker
Daniel M. Gerbatz	William V. King	Gordon D. Berg
James A. Stephenson	Victoria A. Lyman	Benilda G. Viernes
Randall A. McCargar	Lawrence L. Jones	Doris E. Roberts.
Alternates: Jerome A. Moss, Susan M. Frankel, Peter G. Thomas and James H. Dunn		

5:30 p.m. Jury admonished; said admonishment administered prior to each recess throughout the trial. Jury excused.

Outside the presence of the jury, discussion ensued regarding the schedule of trial.

Court further instructed all persons present in the audience, that there may not be any visible reactions to any testimony during the trial.

5:35 p.m. Court recessed. Defendant remanded to the custody of the sheriff.

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CASE NO. CR98-0516 TITLE: THE STATE OF NEVADA VS. SIAOSI VANISL a.k.a. "PE", a.k.a. "GEORGE"

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HONORABLE
CONNIE J.

STEINHEIMER

DEPT. NO. 4

M. Stone

(Clerk)

E. Nelson

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Public Defender Michael Specchio, and Deputy Public Defenders, Steve Gregory and Jeremy Bosler.

11:15 a.m. Court reconvened outside the presence of the jury.

Motion for Mistrial or in the alternative, Motion for Change of Venue by defense counsel Bosler; presented argument; objection and argument by State's counsel Stanton. COURT ENTERED ORDER denying the Motion for Mistrial and for Change of Venue.

Motion to use transparency during opening statement by defense counsel Bosler; objection and argument by State's counsel Stanton. COURT ENTERED ORDER allowing the use of the transparency with the words redacted off.

EXHIBIT 38 marked and offered by defense counsel Bosler; no objection by State's counsel; ordered admitted into evidence.

Exhibit 37 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

11:30 a.m. Jury entered. Respective counsel stipulated to the presence of the jury.

Court Clerk read the Information aloud and indicated that pleas of not guilty had previously been entered by the defendant.

State's counsel Gammick presented opening statement.

Defense counsel Bosler presented opening statement.

11:56 a.m. Jury admonished. Court recessed. Defendant remanded to the custody of the sheriff.

1:30 p.m. Court reconvened with respective counsel and defendant present. Respective counsel stipulated to the presence of the jury.

Brenda Martinez called by State's counsel Gammick, sworn and testified.

EXHIBIT 6 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Martinez further direct examined; excused.

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(Reporter)

Carl Smith called by State's counsel Gammick, sworn and testified.

***Record reflected identification of the Defendant.

Witness Smith further direct examined.

EXHIBITS 12 and 13 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBIT 17A offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBIT 15A offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBITS 16A and 16B offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBIT 18 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBITS 14A and 14B offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Smith further direct examined; cross-examined by defense counsel Specchio; redirect examined.

EXHIBITS 24A and 24B offered by State's counsel Gammick; no objection by

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(Reporter)

defense counsel Specchio; ordered admitted into evidence.

Witness Smith further redirect examined; excused.

3:00 p.m. Jury admonished and excused. Outside the presence of the jury, defense Bosler made statement regarding people in the audience making faces at the defendant.

3:05 p.m. Court recessed.

3:25 p.m. Court reconvened with respective counsel and defendant present.

Andrew Ciocca called by State's counsel Gammick, sworn and testified.

EXHIBITS 17B and 17C offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness further direct examined; cross-examined by defense counsel Specchio; excused.

Willie Stephenson called by State's counsel Gammick, sworn and testified.

***Stipulation entered regarding this witness being a fingerprint expert.

Witness Stephenson further direct examined.

EXHIBIT 19 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Stephenson further direct examined.

EXHIBIT 17D marked by State's counsel Gammick.

Witness Stephenson further direct examined.

EXHIBIT 17D offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Stephenson cross-examined by defense counsel Specchio; redirect examined; excused.

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(Reporter)

Mele Mavani called by State's counsel Stanton, sworn and testified; cross-examined by defense counsel Specchio; redirect examined; recross-examined; excused.

5:00 p.m. Jury admonished. Court recessed. Defendant remanded to the custody of the sheriff.

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CONTINUED JURY TRIAL

E. Nelson
(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Public Defender Michael Specchio, and Deputy Public Defenders, Steve Gregory and Jeremy Bosler.

10:25 a.m. Court reconvened with respective counsel and defendant present. Respective counsel stipulated to the presence of the jury.

Sateki Taukieuvea called by State's counsel Stanton, sworn and testified.

EXHIBIT 36 offered by State's counsel Stanton; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Taukieuvea further direct examined.

(10:50 a.m. Steve Hopper - Court Clerk entered)

Witness Taukieuvea further direct examined; cross-examined by defense counsel Specchio; redirect examined; recross-examined; excused subject to recall.

11:55 a.m. Jury admonished. Court recessed.

1:40 p.m. (M. Stone - Court Clerk) Court reconvened outside the presence of the jury with respective counsel and defendant present.

Motion to endorse additional witness John Oakes, Esq., by State's counsel Stanton; presented argument; defense counsel stood moot. COURT ENTERED ORDER granting motion.

Upon request, COURT will give the jury an Instruction regarding stipulations.

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Defense counsel Specchio did not wish a continuance due to the newly endorsed witness.

1:45 p.m. Jury entered. Respective counsel stipulated to the presence of the jury.

John Oakes called by State's counsel Stanton, sworn and testified; excused.

Maria Louis called by State's counsel Stanton, sworn and testified; cross-examined by defense counsel Specchio; excused.

Priscilla Endemann called by State's counsel Stanton, sworn and testified.

EXHIBIT 20A and 20B offered by State's counsel Stanton; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Endemann further direct examined; excused.

Manaoui Peaua called by State's counsel Stanton, sworn and testified; cross-examined by defense counsel Specchio; redirect examined; excused.

3:04 p.m. Jury admonished. Court recessed.

3:34 p.m. Court reconvened with respective counsel and defendant present. Respective counsel stipulated to the presence of the jury.

Metuisel Tauveli called by State's counsel Stanton, sworn and testified.

EXHIBIT 8 offered by State's counsel Stanton; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Tauveli further direct examined; cross-examined by defense counsel Specchio; redirect examined; excused.

Jim Duncan called by State's counsel Gammick, sworn and testified.

EXHIBIT 24D offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

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Witness Duncan further direct examined.

EXHIBIT 21 offered by State's counsel Gammick; based on stipulation by defense counsel Specchio and discussion at bench, ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBIT 23A and 23B offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBIT 11 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBIT 25 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBIT 29A and 29B offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBITS 15B, 15C and 15D offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBITS 22 and 26 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBITS 16, 16A and 16B offered by State's counsel Gammick; no objection

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E. Nelson

(Reporter)

by State's counsel; ordered admitted into evidence.

5:00 p.m. Jury admonished and excused. Outside the presence of the jury, Defendant canvassed by the Court regarding a stipulation to be read to the jury and jury instruction. Defense counsel opposed the use of a jury instruction at this time, but had no objection to a jury instruction regarding stipulations at the time of all the instructions.

5:05 p.m. Court recessed. Defendant remanded to the custody of the sheriff.

1/15/99

CONTINUED JURY TRIAL

E. Nelson

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Public Defender Michael Specchio, and Deputy Public Defenders, Steve Gregory and Jeremy Bosler.

10:10 a.m. Court reconvened outside the presence of the jury.

State's counsel Gammick made statement regarding statement made to police by Michelle Chaitra.

EXHIBIT A marked by State's counsel Gammick.

State's counsel made further statement.

EXHIBIT B and C marked by State's counsel Gammick.

State's counsel made further statement.

Motion for Mis-Trial by Defense counsel Specchio; presented argument; response by State's counsel Gammick.

Defense counsel Specchio stipulated that a Mis-Trial would not create a double jeopardy issue for the Defendant.

Defendant canvassed regarding a potential Mis-Trial and double jeopardy. Upon finding a manifest necessity, COURT ENTERED ORDER granting the Defense's Motion for Mis-Trial.

10:40 a.m. Jury entered. Respective counsel stipulated to the presence of the jury.

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E. Nelson
(Reporter)

Court informed jury panel of Mis-Trial.

10:45 a.m. Jury excused.

COURT ORDERED respective counsel to return on January 19, 1999, at 10:00
a.m. to re-set the matter for trial.

10:55 a.m. Court recessed.

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10:00 a.m.

Hrg to Re-Set
Trial

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HONORABLE

9:50 a.m. Court convened in chambers with respective counsel Stanton and Bosler. Discussion ensued regarding voir dire questions.

CONNIE

STEINHEIMER

10:00 a.m. Court recessed.

DEPT. NO.4

M. Stone

(Clerk)

E. Nelson

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Public Defender Michael Specchio, and Deputy Public Defenders, Steve Gregory and Jeremy Bosler.

10:15 a.m. Court reconvened outside the presence of the jury.

Court canvassed Defendant regarding waiver of presence when Court excused Jurors Lyle (a.k.a. Agee) and Peak and during side bars during the course of the trial. Defendant waive right.

Discussion ensued regarding security of the Courtroom.

10:30 a.m. Court recessed.

10:55 a.m. Court reconvened with respective counsel and defendant present.

Prospective jurors present.

Court personnel, respective counsel and defendant introduced to the jury panel.

Roll taken of prospective jurors; all present. All prospective jurors sworn as to their qualifications to serve as trial jurors. Thirty-Six names drawn (Mueller, Guiler, Aguirre, Adamson, Hill, Hinxman, Kominek, Lafond, Burkholder, Sepahpour, Saputo, Judson, Gerbetz, Thomas, Getz, Stephenson, Barger, Arlitz, Lyman, Viernes, Kenny, Cadena, Frandsen, L. Jones, Battaglia, Furrie, Timmerman, Estey, Kizis, Imasaki, Turnage, Geach, Frankel, Booth, Burke and Dunn); jurors seated and generally questioned by the Court.

12:20 p.m. Jury excused. Seated Jury Panel to Department 9's Courtroom. Unselected Jury Panel to Department 3's Courtroom.

Outside the presence of the jury, Defense counsel Bosler objection to the jury selection process. State's counsel Stanton made statement. COURT ENTERED ORDER denying Motion regarding Jury Selection, with leave to renew at another time.

12:33 p.m. Court proceeded with individual voir dire.

Juror Aguirre entered; examined by Court, State's counsel Stanton and Defense counsel Bosler; challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; excused for cause.

Court addressed defendant about his presence during the excusing of the panels for lunch and roll call following the lunch. Defendant and counsel waived right to be present.

AA02986

DATE, JUDGE
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CONTINUED JURY TRIAL

E. Nelson
(Reporter)

Juror Geach entered; examined by Court; challenged for cause by defense counsel Bosler; no objection by State's counsel Stanton; excused for cause.

12:46 p.m. Court recessed. Defendant remanded to the custody of the sheriff.
12:50 p.m. Court reconvened in Department 3 with panel of un-selected jurors. Court excused panel for lunch to return at 1:45 p.m. in Department 9.
12:58 p.m. Court reconvened in Department 9 with panel of selected jurors. Court excused panel for lunch to return at 1:45 p.m. in Department 3's juryroom.
2:00 p.m. Court recessed.

1:45 p.m. Court reconvened in Department 3's juryroom; roll called, all 34 present of selected jury panel.

1:50 p.m. Court reconvened in Department 9; roll called, all present of un-selected jury panel, except Meidell.

2:00 p.m. Court reconvened with respective counsel and defendant present in Department 4.

Outside the presence of the jury, Court informed respective counsel of missing juror.

Juror J. Thomas entered; examined by Court and State's counsel Stanton; challenged for cause by defense counsel Bosler; no objection by State's counsel Stanton; excused for cause.

2:08 Juror Meidell present and excused to Department 9.

Juror Burke entered; examined by Court and defense counsel Bosler; challenged for cause by defense counsel Bosler; traversed by State's counsel Stanton; further examined by Court; challenge denied.

Juror Getz entered; examined by Court and State's counsel Stanton; challenged for cause by defense counsel Bosler; no objection by State's counsel Stanton; excused for cause.

Juror Adamson entered; examined by Court, State's counsel Stanton and defense counsel Bosler; challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge denied.

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E. Nelson
(Reporter)

Juror Hill entered; examined by Court, State's counsel Stanton and defense counsel Bosler; challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge renewed by State's counsel Specchio; excused.

Juror Sepahpour entered; examined by Court and State's counsel Stanton challenged for cause by defense counsel Bosler; no objection by State's counsel Stanton; excused.

Juror Gerbatz entered; examined by Court, State's counsel Stanton and defense counsel Bosler; challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge denied.

Juror Cadena entered; examined by Court, State's counsel Stanton and defense counsel Bosler; challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge denied.

Outside the presence of the jury, Motion for Court to Modify Jury Selection by defense counsel Bosler granted. The Defense would be allowed to examine panel before the State.

Juror Battaglia entered; examined by Court and defense counsel Bosler; challenged for cause by defense counsel Bosler; traversed and objection by State's counsel Stanton; challenge denied.

Juror Kizis entered; examined by Court and defense counsel Bosler; challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge denied.

Juror Turnage entered; examined by Court and defense counsel Bosler; challenged for cause by defense counsel Bosler; traversed and no objection by State's counsel Stanton; excused.

Juror Kenny entered; examined by Court; stipulation to excuse by respective counsel Stanton and Bosler; excused.

3:45 p.m. Court recessed. Defendant remanded to the custody of the sheriff.
4:07 p.m. Court reconvened with respective counsel and defendant present.
Entire prospective panel present.

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JURY TRIAL

E. Nelson
(Reporter)

Law Clerk Davis and Jury Commissioner Lopshire indicated that no jurors left their assigned room since roll was last taken. Respective counsel stipulated to the presence of the jury panel.

Eight additional names drawn. Frank X. Sotero, John W. Auld, Bo H. Larsson, Mary H. Schultz, Grace B. Mills, Randall A. McCargar, Alan R. Golbov and Stephen L. Sowers called, seated and generally examined by Court. Jury panel further generally examined by Court.

Upon discussion at the bench and no objection by respective counsel, COURT excused Jurors Schulz, Larsson, Burkeholder, Saputo, Judson, Timmerman, Sowers, Burke and Auld.

Nine additional names drawn. James G. Rumbaugh, Preston, E. O'Daye, George A. Decker, Rayetta Buckley, Rebeka A. Hilliary, John J. Giordano, Doris E. Roberts, Rhonda D. Pembroke and Peter G. Thomas called.

5:13 p.m. Court admonished and excused panel until January 12, 1999, at 9:30 a.m.

Outside the presence of the jury, respective counsel invoked the rule of exclusion with the exception of the witnesses to be used in penalty phase of the trial. If any person display any emotion whatsoever during the course of the trial, they will be removed from the courtroom and not allowed back in for the duration of the trial.

Discussion ensued regarding security.

EXHIBIT 7 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

5:30 p.m. Court recessed.

1/12/99

E. Nelson
(Reporter)

CONTINUED JURY TRIAL

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Public Defender Michael Specchio, and Deputy Public Defenders, Steve Gregory and Jeremy Bosler.

9:37 a.m. Court reconvened with all prospective jurors present except Juanita

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CONTINUED JURY TRIAL

E. Nelson
(Reporter)

Pierce.

Upon the Court being notified that Juror Pierce was hospitalized and no objection by respective counsel, COURT excused juror Pierce.

Upon discussion at the bench with juror Pembroke, COURT excused Pembroke.

Another name drawn. Jerome A. Moss called and seated.

Jury panel further generally examined by the Court.

Juror Rumbaugh challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge denied.

Jury panel further generally examined by Court.

Juror Giordano excused due to hearing impairment.

Another name drawn. William V. King called, seated and generally examined by the Court.

Jury panel further generally examined by Court.

Juror Hilliary challenged for cause by State's counsel Stanton; objection by defense counsel Bosler; challenge granted; excused.

Another name drawn. Anita J. Cason called, seated and generally examined by the Court.

Upon discussion at the bench, Juror Cason excused.

Another name drawn. Paul E. Damoth called, seated and generally examined by the Court.

Upon direction of the Court, State's counsel Stanton specifically examined the panel.

Juror Mills challenged for cause by defense counsel Bosler; no objection by State's counsel Stanton; challenge granted.

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E. Nelson
(Reporter)

Juror Buckley challenged for cause by defense counsel Bosler; no objection by State's counsel Stanton; challenge granted; excused.

Juror Gerbatz challenged for cause by defense counsel Bosler; objection by State's counsel; challenge denied.

Two additional names drawn. Menandro H. Domingo and Robin W. Sheets called, seated and generally examined by Court.

Juror Domingo challenged for cause by defense counsel Bosler; stipulation by State's counsel Stanton; challenge granted; excused.

Another name drawn. Sandra J. Ellin called, seated and generally examined by the Court.

Juror Ellin challenged for cause by defense counsel Bosler; traversed and no objection by State's counsel Stanton; challenge granted; excused.

Another name drawn. Gordon D. Berg called, seated and generally examined by the Court.

Jury panel further specifically examined by State's counsel.

Juror Rumbaugh challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge denied.

11:47 a.m. Jury admonished and excused. Outside the presence of the jury, defense counsel set forth arguments for certain challenges.

Juror Mueller challenged for cause by defense counsel Bosler; stipulation by State's counsel Stanton; challenge granted; excused.

Juror Rumbaugh challenged for cause by defense counsel Bosler; objection by State's counsel Stanton; challenge denied.

Court informed respective counsel of voir dire questions that could be asked during specific voir dire.

Exhibit C marked by the Court.

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CONTINUED JURY TRIAL

E. Nelson

12:25 p.m. Court recessed. Defendant remanded to the custody of the sheriff.

(Reporter)

1:13 p.m. Court reconvened with respective counsel and defendant present.
Clerk called roll; all prospective jurors present.

Based upon hearing outside the presence of the jury, Court excused Jurors Mueller and Rumbaugh.

Two additional names drawn. Shelby A. Denton and Julie C. Springer called, seated and generally examined by the Court.

Panel further specifically examined by State's counsel Stanton.

Upon direction of the Court, Defense counsel Bosler specifically examined the panel; passed for cause.

Court thanked and excused un-selected jurors.

Respective counsel exercised, silently, 8 peremptory challenges each as to the jury and 2 peremptory challenges each as to alternate jury.

EXHIBIT D marked by the Court.

The following twelve persons and four alternates were sworn to try this case:

Shelby Y. Denton

Cheryl L. Kominek

George A. Decker

Daniel M. Gerbatz

William V. King

Gordon D. Berg

James A. Stephenson

Victoria A. Lyman

Benilda G. Viernes

Randall A. McCargar

Lawrence L. Jones

Doris E. Roberts

Alternates: Jerome A. Moss, Susan M. Frankel, Peter G. Thomas and
James H. Dunn

5:30 p.m. Jury admonished; said admonishment administered prior to each recess throughout the trial. Jury excused.

Outside the presence of the jury, discussion ensued regarding the schedule of trial.

Court further instructed all persons present in the audience, that there may not be any visible reactions to any testimony during the trial.

5:35 p.m. Court recessed. Defendant remanded to the custody of the sheriff.

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CONTINUED JURY TRIAL

HONORABLE
CONNIE J.

STEINHEIMER

DEPT. NO. 4

M. Stone

(Clerk)

E. Nelson

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Public Defender Michael Specchio, and Deputy Public Defenders, Steve Gregory and Jeremy Bosler.

11:15 a.m. Court reconvened outside the presence of the jury.

Motion for Mistrial or in the alternative, Motion for Change of Venue by defense counsel Bosler; presented argument; objection and argument by State's counsel Stanton. COURT ENTERED ORDER denying the Motion for Mistrial and for Change of Venue.

Motion to use transparency during opening statement by defense counsel Bosler; objection and argument by State's counsel Stanton. COURT ENTERED ORDER allowing the use of the transparency with the words redacted off.

EXHIBIT 38 marked and offered by defense counsel Bosler; no objection by State's counsel; ordered admitted into evidence.

Exhibit 37 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

11:30 a.m. Jury entered. Respective counsel stipulated to the presence of the jury.

Court Clerk read the Information aloud and indicated that pleas of not guilty had previously been entered by the defendant.

State's counsel Gammick presented opening statement.

Defense counsel Bosler presented opening statement.

11:56 a.m. Jury admonished. Court recessed. Defendant remanded to the custody of the sheriff.

1:30 p.m. Court reconvened with respective counsel and defendant present. Respective counsel stipulated to the presence of the jury.

Brenda Martinez called by State's counsel Gammick, sworn and testified.

EXHIBIT 6 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Martinez further direct examined; excused.

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E. Nelson
(Reporter)

Carl Smith called by State's counsel Gammick, sworn and testified.

***Record reflected identification of the Defendant.

Witness Smith further direct examined.

EXHIBITS 12 and 13 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBIT 17A offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBIT 15A offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBITS 16A and 16B offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBIT 18 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Smith further direct examined.

EXHIBITS 14A and 14B offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Smith further direct examined; cross-examined by defense counsel Specchio; redirect examined.

EXHIBITS 24A and 24B offered by State's counsel Gammick; no objection by

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E. Nelson
(Reporter)

defense counsel Specchio; ordered admitted into evidence.

Witness Smith further redirect examined; excused.

3:00 p.m. Jury admonished and excused. Outside the presence of the jury, defense Bosler made statement regarding people in the audience making faces at the defendant.

3:05 p.m. Court recessed.

3:25 p.m. Court reconvened with respective counsel and defendant present.

Andrew Ciocca called by State's counsel Gammick, sworn and testified.

EXHIBITS 17B and 17C offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness further direct examined; cross-examined by defense counsel Specchio; excused.

Willie Stephenson called by State's counsel Gammick, sworn and testified.

***Stipulation entered regarding this witness being a fingerprint expert.

Witness Stephenson further direct examined.

EXHIBIT 19 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Stephenson further direct examined.

EXHIBIT 17D marked by State's counsel Gammick.

Witness Stephenson further direct examined.

EXHIBIT 17D offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Stephenson cross-examined by defense counsel Specchio; redirect examined; excused.

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E. Nelson
(Reporter)

Mele Mavani called by State's counsel Stanton, sworn and testified; cross-examined by defense counsel Specchio; redirect examined; recross-examined; excused.

5:00 p.m. Jury admonished. Court recessed. Defendant remanded to the custody of the sheriff.

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CONTINUED JURY TRIAL

E. Nelson
(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Public Defender Michael Specchio, and Deputy Public Defenders, Steve Gregory and Jeremy Bosler.

10:25 a.m. Court reconvened with respective counsel and defendant present. Respective counsel stipulated to the presence of the jury.

Sateki Taukieuvea called by State's counsel Stanton, sworn and testified.

EXHIBIT 36 offered by State's counsel Stanton; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Taukieuvea further direct examined.

(10:50 a.m. Steve Hopper - Court Clerk entered)

Witness Taukieuvea further direct examined; cross-examined by defense counsel Specchio; redirect examined; recross-examined; excused subject to recall.

11:55 a.m. Jury admonished. Court recessed.

1:40 p.m. (M. Stone - Court Clerk) Court reconvened outside the presence of the jury with respective counsel and defendant present.

Motion to endorse additional witness John Oakes, Esq., by State's counsel Stanton; presented argument; defense counsel stood moot. COURT ENTERED ORDER granting motion.

Upon request, COURT will give the jury an Instruction regarding stipulations.

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E. Nelson
(Reporter)

Defense counsel Specchio did not wish a continuance due to the newly endorsed witness.

1:45 p.m. Jury entered. Respective counsel stipulated to the presence of the jury.

John Oakes called by State's counsel Stanton, sworn and testified; excused.

Maria Louis called by State's counsel Stanton, sworn and testified; cross-examined by defense counsel Specchio; excused.

Priscilla Endemann called by State's counsel Stanton, sworn and testified.

EXHIBIT 20A and 20B offered by State's counsel Stanton; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Endemann further direct examined; excused.

Manouei Peaua called by State's counsel Stanton, sworn and testified; cross-examined by defense counsel Specchio; redirect examined; excused.

3:04 p.m. Jury admonished. Court recessed.

3:34 p.m. Court reconvened with respective counsel and defendant present. Respective counsel stipulated to the presence of the jury.

Metuisei Tauveli called by State's counsel Stanton, sworn and testified.

EXHIBIT 8 offered by State's counsel Stanton; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Tauveli further direct examined; cross-examined by defense counsel Specchio; redirect examined; excused.

Jim Duncan called by State's counsel Gammick, sworn and testified.

EXHIBIT 24D offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

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E. Nelson
(Reporter)

CONTINUED JURY TRIAL

Witness Duncan further direct examined.

EXHIBIT 21 offered by State's counsel Gammick; based on stipulation by defense counsel Specchio and discussion at bench, ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBIT 23A and 23B offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBIT 11 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBIT 25 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBIT 29A and 29B offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBITS 15B, 15C and 15D offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBITS 22 and 26 offered by State's counsel Gammick; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Duncan further direct examined.

EXHIBITS 16, 16A and 16B offered by State's counsel Gammick; no objection

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CONTINUED JURY TRIAL

E. Nelson
(Reporter)

by State's counsel; ordered admitted into evidence.

5:00 p.m. Jury admonished and excused. Outside the presence of the jury, Defendant canvassed by the Court regarding a stipulation to be read to the jury and jury instruction. Defense counsel opposed the use of a jury instruction at this time, but had no objection to a jury instruction regarding stipulations at the time of all the instructions.

5:05 p.m. Court recessed. Defendant remanded to the custody of the sheriff.

1/15/99

CONTINUED JURY TRIAL

E. Nelson
(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant present with counsel, Public Defender Michael Specchio, and Deputy Public Defenders, Steve Gregory and Jeremy Bosler.

10:10 a.m. Court reconvened outside the presence of the jury.

State's counsel Gammick made statement regarding statement made to police by Michelle Chaitra.

EXHIBIT A to the Motion for Mis-Trial marked by State's counsel Gammick.

State's counsel made further statement.

EXHIBIT B and C to the Motion for Mis-Trial marked by State's counsel Gammick.

State's counsel made further statement.

Motion for Mis-Trial by Defense counsel Specchio; presented argument; objection and argument by State's counsel Gammick.

Defense counsel Specchio stipulated that a Mis-Trial would not create a double jeopardy issue for the Defendant.

Defendant canvassed regarding a potential Mis-Trial and double jeopardy. Upon finding a manifest necessity, COURT ENTERED ORDER granting the Defense's Motion for Mis-Trial.

10:40 a.m. Jury entered. Respective counsel stipulated to the presence of the jury.

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CONTINUED JURY TRIAL

E. Nelson

Court informed jury panel of Mis-Trial.

(Reporter)

10:45 a.m. Jury excused.

COURT ORDERED respective counsel to return on January 19, 1999, at 10:00 a.m. to re-set the matter for trial.

10:55 a.m. Court recessed.

1/19/99

10:00 a.m.

Hrg to Re-Se
Trial

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1/8/99

PRE-TRIAL HEARING

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

K. Ramage

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney Gammick represented the State. Defendant not present with counsel, Public Defendant Michael Specchio and Deputy Public Defenders Steve Gregory and Jeremy Bosler.
Defendant's appearance waived.
Discussion ensued regarding Jurors Peak and Agee (a.k.a. Lyle). Upon no objection, COURT ENTERED ORDER releasing Jurors Peak and Agee.

AA03001

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1/7/99

CONTINUED VOIR DIRE (JURY SELECTION)

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

E. Nelson

(Reporter)

District Attorney Richard Gammick and Deputy District Attorney David Stanton represented the State. Defendant not present, appearance previously waived, being represented by counsel, Public Defender Michael Specchio and Deputy Public Defenders Steve Gregory and Jeremy Bosler.

8:40 a.m. Court convened.

Third panel of prospective jurors present.

Court addressed prospective jurors. Court personnel and respective counsel introduced to the jury panel.

Roll taken of prospective jurors.

All prospective jurors sworn as to their qualifications to serve as trial jurors.

Third panel of prospective jurors excused to complete Special Juror Instruction "A" and Special Juror Questionnaire.

8:50 a.m. Court recessed.

AA03002

CASE NO. CR98-0516 TITLE: THE STATE OF NEVADA VS. SIOASI VANISI, a.k.a. "PE", a.k.a. "GEORGE"

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CONTD TO

1/4/99 VOIR DIRE (JURY SELECTION)
HONORABLE District Attorney Richard Gammick and Deputy District Attorney David
CONNIE Stanton represented the State. Defendant not present, appearance
STEINHEIMER previously waived, being represented by counsel, Public Defender Michael
DEPT. NO.4 Specchio and Deputy Public Defenders Steve Gregory and Jeremy Bosler.
M. Stone 10:10 a.m. Court convened.
(Clerk) First panel of prospective jurors present.
D. Phipps Court addressed prospective jurors. Court personnel and respective counsel
(Reporter) introduced to the jury panel.
Roll taken of prospective jurors. Upon prospective juror Palmer having her
children present, Prospective juror Palmer sworn by Court Clerk and excused
to complete Special Juror Instruction "A" and Special Juror Questionnaire.
Further roll taken of prospective jurors; all present except jurors Crook,
Dallmann, Fratini, Garaventa, E. Green, Haskell, Latimore, Loring, Morancy,
Munns, O'Daye, Polikalas, Ramsey and Saputo. Prospective jurors
Armentrout and Domingo also present, although names not initially called in
roll.
Upon request, Juror Null sworn by affirmation.
All prospective jurors sworn as to their qualifications to serve as trial jurors.
First panel of prospective jurors excused to complete Special Juror Instruction
"A" and Special Juror Questionnaire.
10:30 a.m. Court recessed.
10:45 a.m. Court reconvened with respective counsel present.
Second panel of prospective jurors present.
Court addressed prospective jurors. Court personnel and respective counsel
introduced to the jury panel.
Roll taken of prospective jurors; all present except jurors Bacigalupi, Brown,
Ebright, Gibson, Malone, Meluis, Papas, Reinbold, Richter, Roberts, Rogers,
Sheets, Sowers and Turnage. Prospective juror E. Green also present,
although name was initially called with first panel of prospective jurors.
Upon request, Juror Judson sworn by affirmation.
All prospective jurors sworn as to their qualifications to serve as trial jurors.
First panel of prospective jurors excused to complete Special Juror Instruction
"A" and Special Juror Questionnaire.
Defense counsel Gregory and Specchio set forth Defendant's waiver of right
to be present.
11:03 a.m. Juror Palmer re-entered Courtroom. Upon discussion at the bench
and no objection by respective counsel, COURT ENTERED ORDER excusing
juror Palmer.
11:05 a.m. Court recessed.

AA03003

CASE NO. CR98-0516

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CONT'D TO

12/30/98

TELEPHONIC HEARING REGARDING JURORS

HONORABLE

District Attorney Richard Gammick and Deputy District Attorney David

CONNIE

Stanton represented the State. Public Defender Michael Specchio

STEINHEIMER

represented the Defendant, who was not present.

DEPT. NO.4

Court informed respective counsel of conflict with Juror Haskell. Upon no

M. Stone

objection by respective counsel, COURT ENTERED ORDER releasing Juror

(Clerk)

Haskell from reporting for Jury Service on January 4, 1999.

D. Phipps

Further discussion ensued regarding Jury Selection. Upon waiver and no

(Reporter)

objection by State's counsel, COURT ENTERED ORDER allowing the

Defendant to waive his presence at the January 4, 1999, hearing. Upon

request of State's counsel, the Defendant shall place his waiver on the

record at the January 7, 1999.

Upon discussion regarding the marking the exhibits for the trial, COURT

ENTERED ORDER that State's counsel provide a list of exhibits to the Clerk

to assist in marking the exhibits and that exhibits shall be marked on

January 8, 1999, at 2:00 p.m.

AA03004

DATE, JUDGE
OFFICERS OF

COURT PRESENT**APPEARANCES - HEARING****CONT'D TO**

12/10/98

HONORABLE

C O N N I E
STEINHEIMER

DEPT. NO. 4

S. Hopper

(Clerk)

L. Clarkson

(Reporter)

MOTION FOR JURY QUESTIONNAIRE

District Attorney Richard Gammick was present for the State. Defendant was present being represented by counsel, Public Defender Michael Specchio.

Counsel Specchio addressed the Court regarding the seating arrangements of counsel and the Defendant during trial. Counsel Specchio further addressed the Court regarding trial materials and the possibility of such materials remaining in the courtroom overnight during trial weeks.

COURT ORDERED: All of counsels' trial materials may remain in the courtroom.

Court addressed the security issue of firearms being checked in with the bailiff, Deputy Max Brocaw, when entering the courtroom.

Court further addressed counsel regarding pre-trial jury questionnaire and the approved Jury Questionnaire to be submitted to the Jury Commissioner by January 4th, 1999 at 1:30 p.m.

Court reviewed the jury confidentiality process and policy in Department Four (4).

Court further reviewed its ruling regarding the Motion in Limine as to the District Attorney's DNA expert.

Counsel Gammick addressed the Court regarding Exhibits 5 and 4 (b through j); said exhibits were returned to Clerk Hopper to be returned to Exhibit Clerk Dick Duer. Counsel Gammick further addressed the Court regarding the photos presented to the Public Defender pursuant to discovery.

Counsel Specchio addressed the Court regarding the security of the Defendant and his restraints.

Respective counsel further addressed the Court regarding the Jury Questionnaire; respective counsel shall prepare and submit their respective questions for approval by Wednesday, December 16th, 1998.

SO APPROVED. Defendant was in custody.

CASE NO. CR98-0516

TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

11/24/98

PRE-TRIAL MOTIONS

HONORABLE

District Attorney Richard A. Gammick and Deputy District Attorney David

CONNIE

Stanton represented the State. Defendant present with counsel, Public

STEINHEIMER

Defender Michael Specchio and Deputy Public Defender Steve Gregory.

DEPT. NO.4

M. Stone

Discussion ensued regarding the order in which the Motions shall be heard.

(Clerk)

D. Phipps

(Reporter)

Respective counsel Gammick and Specchio made statement regarding the use of Jury Questionnaires and Individual Voir Dire. COURT ORDERED that decision on this Motion shall be held in abeyance pending receipt by the Court of a Recommendation being prepared by a Jury Consultant. COURT FURTHER ORDERED matter set for hearing on December 10, 1998, at 10:00 a.m.

Upon agreement of respective counsel, Motion to Avoid Death Penalty is submitted for decision on the pleadings, without oral argument.

Motion to preclude photographs and T.V. Reporters by defense counsel Specchio; presented argument. COURT ENTERED ORDER denying the Motion to preclude photographs and T.V. Reporters in the Courtroom, as long as they abide by the rules and regulations set out by the Court. If there is any violations of those rules, the photographers shall be removed from the Courtroom. COURT FURTHER ENTERED ORDER that reporters, with or without cameras may not congregate outside the Courtroom, or be on the floor, with the exception of the one in the Courtroom.

Jeff Riolo called by State's counsel Stanton, sworn and testified.

Exhibits 1, 2 and 3 marked and offered by State's counsel Stanton; no objection by defense counsel Specchio; ordered admitted into evidence.

Witness Riolo further direct examined; cross-examined by defense counsel Specchio; redirect examined; examined by the Court; excused.

Exhibits 4A-4J marked.

Dr. Ellen Clark called by State's counsel Stanton, sworn and testified.

Exhibit 4A withdrawn.

AA03006

CASE NO. CR98-0516

TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI

PAGE TWO

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

11/24/98

CONTINUED PRE-TRIAL MOTIONS

D. Phipps

(Reporter)

Witness Clark further direct examined.

Exhibit 5 marked as demonstrative by State's counsel.

Witness Clark further direct examined; cross-examined; excused.

Motion in Limine regarding Gruesome Photographs by defense counsel Specchio; presented argument; objection and argument by State's counsel Stanton. Upon finding the photographs necessary during the testimony of the Pathologist, COURT ENTERED ORDER denying Motion and allowing the use of pictures marked as Exhibits 4B - 4 J during trial.

Request to Use the Doar System to Display exhibits during trial, including photographs, by State's counsel Stanton; presented argument; objection and argument by defense counsel. Upon finding that the photographs were not any more gruesome when used with the Doar System, COURT ENTERED ORDER granting request. Defense counsel's Objection is noted for the record and shall continue through trial.

Motion in Limine regarding the State's DNA Expert by defense counsel; presented argument; objection and argument by State's counsel. COURT took matter under advisement and ORDERED counsel to provide copies of cases cited to the Law Clerk.

Discussion ensued regarding the Motion in Limine regarding the Arrest of the Defendant.

Exhibit A marked.

COURT ORDERED that any statements against interest made by the Defendant, stated in a report or not in a report, must be disclosed in a hearing outside the presence of the jury to determine its admissibility.

12:00 p.m. Court recessed. Defendant remanded to the custody of the sheriff.

1:40 p.m. Court reconvened with respective counsel and defendant

AA03007

CASE NO. CR98-0516

TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI

PAGE THREE

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

11/24/98

D. Phipps
(Reporter)

CONTINUED PRE-TRIAL MOTIONS

present.

12/10/98

10:00 a.m.
Status Hrg
Re: Jury
Question-
naire

Motion in limine regarding prior bad acts and any gang affiliations of the Defendant by defense counsel; presented argument; argument by State's counsel Stanton. Upon agreement by respective counsel, COURT ORDERED that testimony of Vienga Kinney-Kinney be redacted to exclude any reference to gang activity; and if necessary, the State may lead this witness during direct examination. COURT FURTHER ORDERED that the prior bad act regarding the religion of Mormons, be held in abeyance pending progress of trial.

Court reviewed the Motions filed and decided with counsel.

Upon Motion by State's counsel and no objection by defense counsel, COURT ORDERED exhibits 4B-4J and 5 released to the State once copied by the Clerk of the Court.

AA03008

CASE NO. CR98-0516

TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

11/10/98

HEARING REGARDING COUNSEL FOR DEFENDANT

HONORABLE

District Attorney Richard Gammick and Deputy District Attorney David

CONNIE

Stanton represented the State. Defendant present with counsel, Public

STEINHEIMER

Defender, Michael Specchio.

DEPT. NO.4

11:00 a.m. Court convened.

M. Stone

Defendant indicated to the Court that he wants Public Defender Specchio

(Clerk)

and his Office to represent him at trial.

E. Nelson

Upon request of State's counsel, COURT FURTHER advised the defendant

(Reporter)

that any future requests for new counsel or to represent himself will be denied, if those requests are made solely to continue the trial and/or if they are not made timely prior to trial.

11:10 a.m. Court recessed. Defendant remanded to the custody of the sheriff.

AA03009

CASE NO. CR98-0516 TITLE: THE STATE OF NEVADA VS. SIAOSI VANISI

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

11/6/98

REPORT ON PSYCHIATRIC EVALUATION REPORTS

HONORABLE

District Attorney Richard Gammick represented the State. Defendant present with counsel, Public Defender, Michael Specchio.

CONNIE

STEINHEIMER

DEPT. NO. 4

Court noted receipt of reports from psychiatrists; advised counsel of findings set forth therein.

M. Stone

(Clerk)

COURT ENTERED ORDER finding defendant competent to stand trial and to aid counsel in preparation of that trial pursuant to statute.

C. Brown

(Reporter)

Court further entered ORDER that the Psychiatric Reports be marked and admitted as exhibits.

Exhibits A and B marked and admitted into evidence.

Discussion ensued regarding the Defendant obtaining private counsel or representing himself. Defendant made statement.

COURT ORDERED matter set for hearing on November 10, 1998, at 11:00 a.m. Defendant must speak with counsel Specchio to weigh his options. Defendant remanded to the custody of the sheriff.
