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.	Supreme Court No. 78209 District Court No. 98CR0516 Volume 17 of 38

APPELLANT'S APPENDIX

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

RENE L. VALLADARES
Federal Public Defender

RANDOLPH M. FIEDLER
Assistant Federal Public Defender
Nevada State Bar No. 12577
411 E. Bonneville, Suite 250
Las Vegas, Nevada 89101
(702) 388-6577
randolph_fiedler@fd.org

Attorneys for Appellant

EXHIBIT

EXHIBITS

EXHIBITS

EXHIBITS

EXHIBITS

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:

Jennifer P. Noble
Appellate Deputy
Nevada Bar No. 9446
P.O. Box 11130
Reno, NV 89520-0027
jnoble@da.washoecounty.us

Joseph R. Plater
Appellate Deputy
Nevada Bar No. 2771
P.O. Box 11130
Reno, NV 89520-0027
jplater@da.washoecounty.us

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

It is the duty of attorneys on each side of a case to object when the other side offers testimony or other evidence which counsel believes is not admissible.

When the court has sustained an objection to a question, the jury is to disregard the question and may draw no inference from the wording of it or speculate as to what the witness would have said if permitted to answer.

Instruction No. 7

1685

SVanisi2JDC06297

Nothing that counsel say during the trial is evidence in the case.

The evidence in a case consists of the testimony of the witnesses and all physical or documentary evidence which has been admitted.

Instruction No. 8

1686

SVanisi2JDMC06298

The penalty provided by law for the offense charged is not to be considered by the jury in arriving at a verdict.

Instruction No. 9

1687

Svanisi2JDC06298

Neither the prosecution nor the defense is required to call as witnesses all persons who may appear to have some knowledge of the matters in question in this trial.

Instruction No. 10

1688

There are two types of evidence from which a jury may properly arrive at a verdict. One is direct evidence, such as the testimony of an eyewitness. The other is circumstantial evidence, the proof of a chain of circumstances pointing to the existence or nonexistence of a fact in issue.

The law makes no distinction between direct and circumstantial evidence, but requires that before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

Instruction No. 11

1689

SVanis12JPC06301

To the jury alone belongs the duty of weighing the evidence and determining the credibility of the witnesses. The degree of credit due a witness should be determined by his or her character, conduct, manner upon the stand, fears, bias, impartiality, reasonableness or unreasonableness of the statements he or she makes, and the strength or weakness of his or her recollections, viewed in the light of all the other facts in evidence.

If the jury believes that any witness has willfully sworn falsely, they may disregard the whole of the evidence of any such witness.

Instruction No. 12

1690

SVanHsi2JDC06302

A person is qualified to testify as an expert if he or she has special knowledge, skill, experience, training, or education sufficient to qualify him or her as an expert on the subject to which his or her testimony relates.

Duly qualified experts may give their opinions on questions in controversy at a trial. To assist you in deciding such questions, you may consider the opinion with the reasons given for it, if any, by the expert who gives the opinion. You may also consider the qualifications and credibility of the expert.

You are not bound to accept an expert opinion as conclusive, but should give to it the weight to which you find it to be entitled. You may disregard any such opinion if you find it to be unreasonable.

Instruction No. 13

1691

SVanisi2JDC06303

In every crime there must exist a union or joint operation of act and intent.

The burden is always upon the prosecution to prove both act and intent beyond a reasonable doubt.

Instruction No. 14

1692

Intent may be proved by circumstantial evidence. It rarely can be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what a defendant does or fails to do, there can be no eyewitness account of a state of mind with which the acts were done or omitted, but what a defendant does or fails to do may indicate intent or lack of intent to commit the offense charged.

Instruction No. 15

1693

Every person charged with the commission of a crime shall be presumed innocent unless the contrary is proved by competent evidence beyond a reasonable doubt.

Instruction No. 16

1694

The burden rests upon the prosecution to establish every element of the crime with which the defendant is charged, and every element of the crime must be established beyond a reasonable doubt.

Instruction No. 17

169

SVanis12JDC06307

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable, must be actual, not mere possibility or speculation.

Instruction No. 18

1696

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Murder is further divided into Murder of the First Degree and Murder of the Second Degree

Instruction No. 19

167

SVanis12JDC06309

As it applies to this case, Murder of the First Degree is:

(a) premeditated and deliberate murder or

(b) murder committed while lying in wait or

(c) murder committed during the commission or in the furtherance of a robbery

All other types of murder are Murder in the Second Degree.

Instruction No. 20

16 38

NRS 200.020 defines malice, express and implied, as follows:

1. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

2. Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

Instruction No. 21

1695

Malice aforethought, as used in the definition of murder, means the intentional doing of a wrongful act without legal cause or excuse, or what the law considers adequate provocation. The condition of mind described as malice aforethought may aries, not alone from anger, hatred, revenge or from particular ill will, spite or grudge toward the person killed, but may also result from any unjustifiable or unlawful motive or purpose to injure another which proceeds from a heart fatally bent on mischief, or with reckless disregard of consequences and social duty.

Instruction No. 22

172a

The nature and extent of the injuries, coupled with the repeated blows, may constitute evidence of willfulness, premeditation and deliberation.

Instruction No. 23

SVanis12JDC06313

Unless felony-murder applies, the unlawful killing must be accompanied with deliberate and clear intent to take life in order to constitute Murder of the First Degree. The intent to kill must be the result of deliberate premeditation.

Premeditation is a design, a determination to kill, distinctly formed in the mind at any moment before or at the time of the killing.

Premeditation need not be for a day, an hour or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the premeditation is followed by the act constituting the killing, it is willful, deliberate and premeditated murder.

Instruction No. 24

170

Whenever death occurs during the perpetration of certain felonies, including Robbery, NRS 200.030 defines this as Murder in the First Degree. This is known as the "felony murder rule."

Therefore, an unlawful killing of a human being, whether intentional, unintentional or accidental, which is committed in the perpetration of a Robbery is Murder in the First Degree if there was in the mind of the defendant the specific intent to commit the crime of Robbery.

The specific intent to commit Robbery must be proven by the State beyond a reasonable doubt.

Instruction No. 25

1705

All verdicts in this case must be unanimous. In considering Count I, Murder, the State has alleged three different theories of First Degree Murder. The three theories of Murder in the First Degree are as follows:

(1) Premeditated and deliberate murder; or

(2) That the murder was perpetrated in the furtherance of a robbery; or

(3) The murder was committed by means of lying in wait.

However, you need not be unanimous in your finding as to either of the theories I have just outlined.

Thus, you do not have to agree on the theory of Murder in the First Degree, it is sufficient that each of you find beyond a reasonable doubt that the murder, under any one of the three theories, was Murder in the First Degree.

Instruction No. 26

1704

Robbery is the unlawful taking of personal property from the person of another, or in his or her presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person or property.

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

Instruction No. 27

170

Grand Larceny consists of the unlawful stealing, taking, and carrying away of personal goods or property of another of a value of Two Hundred Dollars or more, with the intent to permanently deprive the owner of the possession of such personal goods or property.

Instruction No. 28

If you find the defendant guilty of any of the first four counts of the Information, Murder in the First Degree and/or Robbery you must then answer the question as to whether the crime was committed with a deadly weapon.

Instruction No. 29

1201

SVanis12JDC08319

A deadly weapon is any object, instrument or weapon which is used in such a manner as to be capable of producing, and likely to produce, death or great bodily injury.

Instruction No. 30

120.

A deadly weapon is any object, instrument or weapon which is used in such a manner as to be capable of producing, and likely to produce, death or great bodily injury.

Instruction No. 30

120.

Each count charges a separate and distinct offense. You must decide each count separately on the evidence and the law applicable to it, uninfluenced by your decision as to any other count. The defendant may be convicted or acquitted on any or all of the offenses charged. Your finding as to each count must be stated in a separate verdict.

Instruction No. 31

SVanis12JDC06321

It is your duty as jurors to consult with one another and to deliberate, with a view of reaching an agreement, if you can do so without violence to your individual judgment. You each must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

Instruction No. 32

171C

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn from the fact that the defendant has not testified.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Instruction No. 33

171

SVanis12JDC06323

Upon retiring to the jury room you will select one of your number to act as foreperson, who will preside over your deliberations and who will sign a verdict to which you agree.

When all twelve (12) of you have agreed upon a verdict, the foreperson should sign and date the same and request the Bailiff to return you to court.

Connie J. Steinheimer
DISTRICT JUDGE

Instruction No. 34

171

Exhibit 12

Exhibit 12

ORIGINAL

FILED

OCT 06 1999

AMY HARVEY, CLERK
By: DEPUTY

CODE 1885

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR98-0516

Dept. No. 4

SIAOSI VANISI,
also known as
"PE,"
also known as
"GEORGE,"

Defendant.

_____/

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this penalty hearing. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions, regardless of any opinion you may have as to what the law is or ought to be.

Instruction No. 1

1744

If in these instructions, any rule, direction or idea is repeated or stated in a different way, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

Instruction No. 2

1745

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you would find that another fact exists, even though it has been proved directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give any evidence.

It is for you to decide whether a fact has been proved by circumstantial evidence. In making that decision, you must consider all the evidence in the light of reason, common sense and experience.

You should not be concerned with the type of evidence but rather the relative convincing force of the evidence.

Instruction No. 3

1746

The evidence presented both during the trial and during this hearing may be considered by the jury in deciding the proper and appropriate sentence in this case.

This evidence consists of the sworn testimony of the witnesses, both on direct and cross-examination, regardless of who called the witness; the exhibits which have been introduced into evidence and any facts to which the lawyers have agreed or stipulated.

Instruction No. 4

1747

SVanisi2JDC06076

The State has the burden of proving beyond a reasonable doubt the aggravating circumstance in this case.

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors after the entire comparison and consideration of all the evidence are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt, to be reasonable, must be actual, not mere possibility or speculation. Judge Stiglich

Instruction No. 5

1748

You have found the defendant in this case to be guilty of Murder in the First Degree; therefore, under the law of this state, you must determine the sentence to be imposed upon the defendant.

First Degree Murder is punishable:

(1) by death, only if an aggravating circumstance is found, and any mitigating circumstance or circumstances which are found to not outweigh the aggravating circumstance, or

(2) by imprisonment in the Nevada State Prison for life without the possibility of parole, or

(3) by imprisonment in the Nevada State Prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of twenty 20 years has been served, or

(4) for a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served

A determination of whether an aggravating circumstance exists is not necessary in the event you determine to impose a sentence less than death.

Instruction No. 6

A prison term of fifty years with eligibility for parole beginning when a minimum of twenty years has been served does not mean that the defendant would be paroled after twenty years but only that he or she would be eligible for parole after that period of time.

Life imprisonment with the possibility of parole is a sentence to life imprisonment which provides that the defendant would be eligible for parole after a period of twenty years. This does not mean that he or she would be paroled after twenty years but only that he or she would be eligible for parole after that period of time.

Life imprisonment without the possibility of parole means exactly what it says, that the defendant shall not be eligible for parole.

If you sentence the defendant to death, you must assume that the sentence will be carried out.

Instruction No. 7

1757

Any person who uses a ~~firearm~~ deadly weapon Judge Steinheimer in the commission of a crime, shall be punished by imprisonment in the Nevada State Prison for a term equal to and in addition to the term of imprisonment prescribed for the underlying crime, and said sentence shall run consecutively with the sentence prescribed for the underlying crime.

Because you have found the defendant committed the offense with the use of a ~~firearm~~ deadly weapon → Judge Steinheimer, if you sentence him to life in prison with the possibility of parole, his earliest parole eligibility would be forty years. Likewise, if you sentence him to a term of fifty years, his earliest parole eligibility would be forty years.

Instruction No. 8

The following are the aggravating factors as alleged in this case:

1. The murder was committed in the commission of or attempt to commit the crime of Robbery With the Use of a Deadly Weapon;

2. The murder was committed upon a peace officer, Sgt. George Sullivan, while engaged in the performance of his official duty and that the defendant knew or reasonably should have known that the victim was a peace officer;

3. The murder involved mutilation of the victim;

4. The murder was committed by the defendant upon a person because of the actual or perceived race, color, religion or national origin of that person.

Instruction No. 9

The term "mutilate" means to cut off or permanently destroy a limb or essential part of the body, or to cut off or alter radically so as to make imperfect, or other serious and depraved physical abuse beyond the act of killing itself.

Instruction No. 10

1753

A murder in the first degree may be mitigated by any of the following circumstances:

1. The defendant has no significant history of prior criminal behavior.

2. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.

3. The youth of the defendant at the time of the crime.

4. Any other mitigating circumstance.

This list of mitigating circumstances is not meant to be exclusive. You may consider any other mitigating circumstance(s) you believe is/are appropriate as individual mitigating circumstances.

Instruction No. 11

1752

Mitigating circumstances are things which do not constitute a justification or excuse of the offense in question, but which in fairness and mercy may be considered as extenuating or reducing the degree of moral culpability.

Instruction No. 12

1255

The mitigating circumstances which I have read for your consideration are given only as examples of some of the factors you may take into account as reasons for deciding not to impose a sentence of death on the defendant. Any aspect of the defendant's character or record and any of the circumstances of the offense, which a jury believes is a basis for imposing sentence less than death may be considered a mitigating factor. Any one of them may be sufficient, standing alone, to support a decision that death is not the appropriate punishment in this case.

In balancing aggravating and mitigating circumstances, it is not the mere number of aggravating circumstances or mitigating circumstances that controls. You must consider each separately and carefully to determine what weight should be given.

Instruction No. 13

1756

The State has alleged aggravating circumstances are present in this case.

The defendant has alleged certain mitigating circumstances are present in this case.

It shall be your duty to determine:

(a) whether an aggravating circumstance has been proven beyond a reasonable doubt;

(b) whether a mitigating circumstance or circumstances are found to exist; and,

(c) based upon these findings, whether the defendant should be sentenced to death, or one of the alternatives less than death.

The jury may impose a sentence of death only if you find an aggravating circumstance and further find there are no mitigating circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

Instruction No. 14

1257

The law never compels the imposition of the death penalty. Even if you find that the aggravating circumstances have been proven beyond a reasonable doubt, and even if you also do not find that any mitigating circumstances exist, you are not required to return a verdict of the sentence of death as punishment, but may instead sentence the defendant to one of the alternatives less than death.

Instruction No. 15

In reaching your verdict you may consider only the testimony of witnesses and the exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the proper and appropriate sentence should be in this case.

Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from what the lawyers have stated, then your memory controls.

Questions and objections by lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or the court's ruling on it.

Testimony excluded or stricken by the court or testimony which you have been instructed to disregard is not evidence and must not be considered.

Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the proper punishment solely on the evidence received at the trial and at this hearing.

Instruction No. 16

1759

In your deliberation you may not discuss or consider the subject of guilt or innocence of the defendant, as that issue has already been decided. Your duty is confined to a determination of the punishment to be imposed.

Instruction No. 17

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences which you feel are justified by the evidence, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, passion, prejudice, or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

Instruction No. 18

When you retire to consider your verdict, you must first determine whether the State has proven beyond a reasonable doubt that an aggravating circumstance or circumstances exist in this case. All of you must agree as to each aggravating circumstance.

Then you must determine whether a mitigating circumstance or circumstances exist in this case. A single juror may establish the existence of a mitigating circumstance. A mitigating circumstance can be established if any juror finds that some evidence has been provided as to its existence.

Based upon your findings in the verdict you must then determine whether the defendant should be sentenced to death, life without the possibility of parole, life with the possibility of parole or 50 years in prison.

During your deliberations, you will have all the exhibits which were admitted into evidence during the trial and during this hearing, these written instructions and forms of verdict which have been prepared for your convenience.

When all twelve (12) of you have agreed upon a verdict, the foreperson should sign and date the same and request the Bailiff to return you to court.

Connie J. Steinheimer
DISTRICT JUDGE

Instruction No. 19

Exhibit 16

Exhibit 16

FILED

'99 JUN 16 P3:39

AMY HARVEY CLERK
BY K Duncan

CASE NO. CR98-0516

DEPT. NO. 4

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

* * * * *

THE STATE OF NEVADA, Plaintiff,

VS.

SIAOSI VANISI, **DEFENDANT IN PROPER PERSON.**

MOTION TO DISMISS COUNSEL, AND MOTION TO APPOINT COUNSEL

COMES NOW, Defendant, SIAOSI VANISI, (herein after referred to as VANISI) **IN PROPER PERSON**, and respectfully moves this Honorable Court for an ORDER dismissing assigned Counsel, namely, STEVEN GREGORY, ESQ., of the Washoe County Public Defender's Office, and any and all Attorney's in that Office or Capacity, further, VANISI, moves this Court for an ORDER appointing Counsel as authorized by **NRS 7.115** and **NRS 7.125.**

This Motion is based upon the affidavit of SIAOSI VANISI, together with the Points and Authorities submitted herein.

DATED this 14 day of June, 1999.

SUBMITTED BY:

Siaosi Vanisi

SIAOSI VANISI
Defendant in Proper Person

//

//

//

//

999

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and

TO: RICHARD A. GAMMICK, ESQ., District Attorney of Washoe County;

YOU WILL PLEASE TAKE NOTICE that on the 23 day of June, 1999, at the hour of 9:00 A.M., the Defendant will bring the above and foregoing Motion to Dismiss Counsel and to Appoint Counsel before the above-entitled Court.

DATED this 14 day of June, 1999.

Siaosi Vanisi

SIAOSI VANISI
Defendant in Proper Person

STATEMENT OF FACTS

On January 14, 1998, VANISI, was arrested in Salt Lake City, Utah, by law enforcement officers from the Salt Lake City Police Department. On January 26, 1998, VANISI was extradicted back to Reno, Nevada. On January 28, 1998, VANISI was arraigned in Justice Court on Charges of : First Degree Murder, Robbery with the Use in the commision of a Murder, 2-Robberies, and Grand Theft Auto. During such time the Washoe County Public Defender's Office was appointed to represent VANISI upon said Charges. A preliminary hearing was held in this cause resulting in VANISI being bound over to stand trial on said charges. On February 20, 1998, VANISI was arraigned in District Court, wherein he plead not guilty to said charges. On January 11, 1999, Jury selections concluded and Trial commenced, on January 15, 1999, this Honorable Court, Judge Conny Stienhiemer, issued an ORDER for mis-trial due to clerical errors in a transcribed police report which differed from the

1000

actual audio recording. This Court then advised Defense Counsel and VANISI that this ruling was not appealable, and set a new Trial date for September 7, 1999.

ARGUMENT AND POINTS AND AUTHORITIES

I

APPOINTED COUNSEL IS INEFFECTIVE AND IS SUCH THE DEFENDANT IS BEING DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

VANISI contends that the Court appointed Counsel has failed to conduct adequate pre-trial investigations of evidence and facts which have rendered him unprepared or inadequately prepared for Trial. The failure to thoroughly investigate the facts and evidence in a case operates to render Trial Counsel unprepared and ineffective at Trial of the case. **See i.e., People v. White**, 514 P.2d 69 (Colo., 1973). **See also American Bar Association Standards for Criminal Justice, 1.1(b) Role of Defense Counsel, 4.1 Duty to Investigate.**

It is well settled law that a Defendant charged with a felony enjoys under the **Sixth Amendment** the right to Counsel to assist his Defense, even if he lacks funds for Counsel. **Gideon v. Wainwright**, 372 U.S. 335, 83 S.Ct. 792 (1963). However, the right to Counsel under the **Sixth Amendment** is the right to effective and competent assistance of Counsel, for the right given is not merely formal, but is a substantial right. **Powell v. Alabama**, 287 U.S. 45, 53 S.Ct. 55 (1932); **Reece v. Georgia**, 350 U.S. 85, 76 S.Ct. 167 (1955) **Ex Parte Kramer**, 61 Nev. 174, 122 P.2d 862, appeal dismissed, 316 U.S. 646 (1942).

The **Nevada Constitution** provides for (**the full force of**)

Counsel, and not "**mere**" effective assistance. **See**; **NRSA Nev. Const. Art.1, Sect.8.**

Citing as to Olausen, **Wilson [and Olausen] v. State**, 105 Nev. ____ #23, 771 P.2d 583 (1989):

> For ineffective assistance of counsel, defendant must show that the representation fell below an objective standard of reasonableness and his defense was prejudiced as a result; to prove prejudice, defendant must show a reasonable probability that, but for his attorney's mistakes, the result would have been different; in a death sentence case, defendant must show a reasonable probability that the sentencer, absent errors, would have determined death was not warranted; where defense attorney made remarks more appropriate for the prosecutor and failed to present a host of mitigating evidence of remorse, etc., ineffective assistance of counsel resulted; reminding the sentencer that the attorney's undertaking [as appointed counsel] is not by choice represents a breach of counsel's duty of loyalty to his client; death sentence reversed as to Olausen.

So, it also appears that, VANISI is now in the untenable position of permanent, ineffective Counsel (public defender), which may be irreversible. **See**; **Strickland v. Washington**, 466 U.S. 668; 104 S.Ct. 2052; 80 L.Ed.2d 674 (1984); notwithstanding that "objective standard of reasonableness" is a contradiction in terms; i.e., reasonable is **not** an objective term.

Another fundamental principle applies. The "State can't benefit from it's failures". **See**; **Sparks v. State**, 759 P.2d 180 N.2, 182 (Nev. 1988).

It can no more benefit, via continued prosecution, by it's failures to follow procedures, than it can by it's failures to preserve exculpatory evidence. **Id.**

And, the option of a pre-Trial Habeas petition certainly appears to be foreclosed, along with it's considerable power to

discharge VANISI. **See; NRSA Chapter 34, especially NRSA 34.480.**

In the instant case despite numerous attempts by VANISI to contact Counsel for purposes of preparing his case, only a few calls have been successfull, refused to advise VANISI of Counsel's alleged investigation, and since at N.S.P hasn't even attempted to visit VANISI for preparation for Trial, all of which is tantamont to an abusive display of ineffective assistance of Counsel. VANISI further states Counsel has failed to research the law in challenging the sufficiency of said charges, or this Courts ORDER of mis-Trial, i.e., Writ of Habeas Corpus, Motion to Dismiss, etc.

Where inadequate representation of Counsel is alleged and relates to matters outside the record, an evidentiary hearing is generally required and the Court should receive additional evidence in support of a Constitutional claim alleging the denial to the right of effective assistance of Counsel. **See, Brubaker v. Dickson**, 310 F.2d 30 (9th Cir., 1962); **Jackson v. Warden**, 91 Nev. 430, 537 P.2d 473 (1975).

II.

APPOINTMENT OF NEW COUNSEL WITH STATE AND/OR COUNTY PUBLIC DEFENDER'S OFFICE NOT AN OPTION.

VANISI contends a severe conflict of interest with the Public Defender's Office, and with the filing of this Motion that conflict will escalate, inthat he will and is being prejudiced of a fair Trial, effective assistance of Counsel, Due Process of law, and the equal protection of the law.

1003

NRS 178.397 states:

> **Assignment of Counsel.** Every Defendant accused of a gross misdemeanor or felony who is financially unable to obtain Counsel is entitled to have Counsel assigned to represent him at every stage of the proceedings from his initial appearance before a magistrate or the Court through appeal, unless he waives such appointment.

Accordingly VANISI cites a public defender cannot be held vicariously liable for negligence of his deputies; malpractice arising out of discretionary decisions made pursuant to duties as public defender can't give rise to suit; public defenders do not act under color of State law; District Courts lack jurisdiction to impose professional discipline on Attorneys. **Ramirez v. Clark County Public Defender**, 105 Nev. ___ #47, 773 P.2d 343 (1989).

A defendant has a **Sixth Amendment** right to effective assistance of Counsel in deciding whether or not to accept or reject a plea bargain; here, Attorney's conduct fell below an objective standard of reasonableness where his recommendations (withdraw plea, go to Trial, etc.) were based on factors that would further his personal ambitions (to be national consultant on "battered wife" defense, etc.); note that a reasoned plea recommendation which hindsight reveals to be unwise or reliance on an ultimately unsuccessful defense tactic would seldom support a finding of ineffective assistance of Counsel. **Larson v. State**, 104 Nev.___ #113, 776 P.2d 261 (1988). VANISI asserts that due to Counsels lack of preparing an adequate defense he put his whole defense on the error made by the police transcriber. Now VANISI is virtually stuck with going through the motions of a Trial with no hope of expressing a new defense, and ultimately facing the most severe punishment known to man, DEATH.

NRS 171.188, 1, 2(a), (b), 3(a), (b), which apply to VANISI states:

> 1. Any defendant charged with a public offense who is an indigent may, by oral statement to the district judge, justice of the peace, municipal judge or master, request the appointment of an attorney to represent him.
> 2. The request must be accompanied by the defendant's affidavit, which must state:
> (a) That he is without means of employing an attorney; and
> (b) Facts with some particularity, definiteness and certainty concerning his financial disability.
> 3. The district judge, justice of the peace, municipal judge or master shall forhwith consider the application and shall make such further inquiry as he considers necessary. If the district judge, justice of the peace, municipal judge or master:
> (a) Finds that the defendant is without means of employing an attorney; and
> (b) Otherwise determines that representation is required, the judge, justice of the peace, or master shall designate the public defender of the county or the state public defender, as appropriate, to represent him. If the appropriate public defender is unable to represent him, or other good cause appears, another attorney must be appointed.

<u>also See,</u> NRS 7.115:

> A magistrate or a district court shall not appoint an attorney other than a public defender to represent a person charged with any offense by indictment or information unless such magistrate or the district court makes a finding, entered into the record of the case, that the public defender is disqualified from furnishing such representation and sets forth the reason or reasons for such disqualification.

CONCLUSION

For the reasons stated above and with the severity, complexity and possible punishment in this said case, DEATH, VANISI prays this Court will find the only Constitutional remedy is to **GRANT**

//

1005

VANISI' Motion and Appoint a qualified, non-bias, **SCR 250** qualified Attorney to represent VANISI and that the State and/or County Public Defender's Office not an option.

DATED this 14 day of June, 1999.

SUBMITTED BY:

Siaosi Vanisi

SIAOSI VANISI # 58497
Nevada State Prison
P.O.Box 607
Carson City, Nevada
89702-0607
DEFENDANT IN PROPER PERSON

AFFIDAVIT OF SIAOSI VANISI IN SUPPORT OF MOTION TO DISMISS COUNSEL AND TO APPOINT NEW COUNSEL

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

SIAOSI VANISI, being first duly sworn upon his oath, deposes and says:

1. That Affiant has personal knowledge as to the facts contained herein and is competent to testify to same thereto.

2. That Affiant is the Defendant in the above-entitled case.

3. That Affiant has had only very limited phone contact with Counsel since January 15, 1999.

4. That Counsel has not proceeded to challenge the sufficency of the said charges despite the fact that Affiant is facing the Death Penalty.

//

5. That Counsel has not informed or expressed to Affiant of any viable defense he allegedly intends to submit.

6. That Affiant has lost all confidence in Mr. Gregory to be adequately prepared for Trial as the material in this case needs to be reviewed and analized for Trial.

7. That Affiant if convicted, is facing the Death Penalty and needs the effective assistance of Counsel to insure Due Process and a Fair Trial.

FURTHER AFFIANT SAYETH NAUGHT.

Siaosi Vanisi
SIAOSI VANISI

SUBSCRIBED and **SWORN** to before me this 10TH day of June, 1999.

William T. Curry
Notary Public in and for the said County and State.

WILLIAM T. CURRY
NOTARY PUBLIC - NEVADA
Appt. Recorded in CARSON CITY
No. 97-3948-3 My Appt. Exp. Aug. 12, 2001

//
//
//
//
//
//
//

100T

CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 14 day of June, 1999, I, deposited in the United States Post Office, through, Nevada State Prison, a copy of the foregoing **MOTION TO DISMISS COUNSEL AND APPOINTMENT OF COUNSEL**, postage prepaid, addressed to the following:

Richard A. Gammick, Esq.
Washoe County District Attorney
P.O.Box 11130
Reno, Nevada 89520

Steven Gregory, Esq.
Washoe County Public Defender
P.O.Box 11130
Reno, Nevada 89520

Siaosi Vanisi

SIAOSI VANISI #58497
Defendant

//
//
//
//
//
//
//
//
//
//
//
//

1006

Exhibit 17

Exhibit 17

ORIGINAL

CODE 2490
MICHAEL R. SPECCHIO
BAR# 1017
WASHOE COUNTY PUBLIC DEFENDER
P.O. BOX 30083
RENO NV 89520-3083
(775) 328-3464
ATTORNEY FOR: DEFENDANT

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,
vs.
SIAOSI VANISI, aka "PE"
Aka GEORGE",
Defendant.
_____/

UNDER SEAL

Case No. CR98-0516

Dept. No. 4

COURT ORDERED MOTION FOR SELF REPRESENTATION

I've read rule 253. I don't see anywhere in the rules of Nevada nor anywhere in the Constitution that I need to (as a defendant) write a motion to represent myself. However, I am abiding by your order to write this innocuous motion, in hope to fulfill your command.

As you know, it is my desire to exercise my constitutional right to represent myself. Furthermore, I understand the danger and the disadvantages that may procure from self representation.

If I produce a defense that will result to my detriment, I will not complain on appeals.

I am not intimidated by the State's representative, for I know they are experienced and have the training to make tactical decisions to bring about an unintended outcome to their advantage.

I have opened myself to countless hours of contemplation, ruminating whether or not I should represent myself. And I choose to do so on my own volition. And I must add, that no one coerced me to represent myself. Therefore; I'm waving my constitutional right to be represented by an attorney.

I have graduated from High School. From then on I became a "self taught man". I have studied: science, geography, physics, chemistry, english, math and philosophy.

I have the aptitude to apprehend the law. I have perused law books and read case law when I was at the NSP.

The law is not my forte. The realm of science is my strength. However, I have studied Faretta v. California. And you will find that the Supreme Court does not bestow a heavy burden upon a defendant to master the science of law.

And I now quote from FN 15 out of Faretta v. California. "We need make no assessment of how well or poorly Faretta had mastered the intricacies of the hearsay rule and the California Code Provisions that govern challenges of potential jurors on voir dire. For his technical legal knowledge, as such, was not relevant to assessment of his knowing exercise of the right to defend himself".

There are myriads of arguments that legal scholars have argued to intact the right of the accused to manage his own defense. The choice of an individual to represent himself is the lifeblood of the law.

"To force a lawer on a defendant can only lead him to believe that the law contrives against him," sayeth Faretta v. California.

I conclude my motion with the goal to be prepared for trial on the 7th of September 1999.

SIAOSI VANISI S/S
Defendant
August 4, 1999

Exhibit 18

Exhibit 18

svanisi09363

CODE 1675

FILED

'99 JUL 12 A10:57

AMY HARVEY, CLERK
BY [signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,

vs.

Case No. CR98-0516

SIAOSI VANISI,
Defendant.

Dept. 4

***FILED UNDER SEAL**

EX-PARTE ORDER FOR MEDICAL TREATMENT

Good cause appearing therefore,

IT IS HEREBY ORDERED that the Washoe County Sheriff, through his medical representatives at the Washoe County Detention Facility, provide the following medication for the above-named Defendant:

1. Lithium (including a pre-Lithium work-up and Titration with appropriate blood level monitoring); and

///

2. Wellbutrin and Titrate to 300 mg daily, (beginning after therapeutic Lithium levels have been reached).

DATED this 12th day of July, 1999.

Chas M. McGee
DISTRICT JUDGE
Chief Judge for
J. Steinheimer

Exhibit 19

Exhibit 19

CODE 3370

FILED

AUG 11 1999

AMY HARVEY
By: V. Stone
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

****

STATE OF NEVADA,

Plaintiff,

vs. Case No. CR98-0516

SIAOSI VANISI, Dept. No. 4

Defendant.

ORDER

On August 5, 1999, Defendant, Siaosi Vanisi, filed a Motion for Self Representation that was presented to the Court in its original hand-written form attached to a type written version prepared by the Public Defender's office and submitted under seal. On August 5, 1999, this Court reviewed the Motion and Ordered that it be unsealed and served upon opposing counsel and that an evidentiary hearing on the Motion be scheduled for August 10, 1999. On August 9, 1999, the District Attorney's Office filed a Response to "Court Ordered Motion for Self Representation". On August 10, 1999, the Court heard oral testimony upon the Motion and took the matter under submission. After a careful review of all of the pleadings on file and supporting documents as well as the history of the case, previous hearings in the case, and the oral testimony presented, the Court makes its determination as discussed below.

EXHIBIT A

In Defendant's Motion, he articulated a desire to exercise his constitutional right to represent himself. He stated that he understood the danger and disadvantages that may procure from self representation. He further stated that if he conducted a defense to his detriment, he would not complain on appeal.

In the State's Response to the Motion for Self Representation, the State points out that the Nevada Supreme Court has addressed the issue of self representation, and further has adopted Supreme Court Rule 253 which sets out specific guidelines for a canvas of questions that a trial court judge should ask of any defendant seeking to assert the right to self representation. The State also cited a few of the important Nevada Supreme Court cases on this issue including Tanksley v. State, 113 Nev. 997, 946 P.2d 148 (1997), in which the Nevada Supreme Court upheld the trial court's denial of the defendant's request for self representation because the defendant was disruptive.

In its Response, the State then discusses concern that the request is untimely, the request is made solely for the purpose of delay, and that the Defendant is abusing his right to self representation by disrupting the judicial process. However, the State withheld its ultimate position relative to the Motion until the inquiry and assessment was conducted by this Court.

The Nevada Supreme Court has held that criminal defendants have an "unqualified right" to self representation, so long as there is a voluntary and intelligent waiver of the right to counsel. See, Lyons v. State, 106 Nev. 438, 796 P.2d 210 (1990); Baker v. State, 97 Nev. 634, 637 P.2d 1217 (1981), citing Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). However, although the constitutional right of self representation is generally protected by the court, courts have denied self representation where:

(1) the defendant's request for self representation is untimely;
(2) the request is equivocal;
(3) the request is made solely for the purposes of delay;
(4) the defendant abuses the right of self representation by disrupting the judicial process;

(5) the case is especially complex, requiring the assistance of counsel; or
(6) the defendant is incompetent to voluntarily and intelligently waive his or her right to counsel. Id.

In order to ensure that the Defendant has voluntarily and intelligently waived his Sixth Amendment right to the assistance of counsel, the Nevada Supreme Court adopted Supreme Court Rule 253, effective as of March 31, 1997. The purpose of the rule is to set out guidelines for a canvas that is meant to be an in-depth inquiry into whether or not an individual fully understands the disadvantages of self representation as well as an inquiry into the Defendant's background and ability to represent himself. Once a court has asked these and other relevant questions of the defendant, the defendant's right to represent himself may only be denied when one or more of the relevant factors articulated in Lyons v. State, *supra*, is present.

At the end of all relevant inquiry in open court, the Public Defender's Office expressed its position that Mr. Vanisi had satisfactorily answered all of the questions posed to him by the Supreme Court Rule 253 canvas, and should be allowed to represent himself. Similarly, the District Attorney's Office opined that Mr. Vanisi had satisfactorily answered the questions posed to him, but continued to voice concerns about the timeliness of the Motion and whether or not that would cause a delay in trial, as well as the possibility that the Motion was made to disrupt the judicial process. Additionally, the State said that at times previous to the current hearing, the Defendant had acted in a disruptive manner.

The Court believes that Mr. Vanisi was able to recite answers to the Court's inquiry which revealed him to be a very intelligent person who had carefully reviewed some of the most significant cases involving self-representation. However, inquiry as to whether to grant a defendant's request to discharge counsel and represent himself does not stop with the basic questions. The Court must assess many factors. Paramount to the Court's assessment must always be that the defendant has a right to represent himself.

At the conclusion of the Supreme Court Rule 253 inquiry, this Court had serious concerns about Mr. Vanisi's request to represent himself. First, although this request was technically timely for purposes of Lyons v. State, *supra*, this Court believes the Motion was made for the purpose of delay. Several factors enter into this Court's assessment of the Defendant's motive for the Motion being for the purpose of delay. The Defendant has previously verbally, without agreement of counsel, requested a continuance of the trial. Further, the Defendant, in June of this year, requested that the Court appoint new counsel to represent him. The Court denied that request. The Defendant then refused to cooperate with counsel which in fact caused a delay to take place. All matters ceased to be litigated while the Defendant was evaluated for competency. A reviewing court is directed to the sealed portions of this case to see the assessments of the physicians who examined the Defendant. This Court found the Defendant competent to proceed. Now, the Defendant has filed his Motion for Self Representation. The inquiry of Mr. Vanisi revealed he had formed his intent to represent himself on January 16, 1998, (the day of his arrest on this matter), but did not make a request to do so until August 5, 1999, approximately one month prior to the commencement of the second trial. Although the Defendant states he is not making this Motion for the purpose of delay, the Court finds otherwise in light of his previous actions and requests in this case.

Next, this Court believes that Mr. Vanisi is abusing the right of self representation by disrupting the judicial process. At previous hearings, Mr. Vanisi has blurted out statements in a loud voice and interrupted this Court requiring this Court to caution Mr. Vanisi about his conduct. During the Rule 253 inquiry by the Court, the Defendant exhibited difficulty in processing information. He took an extremely lengthy period of time to respond to many of the Court's questions, the courtroom proceedings stopping for two to three minutes at times while he pondered his answer. The Court was asked to repeat the same question many times before answering. In addition, the Defendant refused to answer the Court's question because he

believed it to be an "incomplete sentence." He frequently asked the Court questions rather than answering the Court's questions directly. Further, he spoke out loud to himself in such a manner that it was at times difficult to determine if he was speaking for his own benefit or to the courtroom audience or the Court. Further, Mr. Vanisi has previously been observed making statements under his breath while others were speaking in court. Moreover, at past hearings, Mr. Vanisi has been observed standing up and engaging in unsettling rocking motions, as well as repeating himself over and over again. Based on this combination of words and gestures during prior proceedings, this Court has concern about future disruptions during trial.

Further, the Defendant has a history of aggressive and disruptive behavior while at the Nevada State Prison which required aggressive action on the part of the Prison guards, as well as several incidents at the Washoe County Jail. Further, he has previously asked for accommodation by the Court by way of ordering the security detail to provide a less restrictive confinement of the Defendant while in the courtroom. The Court has diligently safeguarded the Defendant's ability to function and not be presented in a compromising position to the jury, while also safeguarding the safety of all participants in the courtroom. In response to the Court's inquiry if the Defendant thought self representation would allow him full movement in the courtroom, the Defendant's answer and demeanor was interpreted by the Court as yes, and if the Court did not grant him that accommodation, the Defendant would be able to complain on appeal that he was not afforded an equal opportunity to present his case as the prosecutor was afforded. This reveals a "tactic" intended to disrupt the judicial process.

In the case of Tanksley v. State, 113 Nev. 997, 946 P.2d 148 (1997), the Nevada Supreme Court stated that "if the district court decided that [the defendant's] pretrial activity was a strong indication that [the defendant's] self-representation would disrupt the [trial], we will not overturn that factual determination." Further, "This court will not substitute its evaluation for that of the district court judge's own personal observations and impressions." Id.

Accordingly, this Court finds that Mr. Vanisi's Motion for Self Representation is made for the purpose of disrupting the judicial process.

This Court must also consider the complexity of this case and whether the Defendant's self representation would virtually deny him a fair trial.

This Court recognizes that a request for self-representation should not be denied because the court considers that a defendant lacks reasonable legal skills. Lyons v. Nevada, *supra*, and Tanksley v. State, *supra*. However, two Nevada Supreme Court cases have upheld the trial court's decision to deny a defendant's request for self-representation when the case was especially complex.

In the case of Lyons v. State, *supra*, the Nevada Supreme Court stated that "a court may deny a defendant's request to represent himself when a case is so complex that the defendant would virtually be denied a fair trial if allowed to proceed pro se". The Court in Lyons cited the Florida case of Ashcroft v. Florida, 465 So.2d 1374 (Fla.App.1985) in which the District Court of Appeal of Florida held that "self representation is not an absolute right and need not be allowed when it would jeopardize a fair trial on the issues...The judge determined on the basis of the nature of the evidence to be adduced at trial, his inquiries to defendant, and his observations of defendant at prior hearings that defendant would not get a 'decent' trial. We equate 'decent' with fair, especially in view of the trial court's contemplation of the technical aspects to be involved at the trial, such as expert testimony involving fingerprints, serology, and hair comparisons."

Recently, in the case of Meegan v. State, Nos. 29511, 29739, Supreme Court of Nevada (November 25, 1998), the Court held that the murder defendant's request to represent himself was properly denied due to the complexity of the case. Specifically, in Meegan, *supra*, the court found "the district court asked Meegan a series of questions designed to determine whether he knew anything about the law and procedure governing his case. Upon receiving

answers which indicated that he knew virtually nothing about either, the district court denied his request. The basis for the denial was that Meegan was incapable of representing himself in a complex case which involved over thirty witnesses, and involved expert testimony on topics such as DNA evidence and other medical topics. The district court determined that the trial would be disrupted if Meegan were allowed to represent himself...Thus we hold that based on the complexity of the case, the district court properly denied Meegan's request to represent himself."

Both Lyons v. State, *supra*, and Meegan v. State, *supra*, are similar to this case. This case is extremely complex. There are multiple charges against the Defendant. The Defendant is charged with the murder and armed robbery of a police officer, the armed robbery of two clerks in two different convenience stores, and the grand larceny of a motor vehicle from still another person. There are going to be approximately 60 witnesses, many from multiple jurisdictions. In addition, there will be expert witnesses presenting complex scientific evidence. In addition, death penalty cases by their very nature are extremely complex, and thus the Nevada Supreme Court has articulated in Nevada Supreme Court Rule 250 specific procedural guidelines to ensure that Defendant's receive a fair trial. In addition to the legal guidelines of Supreme Court Rule 250, the rule also requires that a criminal defendant facing the death penalty be represented by two attorneys, one specifically trained and certified by the District Court as a death penalty qualified attorney. In this case, Mr. Vanisi is seeking to substitute himself in place of three competent attorneys, the Washoe County Public Defender and two of his deputies.

The Court's concern about these complexities is compounded by Defendant Vanisi's responses to this Court's questions about the charges against him. Mr. Vanisi could not name the elements of all the crimes against him, nor the penalties attached to those crimes, nor the lesser included offenses, nor the elements of the death penalty requirements, nor the maximum

punishment possible for all of these crimes. He focused only upon the potential penalty of death without being aware of all the other charges. Although the Court understands why this is foremost in the Defendant's mind, the other charges and defense of those charges could seriously impact the entire trial process. The Defendant was clearly unable to appreciate the relationship of all the charges to each other. It is evident to the Court that the Defendant's inability to relate to his entire case and subtle nuances of evidentiary issues presented by the case's complexity would result in a denial of a fair trial, if the Court were to allow him to represent himself.

In addition, as the prosecutor argued before the Court, the case is not one where it would be fundamentally fair or result in a fair trial to allow a defendant with a high school education, Mr. Vanisi's mental health issues, and current drug medications, to represent himself while facing the potential of the death penalty. Accordingly, this Court finds that this particular death penalty case is too complex for this particular Defendant, Siaosi Vanisi, to represent himself.

The Court has reviewed a videotape admitted as Exhibit "A" on August 10, 1999, and specifically finds that it does not form the basis of the Court's determination that the Defendant is making this request for the purpose of delay. It is, however, consistent with the Defendant's demeanor and verbal behavior in previous hearings before the Court.

The Court does not believe the combination of drugs the Defendant is currently taking affects his competency to stand trial or assist counsel. However, the side effect of drowsiness could affect the Defendant's ability to effectively handle the complex issues involved in this case.

///

///

///

///

Based on the foregoing, and with good cause appearing,

IT IS HEREBY ORDERED that Defendant Siaosi Vanisi's Court Ordered Motion for Self Representation is hereby DENIED.

DATED this 11 day of August, 1999.

Connie J. Steinheimer
DISTRICT JUDGE

CERTIFICATE OF MAILING

Case No. CR98-0516

Pursuant to NRCP 5 (b), I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the 11th day of August, 1999, I personally hand delivered to the following individuals in the courtroom, a true copy of the attached document, addressed to:

Siaosi Vanisi, Defendant

Richard Gammick
David Stanton, Deputy
Washoe County District Attorney

Steve Gregory, Deputy
Jeremy Bosler, Deputy
Washoe County Public Defender's Office

Exhibit 20

Exhibit 20

Case No. CR98-0516

Dept. No. 4

FILED

'99 JUN 28 P4:53

BY S. Crawford

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA, Plaintiff,	)	Pre-trial Motions
vs.	)	June 23, 1999
SIAOSI VANISI, Defendant.	)	Reno, Nevada

APPEARANCES:

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

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

The Defendant: SIAOSI VANISI

ORIGINAL

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

RENO, NEVADA, WEDNESDAY, JUNE 23, 1999, 1:30 P.M.

-o0o-

THE COURT: All those present in the courtroom who are not -- all the DRT team and the law clerks that are present for the Court, please stand. We need your names for the record, and we'll just start on the left side and move around, not the bailiff, but everyone else.

DEPUTY IVESON: Deputy Josh Iveson.

THE COURT: Back row.

DEPUTY WILLIAMSON: Deputy Brian Williamson.

MS. SANCHEZ: Africa Sanchez.

MS. VOGUE: Lisa Vogue.

MR. CHAMPAGNE: Justin Champagne.

DEPUTY LARRAMENDY: Deputy Greg Larramendy.

LIEUTENANT WISE: Lieutenant Jeff Wise.

MR. PETTY: John Petty.

THE COURT: You represent the defendant.

SERGEANT GROSS: Sergeant Mike Gross.

DEPUTY LONG: Deputy Rob Long.

DEPUTY ELLIS: Deputy James Ellis.

THE COURT: Okay. Mr. Petty, you do not need to be sworn. Everyone else, please raise your right hand.

MR. GREGORY: Your Honor, if I might, who are the three individuals?

THE COURT: My law clerks and Judge Polaha's law clerk.

MR. GREGORY: I object to Judge Polaha's law clerk being present.

THE COURT: Sorry, Mr. Champagne.

MR. GREGORY: And these two individuals are your law clerks, Your Honor?

THE COURT: Yes. One for the summer and my full-time, all-winter law clerk.

MR. GREGORY: Thank you, Your Honor.

THE COURT: Now, I am going to have them sworn, the law clerks, so they can be seated.

Law clerks and Mr. Petty be seated.

The request is to have law enforcement sworn. This hearing, as you know, and I have told the gallery, is under camera and under seal. Therefore, the clerk is going to ask you if you swear that you will abide by the rules of the closed session, and that means that you may not discuss the content of this hearing with anyone, including each other.

You may not disclose it to anyone until you are released by court order. That means you may not disclose it even for purposes of protecting someone or if you think it may come up that you think it would be important to represent what happened here when you are having a

discussion about Mr. Vanisi's case or his transport.

And the order is that you may not discuss anything that is said with each other or anyone else for any purpose without the court order from me.

Now, the clerk will ask you if you solemnly swear to follow this admonition and if you understood it. Please raise your right hands.

(Deputies sworn.)

THE COURT: Thank you. You may be seated.

Okay. Now, Mr. Vanisi, it is your turn. Okay. Now, you filed a motion. What you have to do is tell me exactly what your problems are with specificity.

THE DEFENDANT: Yeah, may I have a word with -- may I have the Court's indulgence's to have a word with Jeremy?

THE COURT: Mr. Bosler?

THE DEFENDANT: Yes.

THE COURT: Go ahead.

MR. BOSLER: Thank you, Your Honor.

THE COURT: Go ahead and stand up and tell me what your concerns are about your attorneys, Mr. Vanisi.

THE DEFENDANT: I assume that you received my motion to dismiss and appoint counsel. And I have also received opposed to -- motion to oppose to dismiss counsel and appoint counsel. And I have not yet fully read -- I'm

only on page 7 of the District Attorney's Office opposition to dismiss counsel.

But I would like to dismiss my counsel, namely Steven Gregory and the Public Defender, and the whole Public Defender, the County Public Defender and the State Public Defender.

I think I indicated that in my motion, that I'd like to dismiss them to have access to assisting me in this legal proceeding.

Now, that is what I stated in my motion. And so I guess what are you asking me now, Judge, I'm not familiar with your question because I have addressed the motion to you, and I guess what I'd like to hear is for you to grant those motions to dismiss my counsel. And I guess I will have to give some proof and some arguments of why I would like for you to grant that motion.

So yeah, where do you want me to begin? I guess perhaps it will help me if you ask me a question.

THE COURT: Well, I did. What's wrong with your counsel?

THE DEFENDANT: Yeah. My counsel here, my counsel here have not given me the full force of the full effect of counsel that I'm entitled to. I'm entitled to the full force of counsel, am I not, Your Honor? Yes, I am entitled.

THE COURT: What haven't they done?

THE DEFENDANT: They have not -- here, let me gather my thought real quick. My head itches.

Yeah. Part of counselor, you are supposed to spend time with your client, you are supposed to go over some strategies. They have not.

They have not fully prepared me with all the legal parameters that would be helpful to me to make decisions. I am making decisions based on limited information that they are giving me, and they are telling me one thing, and yet, when I do my research and do my investigation, I find something totally different from what they are telling me. So I then have to raise the suspicion that they are ineffective.

Can I stop there or do you want me to elaborate more of their ineffectiveness of them preparing me?

THE COURT: You have to be specific. What did they tell you, give you advice about that you did some research on that you think they are wrong about?

THE DEFENDANT: Yeah.

THE COURT: This is why this is all closed. You can talk about this.

THE DEFENDANT: Thank you, Your Honor. Before I go into the heart of why I want them dismissed, is there -- is this the first time -- is this usually the

procedure for every person that wants to dismiss their counsel to go through this, to have to explain specifically detail why there is?

Am I not entitled to say that I definitely have a conflict with Gregory and the Public Defender's Office? Yes, I do have a conflict, and I want to put on the record that I have a conflict. But you are going to make me say more and more?

When will it be enough for you that I am -- that I am in conflict with my attorney? When will it be enough?

I'm afraid if I give you, if I explain to you -- I have already explained to the Court, and I have already put on the record that they have failed to prepare me adequately. The information they have given me --

THE COURT: You are not giving me specifics. Do you know what the word specific means?

THE DEFENDANT: Yes. So, Your Honor, give me a second. Give me four seconds to take a deep breath and to start all over again.

THE COURT: That is fine.

THE DEFENDANT: Obviously, you do not like what I have said about my counselor.

THE COURT: Wait, wait, wait. Calm down. Now stop a second. It isn't whether I like what you are saying.

That's not the point here.

If you want your motion granted, the law requires that you tell me specific things, and then the law requires that the lawyers answer those specific things.

THE DEFENDANT: Give me an answer of something specific because I'm afraid that I'm going to fail you again if I were to explain to you why. Give me an example, Judge.

THE COURT: What did they tell you -- you said they gave you some information about the law and you did some research and found out they were wrong. Now, what did they tell you that they were wrong about? That's specific. That tells me what they did.

THE DEFENDANT: Before I address that, can you give me another example? Can you give me another example of a specific issue? Because I have to assume other defendants have stood here and asked their judge to dismiss their counsel because of conflict of interest.

Can you give me an example, a specific example? Because I'm willing -- before I address your question, because I'm not understanding exactly the specifics you are asking for. So give me -- let's just hypothetical, give me a specific example, please.

THE COURT: Do you have anything else you'd like to say?

THE DEFENDANT: Yeah. There's many things that

I would like to say to the Court and many things I want to say on the record to put on the record for my protection. Because I'm afraid that the counsel that is appointed to me is ineffective and will not put these things on the record.

And before I put these things on the record, I'm still waiting for you to help me understand the specificness of what you are asking me to give because I'm afraid if I make another attempt to give you an explanation why I want my counsel dismissed, you will not be happy with it. So give me another example --

THE COURT: You tell me whatever you want to say. This is your chance. I can't tell you any more. I don't have the brain power to explain it any further. I did the best I could.

THE DEFENDANT: I think we need to try a little harder for the brain power because I tried to explain to you and yet it wasn't sufficient for you to understand.

THE COURT: Put on the record what you want to put on the record. Say whatever you want to say. This is your time.

THE DEFENDANT: I think that it would be prudent to take one issue at a time --

THE COURT: Say it.

THE DEFENDANT: -- before I put many of the things I'd like to put on the record. And so I'd like for

the judge --

THE COURT: Do you have any other allegations against your counsel? Make them now or sit down. That's your chance.

THE DEFENDANT: Maybe I should refer to the motion.

THE COURT: I have read your motion.

THE DEFENDANT: Because I need help, Your Honor. I need help. Please help me. I'm not here to be confrontational with you.

THE COURT: What do you want help with?

THE DEFENDANT: I want help because I'm asking you to grant my motion to dismiss my counsel, and yet, I have given you an explanation.

THE COURT: I read your motion. What do you want to tell me that's in addition to what you wrote down?

THE DEFENDANT: In addition, the thing here, if I -- Nevada Revised Statute 7.115 and Nevada Revised Statute 7.125 allows me to have a counsel that will advocate for me to be effective. That is what I want, an effective counsel. And that's what I want.

Here, let's go to page 2 here of this here. Maybe -- because I'm still -- I could be more specific if you give me an example, Judge. That is what I would like from you, to give me something specific because I'm not

understanding exactly what you are not understanding of me.

THE COURT: What did they tell you that you found out was wrong? What don't you understand about that question?

THE DEFENDANT: Yeah. You know, I really adore Steven Gregory and Bosler and the Public Defender, and I don't at this time, at this time, want to avoid saying anything about them of what they have told me, what I have found out at this time. But I will after I have understood what is specific, what the specific is.

THE COURT: That is specific.

THE DEFENDANT: As I say, there's got to be another example. There's got to be -- this is such an intricate procedure that everything -- that this can't just be the only one. There has to be another example. Maybe if you give me another example of something specific, you can help me.

THE COURT: Why don't you sit down for a minute.

THE DEFENDANT: Sit down? Yeah. But to keep in mind --

THE COURT: Just listen to what I'm going to say now. You listen to what I'm going to say.

The procedure of you saying exactly what's wrong with your lawyers and them responding is not my

procedure. I didn't dream this up just because you filed a motion. You are not the first defendant who has filed this kind of a motion. Not the first defendant in this courtroom or any courtroom in this courthouse, or any courtroom in this state or the nation.

So what's happened is the judges are told, Judge, if a defendant files this kind of motion, this is what you have to do. Now, the Supreme Court has told me, if you refuse to give me anything more than what you wrote down in your motion, I have to deny your request. That's my instructions. That's what the law tells me I have to do.

Now, if you don't want to give me specifics as to what's wrong with your lawyers, or how they are ineffective, or what kind of advice they are giving you that's wrong, or how they are not taking care of your case, that's your choice to make. But if you make that choice, I have no record with which to grant your motion.

So it's in your best interests, if you really want them relieved, to give me the specifics. If you do not give me the specifics, I must deny your motion, and I will be upheld because I'm following what the Supreme Court has told me to do.

So it's up to you. I have read your written motion. It's not specific enough. If you have got some real complaints about your lawyers, which I'm sure you do or

you wouldn't have filed it, you have got to tell me those things now. If you don't, the motion is going to be denied and we're going to move on.

Now, the only thing you have told me that I could say, okay, give me the specifics, was that you said they weren't giving you good advice. So I'm saying okay, what did they tell you and what was wrong?

You said they don't spend time with you. They can address that.

You said you're getting limited information. That's not good enough. You have to tell me what information you think they should be giving you that they are not giving you.

Now either you go down this the way we have to do it, or we'll have to deny your motion and we'll move on. Now, I have the whole afternoon set aside. It doesn't really matter if you want to talk to me for 10 minutes or you want to talk about this for five minutes, or you want to talk about it for a half hour. This is your time to tell me exactly what's going on.

Now, nobody in this courtroom can talk about it. Nobody can tell the press, the D.A. can't know about it. Nobody can know about it, and it can never be brought up by anyone. But it's the only chance that you have to get these people off your case.

Now, if you want to take advantage of the opportunity I'm giving you, do it. But if not, we'll move on.

Now do you understand what you have to do?

THE DEFENDANT: Your Honor, I have understood you from the get go, from the beginning. May I please stand up?

THE COURT: Yes, you may.

THE DEFENDANT: Your Honor, I have understood you from the very top, from the very beginning. All I was asking of the Court was to give me a specific example. That's all I was asking.

I understood just based on what you last said crystal clear, as it was crystal clear for me in the beginning that I wasn't giving you abundance amount of information. I wasn't giving you enough detail. That I understood, and I also said on the record that I'm not willing to at this time or yet because I was hoping that you'd give me some more specifics. But that's okay.

Let's move on without the specifics and put on the record that the judge did not give me specific information of what a person, what a defendant must do to dismiss counsel. But let's move on from there. I just wanted to state that on the record.

So I'm hoping -- because if a person is trying

to -- if a person is trying to ask the judge to -- to have a motion --

THE COURT: I thought I answered that question.

THE DEFENDANT: I don't think I made myself clear again. I'll try again. I was hoping for a little gratuity of the specifics. That is all I was asking.

That's okay. I have indicated on the record that I'll move on from there. I will move on from that. I'll move on and let's go on to something different.

THE COURT: Go ahead.

THE DEFENDANT: Because I have understood you, and you are going to say the exact same thing, and I'm going to say I understood you the first time. So number one.

To move on here, you have to give me just a little more because I need to piece -- there is this one puzzle that I have found through my research, yeah, from my little research of my studying the law books, specific digests and all the other books that was available at hand, there was one information, there was some information that I had come across through my research that had led me to stand away from there and to be objective and look at my counsel, and ask some questions. I had to ask some questions.

And I'll be more specific. I'm just trying to figure out. Be patient with me, Judge.

THE COURT: I am.

THE DEFENDANT: I'm trying to tie two things in one, and that's what I'm trying to do is to tie two things in one, because the reason for my motion to dismiss counsel has to do with this other, with this other piece of information that I have discovered, and I want to tie the two. So I'm trying to -- keep in mind, that I'm trying to do something here that I'm not familiar with and I'm not versed with.

THE COURT: That's okay.

THE DEFENDANT: But I say to you, Judge, the prosecutor, the District Attorney, Dick and David, cannot prosecute me again. I say to the State of Nevada, they cannot retry this case again. I say to you, Judge, that you are obligated to protect my constitutional rights.

My research of the Fifth Amendment, United States Constitution, clearly explains: Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.

I'm going -- the prosecutor and the State wants to violate my constitutional right, which is the Fifth Amendment, and process me again, subjecting me to life or limb twice. The Constitution protects me, and you are obligated, Judge, to protect my constitutional right.

Furthermore, furthermore, now under the Nevada Revised Statute, 174.085(4), which explains proceedings not

constituting an acquittal states -- maybe I can just say it on the top of the head, but I'm going to assume -- let me put it on the record.

Well, I'm not really sure what to put on the record and not put on the record, but just to help me out, to make things understood -- Judge, I have always been civil in your court. May I please have one free hand to go through my papers?

I have always been civil and I continue to be civil. Please, most people such as in Washoe County and most people who deal with me have the misstatement, I'm an English gentleman and they think I'm this villain.

May I have one hand to be free to go through my paperwork? I brought paperwork to help me to make my pleading more effective and more efficient so I can make these references to them. May I please have my right hand free, please?

THE COURT: I'm not going to free your right hand, but I will allow you to sit down if that makes it easier to read.

THE DEFENDANT: That is okay, Judge. I'll work with what you give me.

THE COURT: Don't worry about hurrying.

THE DEFENDANT: What is that?

THE COURT: Don't worry about hurrying if you

need to get more paper off the desk.

THE DEFENDANT: I was a little hard pressed to keep up the time. I think you are putting me at ease, Your Honor.

Nevada Revised Statute 174.085 is proceedings, that gives information on proceedings not constituting an acquittal. I have already been tried on January 21st, and you declared a mistrial. This is what it simply says here.

In all cases where a jury is prevented from giving a verdict by a reason of accident or any cause, or other cause, an accident or other cause, except where the defendant is discharged.

I was not discharged. The jury was discharged.

Now, Your Honor, in the beginning, as soon as -- as soon as the first witness was called, that's when double jeopardy came into play. That's when double jeopardy came into play.

Then you had asked us, Your Honor, you had asked my counselor, you had asked the prosecutor, if this falls under double jeopardy clause. They all sat back not knowing the law. They are supposed to know the law, especially in my case where it resulted in double jeopardy.

The answer should have been yes, Your Honor, this falls under Nevada Revised Statute 174.085. This falls under the constitutional amendment number 5. This falls

under many, many cases. That's what should have been addressed to you, Your Honor.

Now, yeah, you had asked us. So I have to ask -- I have to be objective and say, why would the judge, wouldn't the judge know, the Honorable Judge Connie Steinheimer, know this falls under double jeopardy clause or not? Why would the prosecutors in one unison say no, this doesn't, this doesn't, this doesn't fall under double jeopardy.

But it as surely as one understands the law of NRS 174.085 and the constitutional right, in many cases that I have researched, just one textbook called Pacific Digest, yeah, over 349 cases, over 449 case, 549 cases where they denied rehearing. And then I have a situation here that qualifies me for the double jeopardy clause.

Judge, let me just -- maybe I'm being melodramatic, but allow me to be so. We are all punished or rewarded by the law. Some people live and die by the law. The law in some way made part of our life constitutes how we are rewarded, how we are punished.

This is a case here where I am not to be punished, that I'm not to be retried again. Sayeth the law. I'm only saying what the law is saying, that the prosecutor cannot prosecute me, the State of Nevada cannot retry me, and the Court is obligated, as you said earlier, to protect

my right.

So it's unfair -- I know I'm going to have to say what I say again. That is why I was asking Bosler why was the District Attorney dismissed, because I will have to -- they will have to be informed of this, of my motion.

And I implore you, Judge, to grant my motion to dismiss under the grounds which I have stated, which the law has stated clearly, that I cannot be retried again.

And the prosecutor is not here to hear me, hear me discuss this motion that I want to submit, my verbal motion to submit, and that has a lot to do with why I look at my -- I look at my lawyers and say, Why didn't you guys bring this to me so that I can process the information? Why didn't you tell me of these things? You said to me that this doesn't qualify as double jeopardy, but it surely does.

Now, if I want -- please make sense to my English brain, that I am incorrect, but I don't think so, Your Honor. I think it says here in Nevada Revised Statute, amendment and the Constitution surely upholds a person's constitutional right not to be prosecuted twice.

Now, I would like to hear the prosecutor, and they are not here to make their arguments to you.

THE COURT: We'll get to that.

THE DEFENDANT: I anticipate that, and I expect them to make an argument opposing my verbal motion to

dismiss. And I want to put it on the record because I have other documents here that I made notes on to prepare to oppose them, because I'm advocating the law here. I'm advocating the basic rights of a human person, of a human being not to be tried again because we're all governed by the Constitution.

THE COURT: I understand that specific allegation. So keep going with the other things.

You are going to have to -- you are right, this argument is going to have to be brought up at another time with the D.A. present. But for purposes of your relieving your attorneys, you have made your point.

THE DEFENDANT: And I want -- I want an attorney that I can have confidence in, not to short change me with this information. I could have kept them -- I wouldn't have a problem with them if they had presented this information to me.

You know, I am not a harsh person to deal with. In my situation, I have to be elastic. Yeah, if a wind blows me to the right, I have to go to the right, and I can't refuse, and I can't oppose those people who are blowing me to the left. And I go to the left when the wind blows me.

I just don't understand why my counselor, why the Public Defender availed me from this information. This

is important information. This is life or death here. And this is something that should be given to a person who is in dire need, as I'm in a dire need to stay alive.

THE COURT: I understand your point.

THE DEFENDANT: May I sit down, Judge?

THE COURT: Is that it?

THE DEFENDANT: At this point that's all that the conscience dictates to me, and I only -- I implore you to hopefully grant my motion to dismiss and my motion to appoint counsel, dismiss counsel.

THE COURT: Thank you, Mr. Vanisi.

Counsel, who would like to address the specifics? Which counsel? Mr. Specchio, I think the last issue maybe you need to address.

MR. SPECCHIO: Be happy to, Your Honor.

THE COURT: This is the way I see the specifics that he's put on. He said that you don't spend enough time with him and you haven't talked about the strategies. That is, we haven't gotten any more specific than that.

MR. SPECCHIO: Well, let me briefly respond.

THE COURT: Okay. That's fine.

MR. SPECCHIO: Judge, I started representing Mr. Vanisi in January 1998, maybe February. I'm not sure. I remember the homicide was in January. I don't know exactly how close.

Matter of fact, we sent the Utah Public Defender to talk to him before he even got back to the state because we knew we were probably going to have the case. So sometime in January or at the latest February.

I interviewed and saw Mr. Vanisi at least once a week, sometimes twice a week, sometimes three times a week during 1998. I have personally had about 1100 hours in this case. I have 1100 hours. There are two investigators and these two attorneys in addition to that.

THE COURT: You mean Mr. Bosler and Mr. Gregory?

MR. SPECCHIO: That is correct. And I would reasonably estimate that we have accumulated over 2,000 hours in this case. Our investigators have been every place that Mr. Vanisi suggested that we go. I personally went to Southern California and spoke to relatives and friends, et cetera.

As far as the hours, I'll submit it on that.

THE COURT: He has a claim that he doesn't think counsel has been effective, and the specifics of that claim is that at the time of the granting of the mistrial, a stipulation was entered into between the defense and the District Attorney, that the grounds did not rise to the level of a Fifth Amendment double jeopardy clause violation. And do you want to go ahead and respond to that?

MR. SPECCHIO: Mr. Gregory and I talked to Mr. Vanisi in that holding cell down there, which I remember. If you spend any time in there, you don't forget that. And he was advised as to what a mistrial, motion for mistrial meant and what the ramifications would be. I don't understand what he is talking about now.

He's relying on the fact that we picked the jury, that's double jeopardy, you can't ever try him again. He doesn't quite understand what the law is. He knows what he reads. But he doesn't know how to put it in the proper context.

The mistrial was declared. We didn't stop half way and say, We don't know what we're going to do, you can't retry him again.

This is an instance wherein these proceedings came to a halt, and I think we all agreed that it was through no one person's fault. A mistrial has to be declared in that circumstance. And double jeopardy does not. Unless it can be shown that it was at the fault of the prosecution and the prosecution ambushed in order to get that mistrial. That's not what happened in this case.

THE COURT: And you did discuss that with Mr. Vanisi prior to the mistrial?

MR. SPECCHIO: Not in that detail, but we explained to him what it was, what would probably happen,

and that he would be retried. We would retry this some other time.

MR. GREGORY: I did talk to him in detail at the time, Your Honor.

THE COURT: Thank you, Mr. Gregory. Also has there been a request from Mr. Vanisi to file a motion to dismiss on the double jeopardy grounds? Or is this the first you have heard of it?

MR. SPECCHIO: Not to us.

MR. GREGORY: Not to us, Your Honor.

MR. SPECCHIO: Judge, we're also bound, we're officers of the Court. We entered into a stipulation at that time. If my memory serves me correctly, that we stipulated that it wasn't a double jeopardy issue.

THE COURT: Yes, you did.

MR. SPECCHIO: Well, I can't come in here, whether he wants me to or not, and say, By the way, I was only kidding with that stipulation, Judge.

We don't file frivolous motions, Judge. That doesn't happen in my office. So that wouldn't happen under any circumstance.

THE COURT: Has there been any -- do any of you attorneys know of any reason why you cannot effectively continue as counsel for Mr. Vanisi?

MR. GREGORY: No, Your Honor.

MR. SPECCHIO: There is none, Judge.

MR. BOSLER: No, Your Honor.

THE DEFENDANT: Your Honor --

THE COURT: Wait a minute. I'm talking to them. It's their turn.

You have got 2,000 hours of attorney time thus far?

MR. SPECCHIO: I have 1100. I can give you my time sheet if you want to make it a part of this under seal.

THE COURT: I think that would be a good idea.

MR. SPECCHIO: I think that's through today, Judge, and about 1100 hours.

THE COURT: The clerk will mark it. This exhibit will be under seal to this in camera hearing.

THE CLERK: Exhibit B-1 marked.

(Exhibit No. B-1 marked.)

THE COURT: Counsel, do you know, as officers of the court -- and we all know why you are in the Public Defender's Office, you, all three of you have expressed to the District Court a concern over this type of case and a commitment, a personal commitment to the representation of indigent defendants charged in capital cases.

Do you know of any reason why you cannot provide fair and adequate representation to Mr. Vanisi through these proceedings?

MR. GREGORY: No, Your Honor.

MR. SPECCHIO: No, Your Honor.

MR. BOSLER: No, Your Honor.

THE COURT: Do you know of any inadequacies in your office that would require some short changing of Mr. Vanisi's representation?

MR. GREGORY: None whatsoever.

MR. SPECCHIO: Mr. Vanisi's case, Your Honor, is top priority. No expense is spared in this case. It's been that way since January or February 1998.

THE COURT: Thank you.

Mr. Vanisi, you wanted to respond to something that was said?

THE DEFENDANT: Yes, Your Honor. You asked them a question. You asked them a question if they -- if I had made any attempt to present the motion to dismiss to them. They said no.

Well, they said no because it goes to part of my argument. First is because they don't spend time to see me so that I can tell them these things. How can I inform them if they do not accept my collect call?

One time, one time I made a collect call to them, they accepted one time out of the many times that I have tried to contact the Public Defender's Office. No availability of Specchio. I tried his secretary. I tried

Specchio himself.

I tried -- I don't have Bosler's number, but I tried Gregory, I tried the Public Defender's Office. I tried -- yeah, I tried the Public Defender's Office, Specchio, Gregory, and a secretary. And only one time out of the many times, many attempts, five days out of the week, five times; the second week ten times; third week, 12, 15 times. I contacted, spoke to Gregory one time.

I called through the Public Defender's Office and dispatched me to the investigator. The reason why they don't know about this motion to dismiss is because they are not available to me. If they were to come to see me weekly, I can ask them these questions so they can adequately inform me what is a double jeopardy and what is not double jeopardy, because they are still going to hold and they are going to hold to this argument to the day they die, that this is not a double jeopardy case. But simply the research and the paperwork and the many cases will support that this is a double jeopardy, this falls under double jeopardy.

Now, I don't assume that as soon as the jury is picked that it becomes a -- constitutes double jeopardy.

THE COURT: Just a second. There is something you said I have to ask you about. Did this problem with visiting with them start when you went to prison? Now that you are at the prison, they are not accepting your collect

calls?

THE DEFENDANT: That's just one. There is another, if you want me to elaborate more. That's just one. That's just one. That's just one.

Because I would have liked, I would have liked to say to Gregory, Gregory, look at these books here. Interpret this for me. Look at these findings here. Look at what's going on here, Gregory. This is how I'm interpreting it. This is how I'm reading it. And tell me, Gregory, if I'm incorrect. Because what they have told me, as I stated earlier, they are giving me information that I have found out earlier that it raises suspicion, it raises a layman to ask.

So they are not -- they are not effective, Judge. That's just one issue. I can give you more specific if you want me to continue on.

THE COURT: Go ahead. Give me more specifics.

THE DEFENDANT: For an example here, Specchio once stood here and said that he has seen when I was at NSP, when I was at NSP on July 28, 1998, and Specchio had advocated for me to come back to Washoe, and Specchio had put on the record that he had seen me, his investigator, over 20 times.

That is far-fetched because when I go back to look at the visitation records, it doesn't show. It doesn't

show 20 times of visitation. It doesn't even show 10 times of visitation from June to January 1998, of Specchio visiting me. So there is an inconsistency. Because I'm looking here, 20 times?

And I look at the records, because I have contacted the sergeant, and said, Give me something here so I can see how many times. Because there is an abundant amount of information that I need to be processing in my behalf.

So I see less than 20 times, Your Honor. And he makes this claim that this is -- that he's spent -- yes, he spent a lot of time without contacting me, no doubt. I believe that he does put 1100 hours of hard arduous work that he spends on my case, and I'm indebted to him on that.

But I want to be clear, if I'm going to have representation, Your Honor, I want to have a full force. I want to have the full effect of counsel. I want to be confident with them.

Because what they are now, what they are going to be asking me is, this is Vanisi, I want to say, well, I am not going to be keen on trusting them right away because I will have to go back and find out what's going on. Because this is surely something here, Judge.

I have here something that falls under double jeopardy clause. And if the Court does not protect me and

insure my constitutional right, I warn -- I don't warn. Just I want to put on the record that this will constitute a judicial misconduct if the Court does not insure my constitutional right. My constitutional right is the Fifth Amendment, and that is one of my grounds of my arguments, and the Nevada Revised Statute 174.085(4) is another ground of my argument.

But I guess they have not fully responded to the double jeopardy. Because if this is not a double jeopardy clause, double jeopardy, if this doesn't fall under double jeopardy, I would like to be explained -- I'd like for them to explain on the record why it is not so I can read the record and go back to the case law books and do my research to find out if it is not or if it does not.

If the Court denies my motions, I will have to -- I will be prepared, Your Honor, to send -- submit a motion of certiorari, a motion, a writ of certiorari to higher court to inform them that they have got to look at this proceedings here to see because it's highly irregular.

Thank you, Your Honor.

THE COURT: Anything further from counsel?

The threshold of Mr. Vanisi's motion is that he believes counsel has been ineffective and specifically because counsel stipulated that there was not a double jeopardy violation with granting of the mistrial and the

resetting of the case for trial. Additionally, he argues that counsel has not spent enough time or accepted collect calls.

The issue here is whether or not Mr. Vanisi can receive a fair trial with counsel who have been appointed by the Court. The adversarial process, not the accused relationship with his attorneys, is what is important.

The law guarantees that you receive effective counsel, Mr. Vanisi. However, it does not guarantee that you may have the attorneys of your choice.

The fact that you do not have confidence in your attorneys is not a basis for granting your request to relieve counsel. The issue is whether or not the representation is inadequate, and I cannot make such a finding based on the record today.

The Court observed counsel's behavior at the initial trial that we had last year, I guess it was earlier this year, and I observed counsel's advocacy on your behalf. I know counsel's advocacy in the motion work and continuing advocacy counsel has made for you, and I cannot find at this time that in any way counsel has fallen below any type of objective standard in their representation of you.

When I look at the extent of conflict here, I see that there is a conflict based upon your being at the Nevada State Prison, which was necessitated by your own

behavior, and that problem is that you don't get to see them as often as you did.

I would encourage a schedule to be set where collect calls could be made at a specific time that works with the prison schedule and counsel's schedule so you can set something up if you haven't already. I would encourage that.

MR. SPECCHIO: Judge, we have a policy in the office that we accept collect -- first of all, he doesn't have to call collect. He can call direct. But he prefers to call us collect for some reason.

But the policy in the office is we'll accept them so long as the lawyer to whom he's addressing the call is present. I mean, he calls me at home. My wife finally just said, I have been ill and I wasn't going to take any calls from him. But, you know, it's like $11.00 a call or something.

THE COURT: That is why I'm saying, set up a schedule. I understand you would accept the call if you are there. I'm suggesting maybe you can set a schedule that will be there at a certain time or between a window once a week.

MR. SPECCHIO: Judge, we're probably going to have to address the issue of getting him back down here anyway because we're getting closer to trial and we're going

to have to have contact with him, assuming we're going to represent him. We're going to have to have -- and it's grossly inconvenient to go to the prison.

THE COURT: I understand.

MR. SPECCHIO: It takes hours to get there, come back.

THE COURT: Let me finish my record here.

MR. SPECCHIO: I'm sorry.

THE COURT: My findings. Thank you, Mr. Specchio.

So that's the extent of the conflict. That and his not having confidence in counsel.

When I look at this, based upon this inquiry that we have made today -- and I certainly have I think exhausted Mr. Vanisi's concerns -- I cannot see that there is an adequate basis for the relieving of counsel in this case.

Not only is there not a reason to grant the motion, and Mr. Vanisi's motion does fail on its grounds because it is not established on adequate grounds, I'm also concerned about the reports from the psychiatrist. And Mr. Vanisi is now indicating he wants to take a writ. It does appear and it does create some suspicion that Mr. Vanisi has an agenda to delay the trial rather than to move forward with counsel and prepare and get ready.

Based on the hearing last time when Mr. Vanisi refused to talk to Mr. Gregory substantively, which required an evaluation, which required a continuance and before we could get in here for that, a new motion to dismiss counsel, which Mr. Vanisi, being very bright as he is, knows would require a continuance of the trial if I even granted it, and now a request that if I deny his motion, he is going to go to the Supreme Court, tells me that Mr. Vanisi's true motivation here is to continue this matter out rather than go forward to trial, especially in light of the really minimal conflicts, that he can even address these conflicts! They are very significant to Mr. Vanisi, but they are not significant in terms of the Court's analysis of them.

So for those reasons, I am going to deny the motion to relieve counsel and not grant Mr. Vanisi's pro per oral motion to dismiss at this time. That's denied also. He's represented by counsel. All motions will be brought by counsel.

Now, that doesn't -- Mr. Vanisi, that doesn't stop you from filing your writ. If you want to go to the Supreme Court, do it. It doesn't stop you from later objecting to what I did. If, in fact, you get through the trial and you are found guilty, you can still complain about what I did in this hearing, what your lawyers did.

There are lots of opportunities for you to get

that all heard. Because I'm making these findings, and reaching this conclusion, doesn't mean that you can't appeal to the Supreme Court. You may. You may file a writ to the Supreme Court.

I can't tell you what they will do with it, but you can do it. And when the proceedings are all concluded, if you are not acquitted, then you can always appeal. And everything that we have done today is subject to an appeal.

So just so you understand, it isn't precluding you from ever raising this before the Supreme Court.

THE DEFENDANT: One just quick word, Your Honor, please. Yeah.

THE COURT: Now, you are represented by counsel. You sure you don't want to talk to your attorney?

THE DEFENDANT: I will, I will. Through your finding -- through your finding, you have not even explained fully and specificness of why you are denying my motion. You just said, oh, because you are finding of confidence, you say confidence.

Now, in the beginning, Your Honor --

THE COURT: Mr. Vanisi, there's nothing to debate here. If you don't like my ruling, take it to Carson City.

THE DEFENDANT: I have no problem with your hearing, Your Honor.

THE COURT: There is nothing else for you to talk about. You have counsel.

THE DEFENDANT: Just one quick question. Can you please --

THE COURT: Talk to your lawyers.

THE DEFENDANT: Yeah. Jeremy, will you please ask the judge to explain on the record -- she's asked me to ask you a question.

MR. GREGORY: Be quiet.

Your Honor, I think you have seen an example of how manic Mr. Vanisi can be and how difficult he is to handle. I have already talked to Mr. Gammick, and he indicated to me that he would have no objections if the Court would follow the suggestions as reflected in --

THE COURT: Wait, wait, wait. Are we going beyond the motion to relieve counsel?

MR. GREGORY: We are indeed.

THE COURT: So now we have to go back on the record. We will unseal the further proceedings.

MR. GREGORY: Wait a minute. This Court brought up the psychiatric evaluations. I don't think we have to unseal this, and I think the Court will understand if the Court will allow me.

THE COURT: I just don't want you to argue something that Mr. Gammick might want to respond to or

should respond to.

MR. GREGORY: I already talked to Mr. Gammick, and he indicated to me whatever the ruling the Court gives, he will be satisfied with. As an officer, I'm making that representation. I think it's important that we stay in camera on this particular issue. Please, Your Honor.

THE COURT: The specifics of the hearing are very clear. What about the referral to the psychiatric evaluation as it relates to my determination that you should remain as counsel of record do you need to tell me about?

MR. GREGORY: Thank you, Judge. You saw how Mr. Vanisi responded to the Court.

THE COURT: Actually I didn't think he is any worse than you. But you can go on. I mean, you have interrupted me on many occasions. I mean, he is excitable, but I would not call him manic.

MR. GREGORY: Well, Judge, how would you like to be in a room with him as opposed to these formal proceedings where you have some control and you are not able to get his attention? That's the problem that I have with Mr. Vanisi.

THE COURT: Okay.

MR. GREGORY: You can't have a substantive conversation because once he gets a thought in his mind, that's it, and you can't give him a reasonable answer, as

the Court attempted to do, because he just continues and continues and continues.

Now, what I wanted to ask the Court was to consider what's reflected in the evaluation by Dr. Bittker, he includes Dr. Knapp's notes from the prison, and that good doctor has concluded that this man, although he's competent, might suffer some bipolar disabilities and that Lithium, given in a proper dose, could help him and help us, I might add, Your Honor, to deal with him.

Now, I have talked to him. He's agreed to take whatever medication is necessary to give him a level mood so that we can function effectively as counsel for Mr. Vanisi.

I talked to Mr. Gammick. He's indicated he will have no objections if the Court would order supervised medication administered by a doctor to see if we can't get his mood at a level state so that I can do my job, Mr. Bosler and Mr. Specchio can do their job. Thank you, Your Honor.

THE COURT: Mr. Bosler, or Mr. Gregory, you're aware of the motion filed by the Reno Newspapers?

MR. GREGORY: I just received it, Your Honor. I'm sorry. The motion to release the psychiatric report? Yes.

THE COURT: We are not going to hear that today. Mr. Vanisi, keep your voice down. You have to

whisper. You are interfering.

We're not going to hear that today. But you intend to respond to that motion?

MR. GREGORY: Yes, Your Honor, we're going to be opposed to it. I assume the State is going to join us in that.

THE COURT: My concern on the motion with regard to the Lithium at this stage in the proceedings is I think -- I have some information before me in Dr. Bittker's report, but before the Court actually orders a physician to administer any particular drug --

MR. GREGORY: I'm just talking as that of an example. Anything they deem proper.

THE COURT: -- we have to have an actual hearing, the doctors have to come in. Now, if the prison and/or the Sheriff through their medical personnel determine it's the right thing to do, and begin that treatment, then all we have to do is have a hearing to determine that it isn't affecting his competency.

Of course, if you do hear that he is on medication, I'd ask any of you, whoever is here, as officers of the court, to notify me so we can be sure to do a canvass and be sure that he is competent still once he begins medication.

MR. GREGORY: Absolutely, Your Honor.

THE COURT: If they don't voluntarily place him on medication, we can have a motion, we can bring the doctors in, and they can all tell me before I actually sign an order. I need a little more information before I order medication.

So not that I'm opposed to it, as long as we can maintain his --

MR. GREGORY: Will the Court consider a general order allowing doctors to medicate Mr. Vanisi if they deem appropriate?

THE COURT: As long as we have an ongoing way to assure competency.

MR. GREGORY: Absolutely.

THE COURT: Why don't you talk to the doctors and see.

And, Mr. Gammick. And see what you can work out, and if you can get a stipulation and something in writing from the doctors explaining what it is and a procedure in place, then I'll consider signing such a motion.

MR. SPECCHIO: Thank you, Your Honor.

THE DEFENDANT: One more thing, Gregory.

THE COURT: Wait. That concludes the hearing on the attorney representation. We will bring everyone back in.

But I think it is a good time to take a short recess. We have some other things to do. So we're going to take a 15-minute recess, we'll be back on the record with everyone present.

MR. GREGORY: Thank you, Your Honor.

THE COURT: Court is in recess.

(Closed session concluded at 2:24 p.m.)

STATE OF NEVADA,)
)
COUNTY OF WASHOE.)

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

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

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

DATED: At Reno, Nevada, this 28th day of June, 1999.

Eric V. Nelson

ERIC V. NELSON, CCR No. 57

Exhibit 21

Exhibit 21

Code No. 4190

Case No. CR98-0516

SEALED

Dept. No. 4

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

--oOo--

THE STATE OF NEVADA,

Plaintiff,

-vs-

SIAOSI VANISI,

Defendant.

_____/

Sealed Proceedings

August 3, 1999

Reno, Nevada

APPEARANCES:

For the Plaintiff: RICHARD GAMMICK
District Attorney
DAVID STANTON
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant: STEPHEN GREGORY
and JEREMY BOSLER
Deputies Public Defender
One South Sierra Street
Reno, Nevada

The Defendant: SIAOSI VANISI

Reported by: KAREN YATES, CRR
Nevada CCR No. 195

ORIGINAL

RENO, NEVADA, TUESDAY, AUGUST 3, 1999, 3:45 P.M.

--oOo--

(The following is a partial transcript.)

THE COURT: Thank you. Be seated. Mr. Gregory? The record is sealed from this point forward.

MR. GREGORY: As I have indicated to the Court, I have spent every day with the exception of a couple with Mr. Vanisi since he returned from the Nevada State Prison. He has refused to cooperate with us. There are issues that he wants to discuss that aren't relevant to the case, including whether or not jeopardy attached during the mistrial. And it has led to a level of frustration, I'm certain, with Mr. Vanisi and myself.

This morning, and he hinted at this and he has been hinting of this. I don't mean to suggest it came out of the blue. But this morning he indicated that -- maybe I should back up a little bit. I had presented him, as a result of his concerns about our defense, Faretta and the statutes. This morning he indicated that he wants to represent himself. He wants us to be his legal advisors.

And I asked him if he would wait until we get some, get him on the medications to see if that wouldn't help him a little bit. He indicated initially that he would. But then this afternoon as we were coming in, as I spoke to him before we came into court, he asked that this

be brought to the Court's attention. I promised him I would.

Now I present Mr. Vanisi for his request.

THE COURT: Mr. Vanisi.

THE DEFENDANT: Yeah, I request to represent myself, Your Honor, please. I feel much better and everything will be beautiful for me if I represent myself, please.

THE COURT: What I'm going to do, Mr. Vanisi, is because I have a strict constitutional requirement that I must fulfill before I can grant such a motion, I am going to require that you put your request in writing with an explanation of why you want to do this. This does two fold things. I want you to have an opportunity to think about it and be sure this is what you want. Second, it will give me an opportunity to determine your competence to act as your own counsel.

The written motion will have two effects on me: One, I'll be sure you really want to do it since there has been a little bit of a change of mind. And second, it will give me an opportunity to look at your thought process and how well you will be able to represent yourself and whether you are knowingly and understandingly entering into this request.

Then we will have a hearing as soon as I get the

written motion. And I will make inquiry of you. You will have an opportunity to argue your position, at which point I will make specific findings and either grant or deny your request.

So as soon as you get that in writing to me, I will set a hearing and we will have it.

THE DEFENDANT: Thank you, Your Honor.

THE COURT: If you don't get it to me, I will assume you changed your mind and you are comfortable with your representation.

THE DEFENDANT: Thank you.

MR. GREGORY: Thank you, Your Honor. That's the only matter.

THE COURT: The record is no longer sealed. I think we can conclude today's hearing. We will see you all back on Thursday.

MR. GREGORY: Thank you, Your Honor. We would ask that the motion for Mr. Vanisi be sealed when it is presented to the Court, as part of this record.

THE COURT: I can seal the motion when I get it, but I can't guarantee that other people won't see it.

MR. GREGORY: Then I will ask Mr. Vanisi to present it to me and I'll present it to the Court.

THE COURT: You can file it under seal. There's no problem.

MR. GREGORY: Thank you, Your Honor.

THE COURT: Court is in recess.

(The hearing concluded at 3:55 p.m.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, KAREN YATES, a Certified Court Reporter of the Second Judicial District Court, in and for the State of Nevada, do hereby certify:

That I was present in the above-entitled court on August 3, 1999, and took verbatim stenotype notes of the proceedings entitled THE STATE OF NEVADA, Plaintiff, versus Sisosi Vanisi, Defendant, Case No. CR98-0516, and thereafter transcribed them into typewriting as herein appears,

That the foregoing partial transcript is a full, true and correct transcription of my stenotype notes of the closed portion of said hearing.

DATED at Reno, Nevada, this 3rd day of August, 1999.

KAREN YATES, CRR
Nevada CCR No. 195

Code No. 4190

Case No. CR98-0516

Dept. No. 4

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

--oOo--

THE STATE OF NEVADA,

Plaintiff,

-vs-

SIAOSI VANISI,

Defendant.

_____/

Motion re Medication

August 3, 1999

Reno, Nevada

APPEARANCES:

For the Plaintiff: RICHARD GAMMICK
District Attorney
DAVID STANTON
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant: STEPHEN GREGORY
and JEREMY BOSLER
Deputies Public Defender
One South Sierra Street
Reno, Nevada

The Defendant: SIAOSI VANISI

Reported by: KAREN YATES, CRR
Nevada CCR No. 195

ORIGINAL

RENO, NEVADA, TUESDAY, AUGUST 3, 1999, 3:05 P.M.

--oOo--

THE COURT: Thank you. Please be seated. This is the time set for hearing regarding medication of defendant. Counsel?

MR. STANTON: Thank you, Your Honor. Your Honor, we were advised initially telephonically by Mr. Gregory and then ultimately in a telephone conference with the presiding Chief Judge of the Second Judicial District Court, Judge McGee, about a request for an order of medical treatment of defendant. An order was ultimately filed in and endorsed by Judge McGee dated July 12, 1999. It is entitled an ex parte order for medical treatment. It indicates that it was filed under seal.

In that two-page order it indicates that it is an order from the Second Judicial District Court to the Washoe County sheriff's office through their medical representatives to provide the following medication to the defendant. And it indicates, number one, lithium with a pre-lithium work-up; and another drug called titration, t-i-t-r-a-t-i-o-n; and then Wellbrutin, W-e-l-l-b-r-u-t-i-n and t-i-t-r-a-t-e in a three milligram dose.

Upon the State's receiving the order, we had some concerns because we were unaware to a great extent what had transpired in the hearing that the State was not privy to.

As a result of the order, I had reviewed some of the case law generated from the Nevada Supreme Court as well as from the United States Supreme Court, ironically out of a case that came from Nevada, the Riggins case.

And there is some factual distinctions between the Riggins case and the ultimate decision that was found in that decision. That is 109 Nevada 966, 860 P2d 705. It's a 1993 case. At least that's the case that was published on remand from the United States Supreme Court.

And there are specific directives in the Riggins case for a trial court to find as a matter of record. And that was the concern of the State in bringing this up to the Court's attention. Since we don't know what record was developed when we weren't present, this is one out of caution just to see, to advise the Court what we have been able to glean from the law, and I've told Mr. Gregory about the Riggins case and what my perception was of the mandate of that decision.

There are several fundamental differences factually between Riggins and this case. Number one is that this Court has made a finding of competence in this case which was somewhat convoluted in the Riggins cases.

Second, it was an involuntary medication in the Riggins case. At least it was involuntary in what the defendant pursued on appeal. And finally, that the types of

medication were, as they are described in the written opinion, antipsychotic medications.

I have looked at the PDR to the nature of the medications in the attendant order. I'm not sure what antipsychotic means within the PDR. That term is not used. However, I know that two of the drugs are indeed considered drugs given to people to change their affect. So to that extent I think they should be approached with satisfying that element of the Riggins case.

I don't know and would request of the Court what, if any, the record reveals regarding Mr. Vanisi's position about this medication that is subject to the order. Is he in agreement with it? Does he understand what the medication is? So that the record at least at this juncture is abundantly clear for those that review this record whether or not Mr. Vanisi understands the medication, what it's for, its purpose, its effect, and whether he's in agreement that it be administered to him as outlined in the order.

I'm prepared to address to the Court to the other directives that Riggins gives to trial courts about a finding about such medications whenever the Court is ready. But that's the State's concern in requesting the hearing.

THE COURT: I have a couple of questions for you. One, were you on a telephone conference with Chief Judge

McGee and Mr. Gregory or someone on behalf of Mr. Vanisi?

MR. STANTON: Yes. Ultimately when he signed the order, and I advised Judge McGee that I knew that there was -- Mr. Gregory had called me earlier and said he was going in front of Judge McGee regarding an order for medication. And he had advised me that in essence it had been borne out in part by what had occurred in the hearing that we were not present in.

When Judge McGee had me on the speaker phone, I advised him that I was aware of a case out of the Nevada Supreme Court and out of the United States Supreme Court that spoke to the medication of the defendant in a criminal setting. I remembered it being, coming out of Nevada. I think it actually came out of Clark County. I said that's the authority that I'm aware of that exists, because Judge McGee, I think, was asking me what my position was. I said: Well, judge, I'm shooting in the dark. I don't know what the record has developed about this hearing.

I assumed, I basically was reading between the lines and the fact that Mr. Gregory had indicated that a doctor had evaluated Mr. Vanisi and that he recommended these medications.

THE COURT: Did he share with you and Judge McGee that I said I would not order it absent a hearing?

MR. STANTON: No. I don't recall it.

THE COURT: Was there a court reporter present on the telephone conversation?

MR. STANTON: I have no knowledge, Judge. I was not in the chambers. I believe Mr. Gregory was over with Judge McGee. They put me on a speaker phone.

THE COURT: He was physically with Judge McGee?

MR. STANTON: Either that or it was a three-way conference. I don't know.

THE COURT: I guess we'll find out from Mr. Gregory. Have you received any of the documents? Have you received a copy of the order that was signed?

MR. STANTON: Yes, I received the order that has a stamped signature of Charles M. McGee that's dated July 12th.

THE COURT: Did you receive a transcript or a notification of a transcript from the telephone call?

MR. STANTON: No.

THE COURT: Thank you. Mr. Gregory?

MR. GREGORY: Your Honor, prior to our closed hearing I informed Mr. Stanton that I intended to ask the Court to issue an order allowing Mr. Vanisi to receive lithium treatment. As the Court remembers, at the end of that hearing I brought that to the Court's attention. The Court at that time, my recollection, indicated that if I got a psychiatrist to indicate that these particular medications

were appropriate for Mr. Vanisi, that at that time the Court would sign an order allowing for him to be medicated.

Subsequent to that, I had Dr. Lynn see Mr. Vanisi at the prison. Dr. Lynn practices in Carson City. He gave me a fax transmission, and I subsequently received a letter of confirmation which I believe I made part of the sealed record. The Court should have a copy of that.

The day after I received that letter, I believe Mr. Vanisi was returned from Nevada State Prison. I at that point came looking for this Court. I was informed that this Court was out of session that week. Not thinking to ask whether the Court was in session the following week, I returned the following Monday and was again told that this Court was still out of session.

At that point I called Mr. Stanton; indicated to him that I would like for him to meet with me and the Chief Judge so that I could present an ex parte order. Although it's entitled ex parte, it's obvious I shared with the State exactly what I was going to do.

I thereupon went to meet Judge McGee in chambers. Judge McGee decided that Mr. Stanton didn't have to be present; that we could do that telephonically. I was with Judge McGee. Mr. Stanton indicated to me that he had no objections as long as any Supreme Court issues were addressed.

Now, the case he refers to, the Riggins case, in my humble opinion is apples versus oranges. We are asking for the voluntary medication. The defense is asking for the voluntary medication of mood levelers, if you will, of Mr. Vanisi. The Riggins case was the involuntary medication with antipsychotics ordered by the State.

However, because Mr. Stanton had discovered this case and was concerned about having formal hearings because that was what was required in Riggins, I did not take the ex parte order over to the sheriff's department. As a matter of fact, I had that order three or four days before Mr. Vanisi was actually brought back from Nevada State Prison. And I still have that order. And it still hasn't been served.

So he insisted on having a hearing. At that point I just held the order. That's why we're here.

THE COURT: I'm kind of curious why you refused to have a telephone conference with me last week without a court reporter present for the mere purpose to determine what kind of a hearing you all wanted and how long it would took place, but you thought it was perfectly acceptable to talk about something that involves the specific issue of medication, and Mr. Stanton present, and thought all that could be done with Judge McGee without a court reporter?

MR. GREGORY: The only thing presented to Judge

McGee was the letter from Dr. Lynn.

THE COURT: Well, you got your order signed.

MR. GREGORY: Pardon me?

THE COURT: You also have an order signed. I don't understand, Mr. Gregory. If you want to get an order signed ex parte by the Chief Judge while I'm gone, you think it's perfectly okay to have a telephone conference without a court reporter present. But you absolutely refused to cooperate in my request to have a simple administrative telephone conference to find out how long today's hearing would be and whether you would be calling witnesses.

But that's, there's no other explanation than you just were physically there?

MR. GREGORY: May I respond?

THE COURT: Yes.

MR. GREGORY: I informed the Court that I would be willing to take part in that particular conversation. But when the Court indicated that she wanted to get into the factual reasons for this, at that point --

THE COURT: What factual reasons?

MR. GREGORY: Well, I don't know, Judge. You're the one that indicated --

THE COURT: I never told you we were going to talk about the facts of the matter.

MR. GREGORY: Maybe that's the reason why we have

a court reporter, Your Honor.

THE COURT: It's the same reason why we should have had a court reporter when you were representing things to Judge McGee.

The transcript from the sealed hearing shows that you asked for the motion. My comments were, "We have to have an actual hearing. The doctors have to come in. Now, if the prison and/or the sheriff through their medical personnel determine it's the right thing to do and begin that treatment, then all we have to do is have a hearing to determine that it isn't affecting his competency. Of course, if you hear that he is on medication, I would ask any of you, whoever is here, as officers of the court" -- and I was talking to the sheriff's officers as well as you -- "to notify me so we can be sure to do a canvass and be sure he is competent still once he begins the medication."

You said, "Absolutely, Your Honor." You continued to request, if you got something from a doctor. And I told you throughout the transcript that I would consider such a thing. I said -- you said, "Will the Court consider a general order allowing doctors to medicate Mr. Vanisi if they deem appropriate?"

"As long as we have an ongoing way to assure competency."

You: "Absolutely."

"Why don't you talk to the doctors and see. And Mr. Gammick, and see what you can work out. And if you can get a stipulation and something in writing from the doctors explaining what it is and the procedure in place, then I'll consider signing such a motion."

I was very, very clear about my concerns. Without a transcript, I don't know if you made these representations that I made to you in court clear to Chief Judge McGee when you asked for the order to be signed. I have seen the report from Dr. Lynn. But I don't think that obviates the necessity to have a hearing to determine whether your client wants these drugs. Is it voluntary or not? We need to find out how it affects him. I don't know.

MR. GREGORY: I believe that transcript indicates that his willingness to take the drug, if the Court will continue to read. Because I believe the Court --

THE COURT: There's nothing on here.

MR. GREGORY: I believe the Court specifically addressed that.

THE COURT: No. There isn't anything more in the sealed transcript about it.

MR. GREGORY: Well, maybe we were off the record, but I remember the Court asking if Mr. Vanisi indicated --

THE COURT: We haven't done anything off the

record, Mr. Gregory. So maybe there is an unsealed transcript somewhere where we brought the State back in.

MR. GREGORY: Well, it's my understanding, my recollection Mr. Vanisi indicated his willingness to take whatever medication was prescribed to help him get his moods under control. I can ask Mr. Vanisi now to confirm that.

THE COURT: Before you asked to have medication taken, I read the beginning of the transcript, there may have been something in canvass that he wanted to have that situation under control.

MR. GREGORY: Thank you, Your Honor.

THE COURT: But it hasn't been with regard to taking this particular medication. Dr. Lynn made the recommendation. Is he treating Mr. Vanisi?

MR. GREGORY: No, he cannot, Your Honor. He practices in Carson City. That's why I sought out an order. If Mr. Vanisi was not in custody, obviously I could, you know, have a private doctor give him whatever medications I deemed appropriate or the doctor deemed appropriate.

And Dr. Lynn practices in Carson City. Mr. Vanisi was in Nevada State Prison. So the ex parte order is designed to allow the sheriff through his medical facility to provide these medications. But to be extra cautious, I used the language that Dr. Lynn used in his fax to me, so that there be the checking of the blood levels and whatever.

The exact same language.

THE COURT: Have you communicated with the sheriff's medical personnel?

MR. GREGORY: No, ma'am. Like I said, after Mr. Stanton indicated his acquiescence in this, and then subsequent to that I found out that he was uncomfortable, I kept the order on my desk. It has not been served.

THE COURT: Okay. So, it was your understanding that he was stipulating basically to the medications being given?

MR. GREGORY: Yes, ma'am. Certainly they had no objectionS. I don't want to use a term that he's not comfortable with. But that's the feeling I had.

THE COURT: This is my concern about the treatment. I have to be able to determine, number one, that the specific drugs that are being recommended will not affect his competency and his ability to assist counsel throughout the trial. And we also have to be clear that the actual drugs that are being administered are voluntary. I know that he wants drugs, but we still need to have specific inquiry.

The other thing is, we need to have an ability to monitor this so we have periodic checks that actually the drugs are still appropriate. That's why I'm very uncomfortable ordering specific medications because I'm not

a physician and I think it makes it difficult for the Court to monitor it.

What I was about to say when you kind of misunderstood my question is, had you discussed with the medical personnel at the sheriff's office the utilization of these drugs? In other words, have you had an opportunity to have a conversation with the medical personnel and say: Dr. Lynn suggests these. Are you in agreement? Are you willing to order the administration of these drugs? My client wants them.

Or will I be, or Judge McGee already, be overriding a medical determination made by the physician on staff in the jail by ordering the drugs? That's of concern to me there.

MR. GREGORY: I have not, Your Honor. As I indicated, once I realized that Mr. Stanton was uncomfortable -- see, my concern was to get him on this regimen as quickly as possible. As it stands now we are running out of time. I'm not so sure -- I don't know what blood levels have to be attained with the lithium or how long that takes. I just knew that we were running out of time. That's why I was frantically searching for you and then went to the Chief Judge.

But I have not done anything with the order. It's been gathering dust on my desk ever since Mr. Stanton

indicated his additional concern.

THE COURT: Okay. Mr. Stanton, do you have any requests?

MR. STANTON: Well, Your Honor, as I understand the law in this area, one of the critical elements is whether or not this is an involuntary medication or a voluntary medication. And I don't know what the record has gleaned from that. I think Mr. Gregory and the Court has indicated that there was some discussion at the hearing we weren't present in, but I don't know to what extent.

Then, of course, we go -- if it's Mr. Vanisi's position that it's involuntary and he doesn't want it, that raises a whole set of issues. If indeed it's voluntary, to what extent has he been advised to make that decision? And that the decision is a rational decision, one that is based on information as best as he can determine.

It's the State's perspective from the information it has about Mr. Vanisi that not only indeed is he legally competent, but indeed he is rational in his state of mind to make the determination about the drugs. Obvious, any rational person who is not a doctor would have to have some sort of advice or be given some sort of information to make that rational choice. What are these drugs? What amounts are they? How do they affect him?

And those, other than from what I've gotten

through the PDR, I don't know more than that. The term in Riggins is antipsychotics. And I'm not sure if they use that term in a pharmacological vein with any degree of accuracy. I do know that all these drugs are potentially mood altering. Mr. Gregory's talking about mood leveling. I think it's a fine line between affecting one's mood and then going to the line of antipsychotic.

So, we have those concerns about the initial issue of voluntary versus involuntary. I think Riggins clearly sets out, although it's a short decision, it's only one page, that it lays out specific findings that the Court must put on the record. That it's medically appropriate and essential considering less intrusive means to assure the safety of the appellant or the safety of others.

I think in that vein you can add the language that it's in his best interests relative to his state of mind to either assist counsel or whatever the goal is that's being sought with the medication of the defendant, which the State is operating primarily in the dark here. I don't know what the goal is. I don't know what the problem is. And so I would assume you could assert the language.

But I think Riggins is clear that when you begin to medicate the criminal defendant, that it must be determined is it voluntary or involuntary? And to what extent are the goals being accomplished by the medication?

We have some concerns that, the sole concern from the State is making sure that the record is clear to support the order.

THE COURT: Is it your position that the Riggins case requires such a finding from the Court if the request for medication is voluntary?

MR. STANTON: If the request is voluntary, does the Court need to go further and find out the other aspects of the Riggins decision?

THE COURT: Yes.

MR. STANTON: You know, I'm not sure, Your Honor. The decision doesn't break it down by saying it's conditioned solely on the basis of involuntary versus voluntary. Although the dissent both of the Supreme Court of the United States and the dissent in the final Riggins decision, they seemed to be morally offended by the voluntary versus involuntary nature of the medication. My reading of the decision is that it's just a fact and it's not outcome derivative as to whether or not the rest of the finding must be made.

But I certainly think that some record should be developed as far as what is being requested, the specific drugs and the dosage amounts. And I understand from Mr. Gregory that the doctors who evaluated him in essence prescribed these.

It's kind of a convoluted route. We have a District Court Judge ordering the Washoe County sheriff's office medical staff to give somebody medication. A doctor is not prescribing it, at least not directly. As the Court said, you know, I would think any doctor that prescribes medication would want to know from their patient whether or not the effects are ongoing in a correct, appropriate manner as they would perceive that medication to take place.

If we have a doctor that is down in Carson City, how in the world is he going to know what the effects of Mr. Vanisi are? Because I'll tell you what is going to happen, as I'm sure the Court and counsel is aware of, you give this order to the sheriff's department medical staff, they are going to do one thing and one thing only. That is, they are going to comply with the order. If something happens wacky or up usual, I'm hopeful they will advise the Court. Or if someone in the medical staff says hey, look, I don't think this is appropriate, I would hope they would advise the Court.

But it's somewhat of a -- I understand what Mr. Gregory is doing, I think. That is trying to get some medication to assist him in communicating with his client or whatever. I'm just concerned about what has the record shown to justify the order.

THE COURT: Now, did you, Mr. Gregory, give

Mr. Stanton or Mr. Gammick a copy of Dr. Lynn's report?

MR. GREGORY: I gave Mr. Stanton the opportunity to read that. I didn't have a copy with me. He did read it in toto.

THE COURT: But that has been passed on?

MR. GREGORY: Yes, ma'am. If I might, Your Honor --

THE COURT: I just want to clear one thing up, Mr. Gregory. I just reviewed the entire sealed transcript, albeit while I was listening to Mr. Stanton with one ear. But I have reviewed the whole thing. None of the discussions between Mr. Vanisi and myself dealt with the voluntary medication issue.

MR. GREGORY: I know that question was asked, Judge. Maybe it wasn't during the sealed; maybe it was afterwards.

THE COURT: Maybe it was in open court with the D.A. present?

MR. GREGORY: It certainly could have been.

THE COURT: We will have to find out. I want to let you know it's not in the sealed transcript.

MR. GREGORY: If I might address Mr. Stanton's concern. Judge, if I could take a prescription up there and put it on the sheriff's desk and think that they would act on it, then I would do so. I don't know how else to do

this. I'm not asking the Court to order anything.

The doctor has indicated that this will help Mr. Vanisi focus and cooperate with us, which he has had grave difficulty doing. And the Court -- the prosecutor is concerned with whether or not there will be changes that might affect his competency. I have seen him, with the exception of two days, I have seen him every day since he has been back from the prison. I am there to monitor him. I'm certainly not going to let him fall into some dark mental pit without informing the Court and/or the doctors.

I don't want the Court to involuntarily medicate Mr. Vanisi. Mr. Vanisi understands that he's got a problem and that this might help him. And I think the documents that we used during the competency hearing indicated that the testing done, the extensive testing done by the psychologist has concluded that he is a manic-depressive and could be helped by these medications. Not specifically those. I don't know; I'm not a doctor. At least we have to get him on some sort of regimen, something so that he can aid me in his defense.

THE COURT: I'm not, obviously, familiar with what you all deal with on a regular basis with regard to medical attention at the jail. So I don't know exactly how it all works.

But I know in cases, certainly not as high profile

as this, but in cases generated out of the district that I've seen in my court there have been occasions when the defense has specifically requested that the medical team that is in place at the sheriff's office in the jail evaluate and administer certain kinds of drugs.

MR. GREGORY: Here is the problem, Your Honor. I've inquired of Dr. Lynn and other private psychiatrists. The problem is that the sheriff has a contract with a medical group. And out of extreme caution, this medical group has sugar pills -- this is the doctor's -- I mean, the medications they have to provide really don't do a thing. They are as mild, mild tranquilizers, as mild as they can be, okay? I don't know -- I know they have the capacity to give him lithium, but they are not going to do that out of their general practice in the jail. Just out of extreme caution. That's the way they operate.

THE COURT: But in this particular instance you haven't asked them. Your experience is that they don't do it?

MR. GREGORY: Your Honor, I don't presume on anybody. As I said, as soon as Mr. Stanton indicated his further concerns, I stopped everything immediately.

THE COURT: All right. The way I would like to -- I don't know exactly how we should handle this because we do have a valid order from the Chief Judge of the district who

has authority to sign the order he signed. Although it wasn't exactly what I anticipated, and in fact it was considerably different than what I anticipated, he did not have the benefit of that transcript. I don't know if you had that transcript at the time that you met with him.

MR. GREGORY: I did not.

THE COURT: So he didn't know what I had said I wanted to have happen before he did it. But he did sign the order.

If you voluntarily agree to not proceed with that order, we don't have to involve Judge McGee any further and that's fine. If you still want to proceed with that order, then I'm going to have to do something and I don't know exactly what to do. I have never been faced with this before.

What I would like to do, if this were just fresh on my plate, I would like to have a hearing. I would like to have either the sheriff's doctor tell me why he doesn't want to follow Dr. Lynn's recommendation and/or Dr. Lynn tell me why I should follow his recommendation, and some physician tell me how I and they are going to monitor this medication, so that we can be sure that there's really a physician monitoring the medication.

The fact that you take the blood level isn't the whole story. Somebody has to be evaluating that blood level

and determine: We stop giving it, we give it at a different level, we change the level of medication, whatever it may be. And I'm not comfortable that the order that was entered into initially by Judge McGee tells or directs or puts that responsibility on anybody. And I don't think that the District Court wants that responsibility.

That's all assuming that Mr. Vanisi says to me: Yes, I want the drugs and I want to do it. That's my concern. I want to have -- I would prefer to have the physician at the jail say: We accept Dr. Lynn's recommendation. We will take over the medication. We will supervise him and we will make regular reports to the Court that he's doing fine, and to counsel and he's doing fine. And we can have a medical determination, continuing medical determination of competency. That would be my first choice.

But if that can't happen, then I'm willing to go out and go further and become more aggressive as I've done in many cases with the sheriff's department's medical staff. And I have ordered them to give medication and to take certain action. But I've only done it after I have had a full hearing and I have heard from the physician that's recommending it and the physician who is indicating that he does not want to do it.

Otherwise, I think it's a very dangerous ground to go and just order that we have certain levels. I don't know

who is going to be monitoring those levels.

MR. GREGORY: All right. Here is the problem, as I see it. I believe Mr. Stanton has misread Riggins. The triggering factor here in the Riggins case was he was forced to take medication. That's the thing that offended everybody.

THE COURT: I'm kind of beyond Riggins. I'm assuming that Mr. Vanisi --

MR. GREGORY: Assuming Mr. Vanisi stands up and says: Judge, I need some help. How do we help him? How do we physically help him without going through this? We already had a doctor look at it.

THE COURT: Unless that doctor can treat him, then we have to get the doctor who is treating him on board before we start administering drugs. The order that was entered just says you'll give a certain level of medication. You'll take blood work. But it doesn't say when it gets to a certain level stop. Theoretically that order could force them to get these levels up to a toxic level.

MR. GREGORY: I'm not sure that I quite understood what the doctor was saying. I assume that any other competent doctor would look at that and understand what was going on.

THE COURT: Unfortunately, we've codified it in a written order from a judge which doesn't really allow for

independent reasoning and thought process. You follow the order, blanket order of the Court. That's why I'm very concerned about doing it that way.

MR. GREGORY: We are a month away from the trial, Judge. If you're going to have a full-blown hearing on the request of the defendant to have some voluntary help with his mood changes, I don't know, what are we going to be two weeks down the road?

THE COURT: Hopefully not.

MR. GREGORY: Then would the medication be of any help to him? It's critical that we do this now.

THE COURT: I think what you have to do today is you have to get a hold of the medical director of the jail. You have to give him Dr. Lynn's report. And you have to say: Do we have to have a hearing or will you give Mr. Vanisi the drugs he's requested?

MR. GREGORY: Assuming he says he will, we are finished.

THE COURT: I will canvass Mr. Vanisi today and make sure it's voluntary. Yes, then we're done. If he says he won't, you will be back in here. And I think you can do it on a telephone call together to set a time when we can get the doctor in here and get Dr. Lynn in here and you can ask me to make a call. In that call, I'll also make a call as to who will supervise the lithium levels, who is going to

supervise the blood work, and who is going to report back to me if the medication needs to be stopped.

MR. GREGORY: I want to make sure I understand. I don't want to get into a pickle. If I go up there and the doctor says: Yeah, we can do this, then I'm fine, right? I don't have to report that back to the Court?

THE COURT: Wait a second. If you go up there and you give him Dr. Lynn's report -- I have to canvass Mr. Vanisi still, but I canvass Mr. Vanisi and he says: Yes, I want this. You give him Dr. Lynn's report and the medical physician says yes, I agree this would be a good medical treatment, and I have no problem instituting it immediately, then he'll institute it.

That was my order back when we were, when you were in court on June 23. If they voluntarily gave it to him, they could give him anything and that was my order.

Now, if they don't want to do it, you can't say: Well, I have this order; you've got to do it. That's not what I'm talking about. I'm talking about --

MR. GREGORY: As far as I'm concerned, the order is withdrawn. I'm not going to utilize the order.

THE COURT: If they think it's medically justified, that's fine. What we will do, we will get a report from the medical team sometime before the trial to confirm that Mr. Vanisi is okay and the medication has not

impacted his mental state to the point that he can't be prepared for trial.

Mr. Stanton, you have a problem with that?

MR. STANTON: Not a problem, Your Honor. One additional thing. I think the medical staff from the jail would also want to have the opportunity to speak with Dr. Lynn about -- I read Dr. Lynn's one-time report. Mr. Gregory brought it over. I believe that may not be enough for them to do it. That they might have some follow-up questions of Dr. Lynn.

I think Dr. Lynn will be in the predicament of can he violate the doctor-patient privilege. If that's the case, if Mr. Gregory encounters that with the jail, obviously if they can arrange for Mr. Lynn to be able to communicate openly with the staff that might assist them in making a full determination.

THE COURT: That's a good idea, to give a release if you're comfortable with that, with your client after discussing it, that would be quicker to release Dr. Lynn so he can talk to medical staff.

MR. GREGORY: Yes, Your Honor.

THE COURT: Now, Mr. Vanisi, it's your turn. Now, you remember when you were here before and we had the long hearing when the D.A. wasn't present? Do you remember that?

THE DEFENDANT: Yes.

THE COURT: Now, when we were in that hearing your attorney asked me if I would order that you get certain kinds of drugs. I told him I wouldn't do it right then. Now we are talking about that issue today.

Do you understand that? The issue of whether or not you want to take drugs?

THE DEFENDANT: Yeah.

THE COURT: Now, do you know who Dr. Lynn is?

THE DEFENDANT: Yeah.

THE COURT: And have you gone over his report and recommendation with your attorneys?

THE DEFENDANT: I haven't gone over his report. I was there present when he was interviewing me, trying to see which medication would be proper for me. I was explaining to him certain things about myself and he deemed that I should be on lithium. And he told me that I also have attention deficit disorder, which prohibits me with working with my attorneys.

THE COURT: So he suggested lithium, but he suggested a few other drugs, too. Are you aware of that?

THE DEFENDANT: Yeah, I think one is Butrin and the other one --

THE COURT: Is hard to pronounce.

THE DEFENDANT: Yes.

THE COURT: Titra -- it was spelled by the

prosecutor a little while ago.

THE DEFENDANT: Yeah.

THE COURT: Now, did he tell you all this verbally? Or did you actually get to see his written report that he gave your lawyers?

THE DEFENDANT: I never got to see his written report. He told me after the interview.

THE COURT: Okay.

THE DEFENDANT: What he had suggested.

THE COURT: Now, Counsel, do you have those drug names written down anywhere?

MR. GREGORY: They are in the order. It's Wellbutrin and lithium.

THE COURT: Just go ahead and show Mr. Vanisi those actual words.

THE DEFENDANT: Titration with appropriate blood level monitoring.

THE COURT: I want to make sure --

MR. GREGORY: I don't think titration is a drug, Your Honor.

THE COURT: I don't even know what it is. Those are the recommendations. Okay.

THE DEFENDANT: Is that the report? That's the order.

THE COURT: That's the order, but it says the kind

of drugs that Dr. Lynn recommended that you take.

THE DEFENDANT: Yeah, I looked at that. I just looked at the order.

THE COURT: Okay. Do you want to take those drugs?

THE DEFENDANT: Yeah, I volunteered to take those medications.

THE COURT: Okay. And do you understand that there may even be more medication that is recommended by the medical team that assists you?

THE DEFENDANT: Yeah, if it will help. That's why I'm here. That's why we are here is to get me medicated.

THE COURT: You want to do that?

THE DEFENDANT: Yes.

THE COURT: Now, Mr. Vanisi, you know, don't you, that if any time you think this isn't working for you, that you need to communicate that to your attorneys?

THE DEFENDANT: I was the one --

THE COURT: If the drugs aren't working for you?

THE DEFENDANT: I was the one that kept looking for the proper medication. I was the one that brought it to the attention of these doctors. I brought it to the attention of Washoe. I have written kites. I have written N.S.P. kites. They have all failed to give me a response of what I asked them.

THE COURT: Looks like you're getting a response now.

THE DEFENDANT: Thank you.

THE COURT: What I want to make sure, though, is that you understand that if when you start taking the drugs, if you change your mind or you have a problem taking them, that you must tell your attorneys.

THE DEFENDANT: Yes. I would tell them if something is askew with the medication. I will tell them if something is amiss. I will be very thorough with explaining to them how this is affecting me.

THE COURT: That's fine. Anything further on the canvass with regard to the voluntariness from counsel?

MR. STANTON: No, Your Honor.

THE COURT: Okay. Now, Mr. Gregory, get back to us as soon as you have an answer. We already have an extensive hearing scheduled for Thursday afternoon on other issues with regard to Mr. Vanisi. But we might be able to add this to it. I don't know how long those hearings are going to take.

I don't know exactly how you all are going to sit in the room. Those are the hearings with -- you're all looking at me. You all know you have hearings Thursday? You don't know? Thursday is scheduled the newspaper motions for access to in-chambers conferences and the psychiatric

evaluations. And that's scheduled for Thursday afternoon. You did know, Mr. Gregory?

MR. GREGORY: Yes, Your Honor.

THE COURT: I wanted to make sure everybody knew about that. You two are joined; both the State and the defense is opposing. So it's going to be an interesting placement. We might have to kind of scoot everybody closer together.

MR. GREGORY: There's a problem, Your Honor, if the Court wishes to have a hearing with Dr. Lynn, assuming that the jail indicates that they are not comfortable with medicating. Dr. Lynn is one of those doctors that is, you know, you're three months before you can get him to see someone.

THE COURT: I know Dr. Lynn very well and have known him a long time. I'm sure I can get him here early some morning.

MR. GREGORY: As a favor?

THE COURT: Well, he knows the importance of this. He has had a history of being very cooperative with the Court. If he can arrange it, if necessary we will give him sometime some encouragement from me.

MR. GREGORY: Thank you, judge. May I have the Court's indulgence?

THE COURT: Yes.

MR. GREGORY: Your Honor, I know the Court's time is valuable, but I think it's important that we have a brief moment with the Court in camera with Mr. Vanisi present for certain issues that need to be brought to the Court's attention.

THE COURT: Okay. I think you need to say the general area of that, so that I know what we are excluding the State from. You don't have to tell me what the content of the discussion is, but is it regarding psychiatric? Is it regarding counsel?

MR. GREGORY: No, it really is regarding the attorney-client privilege, Your Honor.

THE COURT: Okay. Counsel, any objection?

MR. STANTON: Kind of hard to state an objection. I'm sure the Court will handle the proceeding appropriately.

THE COURT: Okay. Thank you. All the members of the District Attorney's office and staff will please be excluded from the courtroom.

MR. GAMMICK: May I ask as we did last time, Your Honor, if we can ask the Court to admonish all the sheriff's department not to discuss what is going on in here, we would appreciate it. Thank you.

MR. GREGORY: I believe the Gazette-Journal is also represented.

THE COURT: No, Ms. Sanchez is my law intern.

MR. GREGORY: I apologize.

THE COURT: That's okay.

(Mr. Gammick, Mr. Stanton, and several other people left the courtroom.)

THE COURT: As we did before, the gentlemen who are on the court detail, the bailiff is always obviously under the conditions of confidentiality as to closed hearings. But each of you are adjunct bailiffs of the department by providing security and transportation in this case.

And I would ask that you all -- many of you were here before, but I'm not sure all of you were here before. I will go ahead and have you state on the record your names and that you understand the requirement for confidentiality. That meaning that you cannot talk about what takes place during the sealed hearing with each other or with anyone else, absent a court order allowing you to discuss it, even if you think it's necessary for security purposes.

Go ahead and start over there and stand and state your name.

OFFICER: Deputy Jim Ellis, E-l-l-i-s.

OFFICER: Deputy Brian Williamson, W-i-l-l-i-a-m-s-o-n.

OFFICER: Lieutenant Jeffrey Wise, W-i-s-e.

OFFICER: Deputy Greg Larramendy,

L-a-r-r-a-m-e-n-d-y.

OFFICER: Deputy Brian Uptain, U-p-t-a-i-n.

THE COURT: Gentlemen, would you all stand? You all agree to follow the confidentiality rules I have just outlined?

(All officers responded "yes".)

(This concludes the partial transcript of open proceedings.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, KAREN YATES, a Certified Court Reporter of the Second Judicial District Court, in and for the State of Nevada, do hereby certify:

That I was present in the above-entitled court on August 3, 1999, and took verbatim stenotype notes of the proceedings entitled THE STATE OF NEVADA, Plaintiff, versus Sisosi Vanisi, Defendant, Case No. CR98-0516, and thereafter transcribed them into typewriting as herein appears,

That the foregoing partial transcript is a full, true and correct transcription of my stenotype notes of the open portion of said hearing.

DATED at Reno, Nevada, this 3rd day of August, 1999.

Karen Yates

KAREN YATES, CRR
Nevada CCR No. 195

Exhibit 22

Exhibit 22

Case No. CR98-0516 Code No. 4185

Dept. No. 4

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

--oOo--

THE STATE OF NEVADA,

Plaintiff,

-vs-

SIAOSI VANISI,

Defendant.

_____/

MOTION FOR SELF REPRESENTATION

August 10, 1999

Reno, Nevada

APPEARANCES:

For the Plaintiff: RICHARD GAMMICK
District Attorney
DAVID STANTON
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant: STEPHEN GREGORY
and JEREMY BOSLER
Deputies Public Defender
One South Sierra Street
Reno, Nevada

The Defendant: SIAOSI VANISI

Reported by: KAREN YATES, CRR
Nevada CCR No. 195

ORIGINAL

RENO, NEVADA, TUESDAY, AUGUST 10, 1999, 10:45 A.M.

--oOo--

THE COURT: Thank you. Please be seated. This is the time set for request by Mr. Vanisi for self representation. I have received his written request in the form of a motion and response from the State.

Any further legal documents to be filed at this time?

MR. GREGORY: Not by the defense.

MR. STANTON: Not by the State, Your Honor.

THE COURT: Mr. Vanisi?

THE DEFENDANT: Yes, ma'am.

THE COURT: There is an inquiry that I would like to make of you at this time to determine whether or not I will grant your request for self representation. Are you familiar with the procedure that is going to take place now?

THE DEFENDANT: Yeah, I'm familiar with the procedure.

THE COURT: Have you discussed what is going to happen with your court-appointed counsel?

THE DEFENDANT: Yeah, we've discussed it.

THE COURT: They explained to you what is going to happen today?

THE DEFENDANT: Yeah.

THE COURT: Do you understand, Mr. Vanisi, that it

is often unwise for a criminal defendant to conduct his own defense?

THE DEFENDANT: Yes, I understand.

THE COURT: And by saying you understand, what do you think is unwise about that?

THE DEFENDANT: If I produce a defense that would procure a detriment on my behalf, I won't complain on appeal.

THE COURT: Right. You understand that you can't complain that you were ineffective, in other words?

THE DEFENDANT: Yeah.

THE COURT: Do you understand there's other pitfalls in representing yourself?

THE DEFENDANT: Yes, there are other pitfalls, Your Honor.

THE COURT: What are the other pitfalls you are aware of?

THE DEFENDANT: One of the pitfalls I would be facing against the prosecution, they would have the ability, they would have the training, they would have the skill. They can somehow or another, because of their experience, can produce an unintended event where I would be at a disadvantage because I won't be quite knowledgeable with all the legal terminology and the proceedings of the court rules. So that one could be a pitfall.

THE COURT: All right. Do you understand that if you do undertake to represent yourself, you would be responsible for knowing and complying with all the procedural rules required of attorneys?

THE DEFENDANT: Yes, I understand.

THE COURT: Now, do you understand that you have a request for a jury trial in this case?

THE DEFENDANT: Yes, I understand.

THE COURT: What are the procedural rules that you are aware of with regard to a jury trial?

THE DEFENDANT: The procedural rule, for an example, if we were to have, or if we were to have a stage of possible or potential jurors and we find them prejudiced, we would have to challenge them for cause and we would try to find out how they feel, what their sentiments are about this case. Then if they are prejudiced, we feel there's prejudice, we can challenge them for cause.

THE COURT: Do you understand you would be required to submit all your voir dire questions in writing to the Court?

THE DEFENDANT: Yes, I understand that.

THE COURT: Do you understand that if I order you not to ask a question, you will be required to not ask that question of the juror?

THE DEFENDANT: Yes.

THE COURT: Do you understand what an objection to the form of a question is?

THE DEFENDANT: Yes, objection would be to oppose.

THE COURT: Right. And how would you, at what point are you allowed to intersperse objections in a court proceeding?

THE DEFENDANT: If the prosecution, if the prosecution were to present or to say something that is totally irrelevant, I can stand up and say "objection." And then the prosecution will have to stop and then you would have to give your decision. And then continue on. It would be the same for me. If I were to say something perhaps out of line, the prosecution can object and I would have to stop right there, and then have to find out what you were to say, and then go on from there.

THE COURT: Besides ineffectiveness of counsel, do you understand that you would waive, and there would be no opportunity to appeal your competency as counsel? In other words, if you missed a defense or a witness testified in such a manner that a competent, trained, skilled attorney might be able to detour, change that witness's testimony, get them to testify differently because they were inaccurate; or a trained attorney might be able to cause the jury to not believe that witness? And you might not be able to do those kinds of things.

Do you understand that you would waive any complaint later about that?

THE DEFENDANT: Yeah. If I were to manage my own defense, I will not complain on appeal because I can't complain about my own effectiveness, or ineffectiveness. So I'll have to just accept the fate or the reality. If I were to present a defense that would incur a detriment, yes, that's what would happen.

THE COURT: All right. Do you understand that the prosecution attorneys are extremely skillful, have a great deal of training and ability?

THE DEFENDANT: Yes, they are seasoned. I think they know more than I do, Your Honor.

THE COURT: So you understand that you would have a less experienced attorney?

THE DEFENDANT: Yes. I'm willing to accept the responsibility, knowing that they know more than I do.

THE COURT: Do you understand that you will not be entitled to any special library privileges?

THE DEFENDANT: Yeah, I understand.

THE COURT: What have you gleaned of your library privileges thus far?

THE DEFENDANT: When I was at N.S.P. I was able to read some case law books. I was able to Shepardize some cases, learn how to Shepardize some case laws, some cases.

I was able to read the Prisoner's Self-Help Litigation Handbook.

I'm reading case law here, trying to find out -- there's a case here about Richard Tanksley. So I'm trying to find out what happened in his, what happened in his situation.

So as far as my legal knowledge, that's the extent of it.

THE COURT: I understand that that's what you had available to you at the Nevada State Prison. But you understand that you are housed at the Washoe County jail. And you will be housed at the Washoe County jail during the term of your trial. Do you understand there is no law library at the Washoe County jail?

THE DEFENDANT: Yes, I understand that there is no library, but that's okay. That's okay. I don't need a law library at this point.

THE COURT: How are you going to look up the procedures that you need to look up or the rules of evidence?

THE DEFENDANT: How would I look it up? Well, I won't be able to look it up. I would ask questions. The questions that come to mind, I would ask some of the inmates. When the inmates tell me what they are, I will go and ask my counselor to see if the inmates are right.

I'll verify the information that I receive from other inmates against my standby counsel to see which of them is correct, the standby counsel is correct or the inmate is correct. Hopefully I'm going to go with what my standby counsel versus what the inmate tells me. I also have my standby counsel to ask for help as well.

THE COURT: Well, are you saying to me that you don't really intend to represent yourself? You just want to talk for yourself?

THE DEFENDANT: No, I want to represent myself.

THE COURT: Why are you going to rely on your standby counsel to give you legal research and advice?

THE DEFENDANT: Let me retract that. I'm not going to rely on them. If I said to rely on them, let me retract that. That's an inappropriate word. I am going to represent myself.

Because you are asking me questions, how am I going to figure things out? Is pretty much to paraphrase what you are asking me. And I was just trying to tell you that those are some outlets. Inmates are outlets for information. Counsel are outlets for information. But I'm going to represent myself, not the counsel.

THE COURT: Do you understand if an attorney relied on inmates for information with regard to the law or procedure, that would be per se ineffective? In other

words, if a lawyer came in and told me he was going to represent you and he was going to rely on what other inmates in the jail said to him the law was, that would be ineffective?

THE DEFENDANT: Maybe that example was not a good example because you placed me with the situation where I told you I didn't have a problem with the library book. Then you kept asking me again about the library book. I figured, well, I'll create another situation if you weren't happy with that.

But the bottom line is, I'm going to represent myself. I'm not going to go around asking the inmates. I see what you're saying and what you're doing and I'm not going to do that. I'm going to represent myself.

THE COURT: You understand then it would be a foolish source of information to look to other inmates for legal research or procedural rules?

THE DEFENDANT: Yes, you are correct. I agree with you. It is foolish to ask other inmates.

THE COURT: Do you understand that if you try to play the role of defendant, which you are cast in this case, and of counsel, that there is an inherent conflict there that's going to cause you problems?

THE DEFENDANT: Yeah, of course.

THE COURT: Do you understand that the net result

of that is that your role as attorney will be diminished? Your credibility as attorney will be diminished?

THE DEFENDANT: Yes.

THE COURT: And that puts you at a distinct disadvantage in this case?

THE DEFENDANT: Yes, I'm fully aware of that.

THE COURT: How old are you, Mr. Vanisi?

THE DEFENDANT: Twenty-nine.

THE COURT: And what is your -- I saw in your letter to me that you have a high school diploma?

THE DEFENDANT: Yes.

THE COURT: And the self-teaching, is that education or is that with an instructor, or just things that you read in your spare time?

THE DEFENDANT: Those are things that I do in my spare time or as a hobby, or what I do constantly is teach myself.

MR. STANTON: Your Honor, I noticed that you're going in an order pursuant to the Supreme Court rule. May I make an inquiry of the Court relative to item (2)(f)? If I could pose possibly as a hypothetical a scenario to see if Mr. Vanisi would understand the ramifications of this? Under (2)(f) --

THE COURT: You are suggesting a question that I could ask?

MR. STANTON: Yes. Is that okay, Your Honor?

THE COURT: You can suggest the question. I'll see if it's appropriate.

MR. GREGORY: I object, Your Honor. This Court conducts the Faretta canvass, not Mr. Stanton.

THE COURT: Objection is overruled.

MR. GREGORY: Thank you.

MR. STANTON: The question I would pose, Your Honor, in (2)(f) I recognize what the inquiry the Supreme Court is looking at is a tactical decision that a pro per non-legally trained defendant may make. For example, asking a question of a witness that would open the door, as we commonly refer to it, to evidence that the rules of evidence would otherwise bar. Specifically, say rules of hearsay. And that by asking a question that they feel might be beneficial to them, they don't know that the unintended consequence is that they have now opened the door to an area of inquiry that may be damaging to their case and otherwise may not have been admissible.

MR. GREGORY: Your Honor, after the question was posed, I again object under Faretta. He's not required to have any legal skills whatsoever.

THE COURT: Objection is overruled.

MR. GREGORY: That is the Nevada Lyons case.

THE COURT: Objection overruled.

Mr. Vanisi, the Supreme Court has indicated to me that I must inquire of you as to whether or not you understand that tactical decisions may produce an unintended consequence. Now, Mr. Stanton has suggested a question that I might ask you to determine if you understand that a tactical decision that you make during the course of the trial could produce an unintended consequence. I think it's a valid question. I want to be sure that you understand it.

Now, the question that I would ask you at this time is, do you understand that if you ask a question that calls for hearsay, for instance, and the State does not object -- they just sit silent. They don't object to the question. They're going to let the witness answer that hearsay question -- that they might do that, and by so doing, your asking the question might open the door for them to make inquiry that otherwise they would never be allowed to ask? Go down a road that they, based on the rules of evidence they could never get into that area, they could never ask questions in that area? But because you made a decision and asked a question into an area, you would have opened that line of questioning to the State. And that line of questioning could be very detrimental to you.

Now, do you understand you would be faced with consequences like that constantly during the course of your interrogation of witnesses?

THE DEFENDANT: Yes, I understand.

THE COURT: And do you understand that the consequence of opening those kinds of doors and that stringent detriment that may result could be the ultimate penalty being imposed by the jury against you in this case?

THE DEFENDANT: Yes, I understand that.

THE COURT: Do you understand what that penalty is that is being requested by the State?

THE DEFENDANT: The penalty?

THE COURT: Yes.

THE DEFENDANT: You're asking what a first degree penalty is?

THE COURT: I'm asking you if you understand what the penalty is that the State is requesting in this case.

THE DEFENDANT: Let me find out for you because I understand what you are saying about opening the doors. That I understand what you're getting at. But the penalty would be, I would just normally think the penalty would be that I would suffer, that it would be -- if I opened the door, by my line of questioning I would say something that opened the door and that the prosecution were to go with it and run with it and produce an unintended outcome, I understand -- let me find out what the penalty is.

What would be the penalty, Jeremy?

MR. BOSLER: Your Honor, I would ask the Court,

I'm kind of at a loss because you said, you posed a hypothetical about hearsay, and then said that may open the door. But I think that confuses hearsay and relevancy.

If I asked a question that brings out hearsay and they don't object, that's their problem. It may open the door relevance-wise. If they ask the same witness a question, I can still make a hearsay objection. These are technical problems.

THE COURT: Exactly. Mr. Vanisi needs to respond to it, not you, Mr. Bosler. You may be seated.

MR. GREGORY: He has confused the term "penalty", Your Honor, as far as punishment if he's convicted of the offense.

(There was a discussion between Mr. Vanisi and Mr. Bosler.)

THE DEFENDANT: Yeah, the penalty statute, that's what I said, Judge. The penalty would be the detriment.

THE COURT: Okay. The unintended consequence in this case would be that you would suffer the ultimate penalty allowed in this case, the one that the State is asking for. That could be the end result of what you might do. Do you understand that?

It's not just that something bad will happen that moment. It's not just that a piece of evidence may come in that you did not expect to come in. It's that that piece of

evidence that comes in may result in you receiving the ultimate penalty.

THE DEFENDANT: Yeah.

THE COURT: And the ultimate penalty that the State is requesting is what, Mr. Vanisi?

THE DEFENDANT: Yeah, the ultimate penalty for my situation, my case would be the death penalty.

THE COURT: You understand that?

THE DEFENDANT: Yes, I understand that.

THE COURT: So the one question could open the door for that being the end result?

THE DEFENDANT: Yes.

THE COURT: Okay. Now, with regard to your education, is there anything more that you can tell me about your education other than the written motion that you made?

THE DEFENDANT: Anything I can tell you? I like to read, like to know what I don't know. One of my hobbies or in my spare time, I like to read. I just take a lot of, I have a lot of fulfillment in reading. So I put myself in that type of realm, in reading.

THE COURT: What kinds of things do you read?

THE DEFENDANT: Well, science is my passion. Now law, I read a lot of law case, case laws. That's what I read at the Washoe, I read a lot of case laws.

THE COURT: What authors have you read?

THE DEFENDANT: In novels or in --

THE COURT: Whatever you've read. Give me some idea of what kinds -- I understand you're reading a case. And the case that you cited, I am familiar with that case. That, the legal part of the cases that you have been reading I'm familiar with.

What other kinds of things? You said your passion is science. What kinds of things have you been reading?

THE DEFENDANT: Reading in science? Yeah, physics, chemistry. I don't read a lot of science in jail. Ever since I have been incarcerated I haven't read any science books. But I read chemistry, physical science, astronomy and geography and life science.

THE COURT: And who are the authors of those?

THE DEFENDANT: Well, there's no really any specific author, but there's a guy that comes to my mind, his name is Thomas Young. Thomas Young, what he did when he was going to school, he dissected an ox's eye. Through his dissecting of the ox's eye, he noticed that the ox lens is able to change. Through his discovery of lens, we're able to bring about many other discoveries, like, for example, 35 millimeter lenses in camera, 50 millimeter lenses and 80 millimeter lenses. If you were to put a 50 millimeter in front of the camera, the lens on the 50 millimeter is different than the 35 and 80.

If you were to take a 50 millimeter lens and put it up to your eye as if you were taking a picture and then you move it away, it would be the same thing. We are looking, in our natural lens that we look at, we look at 50 millimeter. If you were to put an 80 millimeter in our, in front of a camera, you will be able to see far away. Just like the glasses you wear, like the glasses you're wearing, those are lenses. Yeah, those lenses are able to help you focus to read or to look at. It was out of Thomas Young; he did discovery and brought some information on the lenses.

There's also Christian Huygens that comes to mind, when he was trying to describe light theories. He thought light traveled in waves and then Isaac Newton came around and he said no, the light travels in particles. Then there's this big dispute whether light traveled in light waves or particle waves. Then coming into, there's another gentleman named Max Planck and he was, he has come out of quantum physics.

There's also another guy; he's the guy, the wild hair guy. I know his name. I see his face. He has a mustache. Wild hair guy. His name is Einstein. So Einstein and Max Planck, based on their two theories, had separated classical physics into modern physics. Up to their time it was classical physics. Now through the realm, theory of relativity and the quantum Planck number we are

able to separate two different types of physics, classical physics and modern physics.

There's another guy that comes to my mind. Theodore -- I don't know how much you want me to give you of these authors. These are not authors. These are, these are men, these are people who have done amazing things for society.

So there's another guy, Theodore Maymen, who first came out of Pepperdine. No. Yeah, he come out of Pepperdine. He is the laser guy, the first guy that created the crystal laser. But it wasn't, it was through Einstein's spontaneous emission theory that he was able to put these two sciences together. Not sciences. Put the spontaneous emission theory along with the laser theory. We are no longer in the bronze age or the stone age. We are in the light age now.

So I think I'll stop there, not -- unless you want me to go on some more, I'll go on.

THE COURT: What is your prior experience or familiarity with legal proceedings?

THE DEFENDANT: I'll tell you what I know. Let's see, for an example, if -- here is an example. The prosecution, in the beginning of the trial, the prosecution go, gives their opening statement. That's familiarity. One can say that's a familiarity. That I know that the

prosecution opens up. They give their opening statements. They are the first ones to begin. See, I know something about that.

THE COURT: What is your prior experience or familiarity with legal proceedings other than this case?

THE DEFENDANT: My prior, my prior experience with the law was when I first had a, when I first had a ticket. That was my first experience with the law is when I had a traffic ticket.

THE COURT: My question isn't what your first experience with the law is. It is what prior experience do you have in legal proceedings other than this trial?

THE DEFENDANT: Well, my father, he was in court. I told, I had to speak, I had to advocate on his behalf because he couldn't speak English. That was one experience that I had.

I had to tell the judge that he lives in Hawaii; that he can't make the hearings, he can't come to San Francisco for the proceedings and that he'll have to do it through letters. So that's one, that's one experience. If you were to look for one, that would be it.

THE COURT: Is that the only other experience you have had?

THE DEFENDANT: Let me see if there are other times.

Yes, I think on June 23, you know, June 23 of this year I stood here and made an argument to dismiss my counsel and you denied my motion. I think I argued here in front of you for 19 minutes.

THE COURT: How did you figure 19 minutes?

THE DEFENDANT: I knew it wasn't four minutes. I made deductions. I know it wasn't ten minutes. I know it wasn't 30, 40 minutes. I rounded off. I say 19 minutes.

THE COURT: Is your request to represent yourself because I wouldn't replace your counsel?

THE DEFENDANT: No, no. The request to represent myself is strictly and solely my decision. No one coerced me. No one forced me. No one persuaded me. No one induced me, none.

THE COURT: That wasn't my question, Mr. Vanisi. You have to answer my questions directly.

THE DEFENDANT: Okay.

THE COURT: Is the reason for your request to represent yourself because I refused your request to discharge counsel?

THE DEFENDANT: No.

THE COURT: Any other familiarity with legal proceedings?

THE DEFENDANT: Let me check my childhood. Maybe there was one time that I might have probably ended up in

court and I didn't realize it and I can't remember. Let me check my childhood.

Let me check my adolescent age. Maybe I stumbled in a courtroom and presented myself and I didn't know it. I'll just check my memory.

No to childhood, no to adolescent. As an adult, just the ones that I've enumerated to you. That's it.

THE COURT: Can you tell me about your health right now? How are you feeling?

THE DEFENDANT: I feel great. I feel fine. Thank you for asking. I feel good.

THE COURT: Are you taking any medications?

THE DEFENDANT: Yes, I'm taking lithium.

THE COURT: What is the dosage of the lithium?

THE DEFENDANT: The dosage of the lithium, I'm not sure. I'm not quite sure, but I think it was in the motion. I think somewhere, 100 milligram.

THE COURT: In what motion?

THE DEFENDANT: What's that?

THE COURT: It was in what motion?

THE DEFENDANT: It was in the motion. It was in the motion I think signed by Judge McGee that I had, that I stood here and read that it was 100 milligram. I saw 100 milligram.

THE COURT: Do you think you're taking medication

now because of a motion signed by Judge McGee?

THE DEFENDANT: No, I don't think that.

THE COURT: Why are you taking it then?

THE DEFENDANT: Why am I taking it? I'm taking it because it's the proper medication for me.

THE COURT: Why are you taking it, though, other than that? Who is giving it to you?

THE DEFENDANT: Oh, who is giving it to me?

THE DEFENDANT: Yes.

THE COURT: Different people give it to me. A lady this afternoon, this morning, she had blond hair. She gave it to me. A lady with brunette hair last night gave it to me. Different people give it to me.

But I think it would be safe to say that Washoe County gives it to me.

THE COURT: Have you had any discussions with a physician with regard to your medication since the last time you were here before me?

THE DEFENDANT: Yes, I had a discussion with a physician and he said that he was going to prescribe me lithium.

THE COURT: Which physician is that?

THE DEFENDANT: I think he goes by the name Dr. Lynn.

THE COURT: You've seen Dr. Lynn since the last

time you were before me?

THE DEFENDANT: No, last time I've seen Dr. Lynn was on the 15th. No, I can't remember exactly the date, but it will take me a little while for me to pull up the right date.

THE COURT: My question was, have you spoken to a physician since the last time you appeared before me?

THE DEFENDANT: No.

THE COURT: Have you spoken to any medical staff other than the person who hands you a pill at the sheriff's office since the last time you appeared before me?

THE DEFENDANT: No.

THE COURT: So, someone hands you a pill and you take it, but you're not sure what it is? You think it's lithium?

THE DEFENDANT: Well, I asked them. I say, I look at it because sometimes people make mistakes. And so I look at my lithium to know that it -- the first time they handed it to me I looked at it and I asked her, "Is this lithium?"

She said yes. Then I know that lithium has a pinkish color. Every time she hands it to me, I look at the color and look to see if it's the right one. And if the lithium comes in a beige or a white color or a dark color, I know that it's not lithium and I will give it back to her.

THE COURT: Has that happened?

THE DEFENDANT: No, that hasn't happened yet.

THE COURT: Other than the little pink pill that you're taking, are you taking any other medication.

THE DEFENDANT: Yes.

THE COURT: What else are you taking?

THE DEFENDANT: Elavil comes in a very dark reddish, almost a burgundy, almost a burgundy color. It's a tiny little pellet. And also Risperdal. That's a white pill like aspirin, but it's long instead of round. The shape of it is a cylindrical shape.

THE COURT: How often do you take the dark reddish pill?

THE DEFENDANT: I take it together with the lithium.

THE COURT: You get them all at the same time?

THE DEFENDANT: Yes.

THE COURT: How many pills of each?

THE DEFENDANT: I take two lithium in the evening time. I take one Elavil. And I take one-half milligram of Risperdal.

THE COURT: All in the evening?

THE DEFENDANT: Yes, all in the evening. One, all in one time.

THE COURT: And when was the last time you took these pills?

THE DEFENDANT: Last night. I take them in the morning. I only take, I take lithium in the morning. I should mention that. I take lithium in the morning. So I had lithium and Risperdal at 9:00 this morning.

THE COURT: How many did you take in the morning?

THE DEFENDANT: I take one lithium, one capsule. Lithium is in a capsule. That's the proper terminology for that. It's one capsule lithium and half a milligram of Risperdal.

THE COURT: You took that this morning, and last night you took two lithium and half a milligram of Risperdal?

THE DEFENDANT: In the evening time I take two lithium, you're correct, and half a milligram of Risperdal and one Elavil.

THE COURT: How long has this been going on?

THE DEFENDANT: Lithium hasn't been a week yet. What is today, Tuesday? I think the lithium, it will be one week tomorrow, one week tomorrow will be for my lithium.

And then for Elavil, all of July. No, take that back. I didn't take, I didn't take any medication on July. July I didn't take any medication. I took them on July 16, is when I began. July 16 is when I began taking Elavil and Risperdal.

I didn't have any in the month of, for the first

half of the month July. I didn't have any, I didn't take any medication in June. And on May, I didn't take any medication in May. Beginning on May -- May 9 was the last time I had it.

But do you want me to tell you when the beginning of my -- you want me to tell you the beginning of when I took Elavil? That's going to take me some time. That will take me a little while to pull up the exact date. Or can we just stop there? Or do you need to know more?

THE COURT: You started taking it July 16 this last time?

THE DEFENDANT: Yes, I started it July 16. I didn't take any from July 1 to July 15. I didn't take any medication. And all of June I didn't take any medication.

THE COURT: I've got some information with regard to your mental health found in motions and discussions that I've received from your counsel or from your psychiatric reports. But can you tell me about any mental health issues that you suffered from in the past?

THE DEFENDANT: Yes. I have, I am manic-depressive. I am manic-depressive.

THE COURT: What does that mean to you?

THE DEFENDANT: Manic is when you're at your extreme highest and you feel really happy. And depressive is when you're really sad, and you're really, really sad.

THE COURT: How does that affect you? You say you're manic-depressive?

THE DEFENDANT: Yes.

THE COURT: How does that affect you?

THE DEFENDANT: I don't want to be manic. I don't want to be happy because when I'm manic I'm the only one happy. It's no fun just being happy by yourself. Plus it just probably irritates other people. You become obnoxious that you're the only one having fun and enjoying life. I don't want to be like that.

And I don't want, depressed is you just feel really sad for no reason. You're just totally bummed out, depressed. I don't want to feel that. I just want to feel normal. There is a normal.

THE COURT: When did you first discover you were manic-depressive?

THE DEFENDANT: I first discovered it when I was incarcerated. I first, I first started paying attention to my psyche when I was incarcerated. But all throughout my life I've always been manic-depressive and I didn't know it. When I look back into my childhood, adolescence, I can see moments where I have been really manic and moments where I have been really depressed.

THE COURT: Have you ever been treated for it?

THE DEFENDANT: No, I never have been treated

before. This is the first time getting treatment.

THE COURT: Have you ever been institutionalized?

THE DEFENDANT: For manic depressive, no.

THE COURT: For any mental health issue?

THE DEFENDANT: For any mental issues? No.

THE COURT: Have you been institutionalized for some other reason?

THE DEFENDANT: No.

THE COURT: You indicated to me that no one has coerced you to waive your right to be represented by an attorney. Did you tell me that earlier today?

THE DEFENDANT: Yeah. I'll tell you again: No one coerced me.

THE COURT: What does coerce you mean, to you?

THE DEFENDANT: Coerce would be to force or to compel.

THE COURT: Has anyone suggested that it would be a good idea that you represent yourself?

THE DEFENDANT: No.

THE COURT: Why did you decide that this would be a good idea?

THE DEFENDANT: When did I decide it was a good idea?

THE COURT: When is a good question, yes.

THE DEFENDANT: January, January 16, 1998.

THE COURT: Why did you wait until now to ask me permission to represent yourself?

THE DEFENDANT: Because I'm finally taking a stand and telling my standby counsel that I don't want you to represent me. I'm going to represent myself. And this just wasn't, this just wasn't thought of yesterday. This always has been something that I've always -- it's the best thing for me to do is to represent myself.

THE COURT: Why did you wait until a month before your trial to bring it up to me?

THE DEFENDANT: Why did I wait to bring it up to you? I figured it would be better than telling you that I want to represent myself on the day of the trial, that I wanted to represent myself. So I thought maybe giving you one month time would be ample time to give you notice, to give the prosecution notice instead of waiting for the day of trial.

THE COURT: But you've known since last January that you wanted to do this?

THE DEFENDANT: Yeah, yeah. There's -- yeah.

THE COURT: Do you understand that I would continue to have counsel provided for you at no cost to yourself? Your attorneys are being paid for by the county. You don't have to pay for their representation of you.

THE DEFENDANT: Yes, I understand that I don't

have to pay for their counseling, that you'll provide for me.

THE COURT: And you understand that's not going to stop. That you'll continue to have their -- they're appointed to represent you, and they would continue to represent you throughout the trial at no expense to you?

THE DEFENDANT: If you were to do that.

THE COURT: Well, they are now currently appointed to represent you. You understand that?

THE DEFENDANT: Yes.

THE COURT: You understand that that's at no expense to yourself?

THE DEFENDANT: Yes.

THE COURT: Would you tell me what the elements are of the offense you are charged with?

THE DEFENDANT: Murder in the first degree, robbery, robbery, robbery, grand larceny.

THE COURT: You think those are the elements?

THE DEFENDANT: Those are the elements.

THE COURT: They are not, Mr. Vanisi. Do you know what the lesser or related offenses might be to those offenses?

THE DEFENDANT: Let me find out what the elements are because I would like to know what the elements are.

What are the elements, Jeremy?

THE COURT: Today is the time for me to find out if you know these things. Then I have to make a decision if I think you can represent yourself.

THE DEFENDANT: Yeah, maybe you can tell me the elements. I think what I said were the charges.

THE COURT: So you don't know what the elements are?

THE DEFENDANT: Let me think. Elements. Elements and charges, elements and charges. Statutory, aggravated is different ...

Yeah, the elements is what the prosecution has to prove beyond a reasonable doubt.

THE COURT: What are those?

THE DEFENDANT: The elements are that, that the murder was willful, deliberate, intentional and -- willful, deliberate -- willful, deliberate, intentional -- willful, premeditated, yeah, that's the fourth. Those are the elements that are against me.

THE COURT: That's it?

THE DEFENDANT: Yeah, willful, premeditated, intentional -- willful, premeditated, intentional. Yeah, those are the four.

THE COURT: I asked you earlier what the lesser included or related offenses are to what you're charged with. Do you know what that means?

THE DEFENDANT: The lesser penalty?

THE COURT: No, the lesser included offenses.

THE DEFENDANT: The lesser included offenses would be grand larceny. That's one of the offenses. That would be the lesser offenses.

THE COURT: You told me you were charged with grand larceny.

THE DEFENDANT: Yes, that's an offense.

THE COURT: What is the lesser included offense? Do you understand that term?

THE DEFENDANT: Say it one more time. My mind is in disorder. Say it one more time.

THE COURT: Do you know what the lesser included or related offenses are to what you are charged with?

THE DEFENDANT: Lesser included offenses are, lesser included offenses, charges ...

No, but I can find out for you. I don't know, but I can find out for you. I'm not quite sure. So I'm not going to say something I don't, I'm not sure of knowing. But I will find out for you what are the lesser included offenses.

THE COURT: You told me that you understand that the State is requesting the death penalty. What are the elements of that request?

THE DEFENDANT: The elements are that -- well,

that the State are saying that -- see, I think it would be better if I speak for another person. If another person instead of me, if a person --

THE COURT: I think it would be much better for you to represent another person if you were an attorney. You're asking to represent yourself. You're going to have to speak in terms of your case. My questions are directed only toward your case.

THE DEFENDANT: To my case, yeah. Well, yeah, those -- yeah, ask your question one more time because I have the answer. Ask the question one more time to make sure we're on the right track.

THE COURT: Well, go ahead and answer it.

THE DEFENDANT: I would like to hear it --

THE COURT: I can't repeat my questions numerous times every time you want to delay. You have to answer my questions if you're going to represent yourself. You have to answer them as I ask them.

THE DEFENDANT: I want to be sure that I heard your question properly.

THE COURT: You heard it. You repeated it to yourself.

THE DEFENDANT: I'll put on the record I think I heard it properly. I'm not quite sure.

THE COURT: Why don't you repeat what you think

you heard.

THE DEFENDANT: Let me see. If I do it verbatim, I'll fail.

THE COURT: Just tell me what you think the question was.

THE DEFENDANT: What are the elements for a death penalty?

THE COURT: Okay. So what do you think that means?

THE DEFENDANT: Yeah, one element for the death penalty was an officer was killed because of his race or his origin or his nationality. That would constitute death penalty; that would be one.

What constitutes a death penalty is if an officer was engaged in his official capacity, if he was working. That would constitute as one.

Mutilation is one and -- yeah, mutilation would be another element. I think those are plain enough for one to face the death penalty.

THE COURT: Are those the only ones that are alleged in this case by the State?

THE DEFENDANT: I'm sure there are more or maybe one more or -- but that's what I can come off my head at this point.

THE COURT: What other possible punishments are

there to the offenses you're charged with?

THE DEFENDANT: Punishment would be first degree, for first degree murder punishment would be life without or life with. Then there are second degree. And then for the other penalty for the element of my offense would be robbery. That's a penalty for robbery is one to 15 years. And if there's a weapon, that's doubled. It would be two to 30 for robbery. And grand larceny penalty would be one to ten years.

THE COURT: So if you happened to be convicted of all of the offenses you're charged with, what is the possible maximum penalty you're facing?

THE DEFENDANT: It would be the death penalty would be the maximum.

THE COURT: I agree in reality. But what else would be the potential penalties?

THE DEFENDANT: It could be life without.

THE COURT: No, I understand that's what might happen with regard to the first degree murder case. But what is the maximum that could be imposed by the jury and the Court combined?

THE DEFENDANT: What is the maximum penalty?

THE COURT: For all the offenses.

THE DEFENDANT: And you understand when I say death penalty is the maximum.

THE COURT: I understand that. But, you know, for instance the death penalty, you might get the death penalty, but it might go away somehow.

THE DEFENDANT: That wouldn't be the maximum. You would have to change your question to what would be the minimum, because the maximum would be the death penalty.

THE COURT: You think you would get the death penalty for robbery?

THE DEFENDANT: No, for that, for the robbery you get one to 15 years. I think I just said, I'll say it again. For robbery, one to 15 years. If it's with a weapon, that doubles it, enhances it from two to 30 years. Grand larceny, I also said earlier, grand larceny is one to ten years.

THE COURT: And is that your total possible sentence?

THE DEFENDANT: Total possible sentence for robbery, yes.

THE COURT: For all the charges that you're charged with.

THE DEFENDANT: Or they can run consecutively. The robberies can run consecutively. For three robbery charges, or offenses, they could run consecutively or concurrently. And so that's up to the jury or up to the judge for sentencing on the jury for the robbery.

THE COURT: What are the potential pleas available to you on these charges?

THE DEFENDANT: Potential pleas is guilty, not guilty, guilty but insane, or the Alford plea. I think there's five pleas. And no contest would make the fifth one.

THE COURT: And what are the possible defenses that are available to you?

THE DEFENDANT: Possible defenses for what crime?

THE COURT: The crimes you're charged with.

THE DEFENDANT: For what offenses? What's that? Possible defense for which crime?

THE COURT: For the crimes you're charged with.

THE DEFENDANT: Possible defense for someone -- let me, let me find out if I should direct it to me because, or should I direct it to somebody else.

THE COURT: You can do it in the abstract.

THE DEFENDANT: Yeah, I'll do it in the abstract. It's better. For defending, can have the defense as that he's not the perpetrator, somebody else is. Or depending what the nature of his case is, he can have that defense or an alibi defense. If he has an alibi defense, he can go with that.

He can go with the insanity defense. Those are some.

THE COURT: Do you think that, do you think the alibi defense is available to you in this instance?

THE DEFENDANT: If it's eligible to me?

THE COURT: Do you understand -- what are the rules with regard to alibi defense?

THE DEFENDANT: An alibi rule? That would be the 174 dot 087. That is you have to give a written notice within ten days before the trial if you are going to have an alibi. Ten days, what the rule requires. And that --

THE COURT: Were you finished?

THE DEFENDANT: Yes. I'll say it again, if you want me to.

THE COURT: No, I only need you to say whatever you want to say once. Just tell me when you're through.

Any other defenses you want to tell me about that might be available to someone charged with these offenses?

THE DEFENDANT: No, those are, I'm comfortable with telling you those defenses, those available defenses.

THE COURT: Do you understand that if I were to grant your motion to represent yourself that I, it's discretionary whether I appoint standby counsel? Do you understand that?

THE DEFENDANT: Yes. Were you finished?

THE COURT: Yes.

THE DEFNEDANT: I thought you were stopping in an

incomplete sentence. I heard you stop at standby counsel. Discretion of standby counsel. I was waiting if you were done.

THE COURT: Do you understand that by speaking in incomplete sentences or colloquialisms, that the average person would understand and must respond immediately. In the courtroom you can't question me in front of the jury.

THE DEFENDANT: Yes, colloquially I can pick it up. But I picked you up as not finishing your sentence. So that's why I was waiting.

But run that sentence by me one more time about standby counsel.

THE COURT: The question as the court reporter has written it is: "Do you understand that if I were to grant your motion to represent yourself that I, it's discretionary whether I appoint standby counsel? Do you understand that?"

In other words, do you understand that it's discretionary with me whether I appoint standby counsel for you?

THE DEFENDANT: Yes, by all means I understand that you have the discretion.

THE COURT: Do you understand that if I were to appoint standby counsel, they would not be required to advise you with regard to the law?

THE DEFENDANT: Yes, I understand.

THE COURT: And that they are not required to provide you with legal advice?

THE DEFENDANT: Yes, I understand.

THE COURT: By understanding that, do you understand you can't later say that because they didn't tell you what you should do or because they didn't give you the right advice on how to represent yourself, you can't complain to the Supreme Court?

THE DEFENDANT: Yes, I understand.

THE COURT: What is the time frame within which to file an appeal of your conviction?

THE DEFENDANT: For --

THE COURT: If you were to be convicted.

THE DEFENDANT: Me, the person me?

THE COURT: Anyone. Why don't you just do it --

THE DEFENDANT: Let's do the abstract.

THE COURT: That's fine.

THE DEFENDANT: If a person is facing a death penalty, that person, it's an automatic appeal for that person. But any other, if it wasn't that person, that person was not facing the death penalty, it would be within 30 days from the judgment.

THE COURT: Mr. Vanisi, why do you think you are better suited to represent yourself than your counsel?

THE DEFENDANT: That's an abstract question. Give

me some time.

(There was a pause in the defendant's response.)

THE DEFENDANT: Yeah, I came up with a lot of reasons, but I'll just give you one. Yeah, it's in my best interests to represent myself.

THE COURT: Why?

THE DEFENDANT: Because for tactical reasons. For tactical reasons.

THE COURT: You understand that one of the tactical reasons that you're going to lose is the right to raise certain issues on appeal?

THE DEFENDANT: Yes, I understand, but I'll waive those.

THE COURT: I can't think of a tactical reason why it's in your best interests.

THE DEFENDANT: You can't?

THE COURT: No.

THE DEFENDANT: Hmmm. Let me see if I can make you understand why you can.

MR. GREGORY: Your Honor, I object. It's his defense if he represents himself. If he has tactical reasons, I don't think we should be sharing that with the prosecutor and this packed courtroom. I think the Court has gone way beyond what is required under Supreme Court Rule 153 and Faretta. 253, sorry.

THE COURT: I can't think of a tactical reason that it would be to your benefit to do this except that it may create a disruption of the court, which is a basis to deny his request. Except that it may cause a delay in the proceedings, which is a basis for denying his request. Except that it could cause security problems, because of your prior disruptive behavior. All those reasons are reasons why I can deny your request to represent yourself.

I want to allow you the opportunity to represent yourself as the constitution guarantees, absent a legitimate reason to deny you that request. But if you are telling me that the tactical decision on your part to represent yourself is that you think you can delay the proceedings as you have today, and on prior occasions; if you think that you don't have to respond to the questions directly or you think it will give you an opportunity to argue with the Court or belittle the court system, all of those reasons are reasons to deny your request.

I do not want to get into the tactical decision of a witness being, a particular witness's cross-examination except to say that if your tactical reason is that you want to violate a rule of law or an ethical consideration -- in other words, you want to put up perjured testimony that your attorneys can't and won't do, that tactical reason would be inappropriate and improper for me to grant your request.

When I say I can't think of a tactical reason, I can't. Now, if you can tell me in the abstract some circumstance, even if it doesn't relate necessarily to your defense, some tactical reason that would be of benefit to you that is not disruptive to the court, I would be more than glad to hear it.

THE DEFENDANT: Let me tell you that what you are saying is incorrect. With all due respect, Your Honor, I am not going to do those things which you had enumerated, such as putting up a perjured witness up there or delaying court time. Those are not, you're coming -- I will have to say on the record you're a little off there, Judge.

But my intention when I say tactical reasons always has been for the pure interest for upholding the law and complying with the Court; never to create an arena for disorderly conduct.

So yeah, if you're not so, you are incorrect when you say I'm doing this to delay. I'll be ready on September 7. I will be ready September 7.

Now you were speaking in the abstract. I didn't know you were hinting, I guess, covertly that you are denying? You are denying my motion? Because that is the, through your abstract speech I kind of got it that you insinuated denying, but I just wanted to put on the record that I am not, I'm not -- I'm not delaying time. I will be

ready on September 7.

I don't intend to do anything that would violate the constitutional or the court law or any law. My pure intention of a tactical decision, it's just as I said first was, it was in my best interest. And that's why I want to represent myself, because it's in my best interest to pose as myself as a person who litigates for himself.

So, now, you have to make me understand, Judge, because I disagree with you. So we have to straighten out this discrepancy. Are you denying my motion?

THE COURT: I haven't ruled on your motion.

THE DEFENDANT: Is there a further question -- what is that?

THE COURT: I have not ruled on your motion.

THE DEFENDANT: Oh, okay.

THE COURT: Do you think that one of the things you can do is raise motions that have already been raised and ruled upon by the Court?

THE DEFENDANT: Are you trying to see if I play games in any -- no, I don't.

THE COURT: No, I want to know if you understand that one of the issues that you would like raised was a legal argument that double jeopardy attached in this case. We have had some discussions about that and your counsel and you have had discussions with me with regard to that.

Do you think if you were representing yourself that you're going to be able to make motions that your counsel has told you -- not just that one. I'm not talking about that one specifically, but other motions that your counsel told you would be inappropriate and they won't file? Is that the point of representing yourself?

THE DEFENDANT: No. The point of representing myself is to behave and to comport with the justice system and to comport with your, with the court rules and comport with this rule, and just to obey the commandments that are expected of me and to represent myself along those guidelines; not to meander off course or to wander aimlessly in a muddle. I don't, I don't plan on raising any of those arguments that I have already argued in this court. I am moving on.

THE COURT: Do you understand if I do allow you to represent yourself I will not allow you any more movement in the courtroom than you were allowed previously?

THE DEFENDANT: Yes, just put it on the record to where I can stand and not stand. As long as you put it on the record that I, that you, that the Court wants me to conduct a fair trial standing as I am as a statute. That's fine, if that's how you want to do it. Just put it on the record.

THE COURT: Is that your issue, that you want to

have more freedom of movement around the courtroom and you want not to be held to any kind of restraint on movement?

THE DEFENDANT: I think we should all just be silly and handcuff and belly chain those two guys and we all stand together, and have a trial like that. That's what I would think.

But I don't think that way, and I think the constitution allows me the law, or the standard of justice would allow me to behave just as the prosecution would behave. If they are allowed to walk in the center, I would like to stand in the center and give an argument from that point.

THE COURT: So is that the reason you want to represent yourself is because you want to be released from the restraints that you were placed in?

THE DEFENDANT: No, that's frivolous. That's a frivolous, that's a frivolous -- no. That's not my intention.

THE COURT: Well, you understand that even if I grant your request I will not change any of the security rules regarding your continued restraint?

THE DEFENDANT: Yeah. I understand if you are going to, you are going to do what you're going to do and I'm going to behave civil and polite, and just behave as the prosecution behaves.

THE COURT: Okay. Mr. Stanton, do you have any questions that you would suggest that the Court inquire?

MR. STANTON: Yes, briefly, Your Honor. In Subsection 1 of Rule 253 there is an indication about whether or not the inquiry by the District Court reveals whether the defendant has consulted with his appointed counsel to discuss the consequences of self representation.

One thing I've noticed about Mr. Vanisi, not only in this hearing but in my review of the facts and the interview by police with Mr. Vanisi, is he takes everything very literally. And your initial question to him was: Did he discuss with his counsel the procedure of today's motion.

I would ask maybe if, since Mr. Vanisi's interpretation of that might be so literal as to just the narrow parameters of the question, whether or not he has discussed fairly or completely with his current counsel the ramifications, all the ramifications that 253 outlines.

THE COURT: That observation of Mr. Stanton is one that, of course, the Court has also observed both today and in prior hearings. And I am concerned that, although I thought I was inquiring as to Rule 253, Sub 1's content, that perhaps Mr. Vanisi did not understand my question. I'm going to take the suggestion from Mr. Stanton as well taken.

Mr. Vanisi, I have another question for you. Have you discussed Rule 253 with your current appointed counsel?

THE DEFENDANT: Yes, I have discussed 253.

THE COURT: Have they talked to you and explained to you what all the possible consequences are in their mind as to yourself representation under Rule 253?

THE DEFENDANT: Yes, they've given me some feedback.

THE COURT: Do you feel like you have had ample opportunity to talk to them about that?

THE DEFENDANT: Yes.

THE COURT: And have they told you some of the things that might happen to you if you proceeded with self representation?

THE DEFENDANT: Yes.

THE COURT: Have they told you some negative things as well as positive?

THE DEFENDANT: They have told me --

THE COURT: Don't tell me the specific advice that they've given you. But have they told you negative as well as positive?

THE DEFENDANT: Yeah, they've told me what the negative side would be.

THE COURT: And you told me before that you think the most egregious negative side would be, in fact, you would be convicted of first degree murder and sentenced to the penalty of death?

THE DEFENDANT: Yeah, that's the, the penalty would be death.

THE COURT: You understand that's the ultimate end if the worst had happened, and it could happen because you made a tactical decision that an attorney would not have made?

THE DEFENDANT: Yeah. I think I answered this question.

THE COURT: I think you did, too, but I want to make sure.

THE DEFENDANT: It's the same question. It would be the same answer. I am aware.

THE COURT: All right. Anything further, Mr. Stanton?

MR. STANTON: No, not from the basis of the guidelines set forth in 253, other than the findings of fact that the Court, I believe, needs to make relative to Subsection 1 and Subsection 4.

I do have a couple of bits of evidence that I would like to offer to the Court in its consideration whenever you would deem that appropriate.

THE COURT: All right, thank you. Mr. Bosler and Mr. Gregory, do either of you have any suggested questions that you think the Court should inquire of your client that I have not?