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IN THE SUPREME COURT OF THE STATE OF NEVADA

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SIAOSI VANISI,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

No. 35249

_____/

RESPONDENT'S ANSWERING BRIEF

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RESPONDENT'S ANSWERING BRIEF

I. STATEMENT OF THE CASE

This is a direct appeal from a judgment of conviction and imposition of sentence by the Second Judicial District Court. Appellant Vanisi was charged with first degree murder and several other offenses stemming from the murder of University Police Sergeant George Sullivan, the theft of Sullivan's gun, and the use of the gun to rob convenience stores. The first trial resulted in a mistrial upon the defense motion when it came to light that the defense had fashioned their strategy around a single clerical error in an unofficial transcript. 17 ROA 923.

The jury in the second trial found Vanisi guilty of all charges and sentenced him to death. The court imposed additional sentences for the other offenses. This appeal followed.

II. STATEMENT OF THE FACTS

In the days preceding the murder of Sergeant Sullivan, appellant Vanisi announced his intent to kill a police officer. He went shopping for an appropriate weapon. He rejected a gun when he

learned that he would need a license. So, he settled on a hatchet. 22 ROA 654; see also, references in the Opening Brief at p.6, n.8.

In the early morning hours of January 13, 1998, Vanisi brought his plan to fruition. He disguised himself and travelled to the campus of the University of Nevada. He watched Sergeant Sullivan conducting a traffic investigation. He waited in the shadows until Sullivan completed that task. He watched as Sullivan moved his car to an area with better light where some police officers liked to complete their paperwork. He crept up on the car and knocked on the window. When Sullivan lowered the window and asked if he could assist, Vanisi lashed out with the hatchet. 25 ROA 975-979.[1] Over and over he smashed the officer's face and head with the hatchet. With one of the blows, Vanisi's hatchet sliced through Sullivan's eyes. See generally, 22 ROA 520-542.

Vanisi took the officer's Sam Brown belt with its gun and other devices. He used the gun to rob two stores. 23 ROA 850-51; 861-64. Before the robberies, he stole a car. 23 ROA 841-42. Afterwards, he fled to Utah. 25 ROA 909-910. He was apprehended at a relative's home in Utah when Utah police used a non-lethal bean-bag gun to disable him. 25 ROA 951-52. He was then returned to Nevada to stand trial.

Before the trial, there were several *in camera* hearings from which the prosecutor was excluded. The transcripts of those

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[1]For the sake of brevity, this summary is taken from Vanisi's confession to a relative. There was a wealth of corroborating evidence adduced at the trial but it is not necessary to describe it in detail.

hearings have been sealed by order of the district court. See ROA (transcripts of June 23, 1999; August 3, 1999; August 26, 1999; September 20, 1999, September 27, 1999.) Because those transcripts cover areas protected by the attorney-client privilege, the State has been denied access to them and must argue this appeal with one hand tied behind its back.

The second trial was set for September 7, 1999. In August, 1999, Vanisi filed a motion for leave to represent himself. 5 ROA 1300-1303. The court conducted a hearing, made extensive findings of fact, and denied the motion. 5 ROA 1333-1418. Among other things, the court noted that Vanisi admitted that he made the decision to represent himself on January 16, 1998, two days after his arrest, but had purposely delayed bringing the motion until what Vanisi perceived as the last viable moment. 5 ROA 1360; 5 ROA 1246-47. The delay occurred despite the fact that in November, 1998, the court cautioned Vanisi that a motion for self-representation must be brought in a timely fashion. 3 ROA 785-86. Even after Vanisi reached his decision, noted the court, he had asserted contrary positions in an apparent attempt to delay the proceedings. For instance, on June 18, 1999, Vanisi filed a motion not seeking to represent himself, but instead seeking to discharge his counsel and to have new counsel appointed. 4 ROA 999-1008. He did that even though he had already decided to represent himself at trial.

Similarly, in November, 1998, he specifically denied any desire to represent himself and announced that he would continue

with his trial counsel "for this time." 4 ROA 785. This, despite the fact, as noted by the district court, that he had already decided to represent himself. In that same time frame he denied knowing his options, but in the next breath acknowledged that he had the right to represent himself. 3 ROA 801. Finally, in that same hearing, Vanisi went so far as to seek advice from the court regarding how best to delay the trial. 3 ROA 807. Thus, the district court concluded that Vanisi was deliberately misleading the court by purposefully delaying presenting his motion for self-representation until some 20 months after he had made his decision.

In the hearing concerning the motion to represent himself, Vanisi announced his intent to seek legal advice from other inmates and from his "counselor" at the jail and from his stand-by counsel. 5 ROA 1338. Although he later denied the intent to induce others into the unauthorized practice of law, the court appears to have believed that Vanisi was being less than honest about his intent.

Vanisi also appears to have assumed that the district court would appoint stand-by counsel with whom he could consult. 5 ROA 1339. Although he nominally acknowledged that appointment of such counsel was "discretionary," he gave no indication that he understood that the refusal to appoint such counsel was also discretionary. 5 ROA 1370. Thus, it may well have been that his motion for self-representation was equivocal or conditional. It may have been founded on the assumption that he would have stand-by counsel.

Vanisi denied that he intended to use self-representation as a means to delay or disrupt the trial, but the trial court, after commenting on the demeanor and deportment of Vanisi, found that was indeed his intent despite his denials. 5 ROA 1247.

In reporting on the defendant's competency in June, 1999, two doctors opined that Vanisi was "malingering." Thus, it appears that Vanisi was trying to mislead the court in that manner as well.[2]

At the hearing on the motion for self-representation, Vanisi also revealed that his motion was equivocal in that he assumed that if he were allowed to represent himself, then security measures would be altered, and he would have the same freedom to move about the courtroom as would the prosecutor. Even after the court cautioned him on that point, he continued to demonstrate that he believed he would be entitled to be relieved of security precautions exactly to the same extent as the prosecutor. 5 ROA 1377; 5 ROA 1249-50; 1255.

At the hearing, Vanisi claimed that he had a tactical reason for seeking self-representation. The court indicated that no tactical advantage was obvious and that the court feared the true reason for self-representation by Vanisi would be to allow improper conduct. 5 ROA 1374-75. However, even in the face of the strong indication that the court suspected his true tactical motivation was to allow disruption, Vanisi could not identify any

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[2]The psychiatric reports should be found in the sealed exhibits included in the record. They are described at 4 ROA 1073.

tactical reason for his decision in even the most general way. 5 ROA 1375-76. As a consequence of that and other considerations, it appears that the true strategy of Vanisi was to enable himself to delay and disrupt the proceedings, and to bring about yet another mistrial. At the hearing on the motion for self-representation, the court also reviewed (but did not rely upon) a certain videotape, exhibit "A," in which Vanisi predicted yet another mistrial. 5 ROA 1383-1390; 5 ROA 1254. The court noted that Vanisi's "demeanor and verbal behavior" on the tape was consistent with prior hearings. 5 ROA 1254. Those prior hearings include those from which the prosecutor was excluded.

After the hearing on the motion for self-representation, the district court made extensive findings of fact. The court found, *inter alia*, that despite his protestations to the contrary, Vanisi intended to use his self-representation to delay and disrupt the proceedings. 5 ROA 1247. Accordingly, the court denied the motion for self-representation. Trial proceeded and Vanisi was convicted.

III. ARGUMENT

A. A TRIAL COURT, IN EVALUATING A MOTION FOR SELF-REPRESENTATION, IS NOT REQUIRED BY ANY RULE OF LAW TO ACCEPT THE REPRESENTATIONS OF THE DEFENDANT AT FACE VALUE.

Vanisi argues that the district court erred in denying his motion for self-representation. He appears to take the position that there was no evidence supporting the conclusion that he intended to delay and disrupt the proceedings. The State

disagrees.

A criminal defendant apparently enjoys two inconsistent rights: the right to counsel and the right to proceed without counsel. Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975). The law creates a presumption in favor of the former and against the latter because the right to counsel attaches even without any request from the defendant. United States v. Arlt, 41 F.3d 516, 520 (quoting Brewer v. Williams, 430 U.S. 387, 404, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977)).[3]

The right to self-representation has been described as an "unqualified" right. Baker v. State, 97 Nev. 634, 636, 637 P.2d 1217, 1218 (1981). Nevertheless, it appears that the right is not absolute, and that there are occasions when a trial court may refuse the request and require the defendant to proceed with the benefit of counsel. The circumstances are narrow. Generally, a competent defendant may represent himself. However, the Supreme Court has noted that "the trial judge may terminate self-representation by a defendant who deliberately engages in serious

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[3]The basic proposition that a defendant enjoys the right to self-representation has been called into question of late. See United States v. Farhad, 190 F.3d 1097, 1101 (9th Cir. 1999) (Reinhardt, J., concurring). See also, Martinez v. Court of Appeal of California, ___U.S. ___, 120 S.Ct. 684 (2000)(in the course of declaring that there was no right of self-representation on appeal, the Court noted that the basis for Faretta, infra, was questionable). While it is not necessary to the instant case, the State invites this Court to adopt the reasoning of Judge Reinhardt and to hold that Faretta was wrongly decided and should be overturned.

and obstructionist misconduct." Faretta n.46. In addition, the Court noted in the same breath that "[t]he right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." Id. The high court reiterated this point in McKaskle v. Wiggins, 465 U.S. 168, 173, 104 S.Ct. 944 (1984), noting that "an accused has a Sixth Amendment right to conduct his own defense, provided only that he knowingly and intelligently forgoes his right to counsel and that he is able and willing to abide by rules of procedure and courtroom protocol." (emphasis added).

In predicting if a defendant will represent himself while adhering to customary courtroom protocol, a trial court can and should properly consider pre-trial behavior of the defendant. Tanksley v. State, 113 Nev. 997, 1001, 946 P.2d 148, 150 (1997). See also; United States v. Flewitt, 874 F.2d 669 (9th 1989)("if the district judge determines that the defendants' request is part of a pattern of dilatory activity," the court may require the defendant to proceed on scheduled day, with counsel or in proper person.); Stewart v. Corbin, 850 F.2d 492 (9th Cir 1998)(decision based on several factors including violent acts in jail). Here, the trial court noted Vanisi's violent disciplinary problems in the jail, causing his removal to the prison, and the similar problems within the prison itself. As the court noted, Vanisi's "aggressive and disruptive behavior" in the prison and the jail led the court to anticipate that Vanisi would utilize his self-representation to

disrupt the trial. 5 ROA 1249.

The court also commented upon Vanisi's inability or unwillingness to act in accordance with courtroom protocol. The district court noted that at previous hearings Vanisi had "blurted out statements in a loud voice and interrupted this court." 5 ROA 1248. The court also commented on Vanisi asking the court to repeat the same question "many times" and on his refusal to answer questions when he took issue with the court's grammatical construction of the question. The court noted that Vanisi had a tendency to speak out loud to himself as though addressing the courtroom audience. The court had observed Vanisi making statements under his breath while others were speaking. 5 ROA 1248-1249.

The court also commented on Vanisi's "standing up and engaging in unsettling rocking motions." Id. The district court concluded the combinations of words and gestures gave rise to the court's concern about future disruptions.

This Court has previously noted the importance of the demeanor and deportment of a defendant in deciding a Faretta motion. Tanksley, supra. The Ninth Circuit agrees:

> "[T]he appellate court is not in as favorable a position as the trial court to determine the effect of the defendant's disruptive conduct on the proceedings. Even though facial expressions, gestures, and other nonverbal conduct are significant, they cannot be transcribed by the court reporter. Also, the reaction of jurors and witnesses is easily observed by the trial judge but seldom appears in the written record. Therefore, great deference must be given to the decision of the

trial court." Stewart v. Corbin, 850 F.2d 492, 497-98 (9th Cir. 1988).

A court may also deny a Faretta motion, even if timely, where the defendant's purpose is to delay the proceedings. Tanksley, supra. Furthermore, no rule of law requires the court to take the defendant's protestations that he will be ready on the designated date at face value. If a court anticipates that the defendant's true motive is to secure a delay, the court may deny the motion for self-representation. The district court noted that Vanisi had filed a motion for the appointment of new counsel despite having already decided to represent himself. The court also commented upon Vanisi's prior attempts to secure delays in the trial as evidence of his true intent.

In Fitz v. Spalding, 682 F.2d 782, 784 (9th Cir. 1982), the court held that the determination of whether the defendant intends his Faretta motion as a delaying tactic is a question of fact addressed to the trial court. The trial court should consider such factors as whether the Faretta motion is accompanied by a motion to continue, prior efforts to delay the trial, and "whether the defendant could reasonably be expected to have made the motion at an earlier time." Id. Here, while the motion was accompanied by Vanisi's claim that he would not be seeking a continuance later, the fact that he had purposefully delayed bringing his motion for some 20 months, until what he perceived to be the last possible moment, coupled with the prior efforts to delay the trial, led the trial court to determine as a matter of fact that Vanisi's motion,

even if timely, was made with the intent to delay the proceedings and not in good faith. As noted above, that factual determination, the decision regarding what inferences are to be drawn from the evidence, is reserved to the district court. That is especially true where the factors noted by the court, the rocking, the muttering, the speaking out of turn in a "loud" voice, are not matters that are readily qualifiable or quantifiable.

The cold transcript of the Faretta canvass reads as though Vanisi might have been sincere. As this court has so often noted, however, a transcript is necessarily deficient because of what it does not reveal. Graves v. State, 112 Nev. 118, 124, 912 P.2d 234, 238 (1996). Military courts have expressly recognized that words are but a small part of a conversation and that tone, tenor, demeanor, and deportment can change innocuous words into a criminal act. United States v. Najera, 52 M.J. 247 (2000). Similar concepts are found in popular culture when comedians become obvious outrageous liars.

There is an additional reason to believe that the court correctly determined that Vanisi intended to use his self-representation for some sort of misconduct. Within days of the Order denying Vanisi's Faretta motion, the Public Defender's Office filed a motion to withdraw, citing an irreconcilable dispute with Vanisi. According to the affidavit attached thereto, Vanisi categorically refused to participate in presenting any lawful defense and insisted on a defense that was not supported by the

evidence and would violate SCR 166. 5 ROA 1499.[4] In United States v. Flewitt, supra, 874 F.2d at 675, the court ruled that "[a] defendant proceeding pro se, or requesting to proceed pro se, is subject to the same good faith limitations imposed on lawyers, as officers of the court." Because it appears that Vanisi was attempting to do by himself that which would have been forbidden to a lawyer, it appears that the court was correct in its factual determination regarding Vanisi's intent.

Given the standard of review and the fact-intensive nature of the inquiry, this Court should rule that the trial court's ruling must be affirmed because the court's legal analysis was correct, and the trial court's prediction that Vanisi would be disruptive and attempt to delay the proceedings is not clearly untenable.

The district court, in denying the motion, also relied on the fact that the case was too complex for Vanisi. Indeed, the court noted that Vanisi did not appear to understand the relationship between the various charges. 5 ROA 1253. In a murder case, the relationship between the charges is of great importance because a first degree murder conviction may be had on a felony murder theory.

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[4]This motion was also denied, and this Court denied a subsequent petition for writ of mandamus. See Vanisi v. District Court, Docket No. 34771, Order Denying Petition dated September 10, 1999. The State has been denied access to the transcript of the hearing on that motion as well, and must just blindly refer the Court to the sealed transcripts for evidence of the true nature of the conflict.

This Court has followed other courts in ruling that a Faretta motion may be denied in rare cases where the case is so complex that the need for a fair trial overrides the defendant's interests in representing himself. Lyons v. State, 106 Nev. 438, 796 P.2d 210 (1990).[5] Some may see a tension between that ruling and the general rule that a defendant's ability to represent himself well is irrelevant. The State contends that the two lines of cases may be reconciled by noting that in a very complex case, the waiver of counsel may not be a knowing and voluntary waiver if the defendant does not or cannot understand the nature of the task that he proposes to undertake. Therefore, the ruling that the motion would be denied because the case was too complex for Vanisi to understand should also be affirmed.

A Faretta motion may also be denied when it is ambiguous or conditional. Lyons, 106 Nev. at 443-444. Here, the apparent assumption by Vanisi that he would have stand-by counsel, and that the court would allow him the same freedom of movement about the courtroom as was enjoyed by the prosecutor tends to show that the request was ambiguous or conditional.

The State also suggests that this Court might wish to inquire into the procedural aspects of a Faretta motion. As a general rule, even where constitutional rights are at stake, state procedural law governs the manner in which those rights are to be

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[5]Indeed, it may be error to grant a Faretta motion where the record reveals that the defendant does not wholly understand the ramifications of his decision.

asserted. See Williams v. Florida, 399 U.S. 78, 90 S.Ct. 1893 (1970)(upholding Florida's "notice of alibi" rule). See also, Bargas v. Burns, 179 F.3d 1207 (9th Cir. 1999)(claim of violation of constitutional right to effective assistance barred for non-compliance with Nevada procedural rules for advancing such claims).

This Court appears to have ruled that a Faretta motion may be properly brought up until the day of trial. Lyons, 106 nev. at 445. However, the Court was drawing from the teachings of other cases and appears to have operated on the assumption that such a rule was required by the Constitution. The State contends that this Court may fashion procedural rules governing Faretta motions so long as those rules do not unduly burden the Constitutional right at stake.

At least one court had held that where a defendant, while aware of his options, clearly elects to proceed with the benefit of counsel and then months later makes a motion for self-representation, such a defendant must show "good cause" for discharging his counsel and proceeding in proper person. U.S. v. Reddeck, 22 F.3d 1504, 1511 (10th Cir. 1994). This decision is consistent with other well-established procedural rules. For instance, where the defendant pleads guilty and thereby waives the most basic of rights, the right to trial, the trial court may bind him to that decision unless he demonstrates some good cause for being relieved of the decision. See Woods v. State, 114 Nev. 468, 958 P.2d 91 (1998)(motion to withdraw guilty plea, made before sentencing, was properly denied).

Of course, in most cases the record will not reflect a conscious decision to elect between the competing rights. In most cases, appointment (or retention) of counsel will occur automatically with no discussion on the record of the opposite right - the right to self-representation. In the instant case, however, where the record reveals a discussion of the competing rights between the court and the defendant, and the defendant explicitly elected to proceed with counsel, then this Court should rule that by state law the defendant may be bound by that decision. The court may, in its discretion, allow the defendant to change his mind, and upon a showing of good cause, the court must allow the change. However, this Court should rule that where the defendant shows no cause for his change of heart, the court may deny a subsequent motion for self-representation, and such a ruling will not be disturbed absent an abuse of discretion.

Whether the Court analyzes this case from a procedural or substantive standpoint, or both, the Court should find no error in the denial of the Faretta motion, and affirm the judgment of the Second Judicial District Court,

B. THE STATUTORILY REQUIRED INSTRUCTION DEFINING THE CONCEPT OF A REASONABLE DOUBT DOES NOT UNCONSTITUTIONALLY DILUTE THE GOVERNMENT'S BURDEN OF PROOF.

Vanisi next takes issue with the standard instruction defining the concept of a "reasonable doubt." The instruction has been approved countless times. Chambers v. State, 113 Nev. 974, 944 P.2d 805 (1997); Evans v. State, 112 Nev. 1172, 926 P.2d 265

(1996); Quillen v. State, 112 Nev. 1369, 929 P.2d 893 (1996); Bollinger v. State, 111 Nev. 1110, 901 P.2d 671 (1995). Further, in Ramirez v. Hatcher, 136 F.3d 1209 (9th Cir.), cert. denied, 525 U.S. 967, 119 S.Ct. 415, 142 L.Ed.2d 337, (1998), the United States Court of Appeals for the Ninth Circuit upheld the constitutionality of NRS 175.211(1). Accordingly, the judgment should be affirmed.

C. THE DEATH SENTENCE IS NOT EXCESSIVE.

Vanisi next raises three separate arguments under a single banner. He first contends that the jury was not justified in finding one of the aggravating circumstances; that the jury's failure to enumerate the mitigating circumstances demonstrates some sort of error and, as a consequence, the death penalty is excessive. The State contends that there is adequate evidence supporting the finding that the murder involved mutilation; that because jurors need not unanimously agree on mitigating circumstances there is no need for the jury to enumerate each mitigating circumstance considered by each separate juror, and, the death penalty is not excessive.

First comes the question of whether the record supports the finding that the murder involved mutilation. This finding made the first degree murder an aggravated murder by virtue of NRS 200.033(8). Vanisi has not questioned the jury instructions and so it appears that he is questioning whether substantial evidence supports the finding of the jury. See Sonner v. State, 112 Nev. 1328, 1346, 930 P.2d 707, 719 (1996)(aggravator will be upheld

where supported by substantial evidence).[6]

This Court has ruled that "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." Deutscher v. State, 95 Nev. 669, 677, 601 P.2d 407, 412-13 (1979), vacated on other grounds, 500 U.S. 901, 111 S.Ct. 1678, 114 L.Ed.2d 73 (1991). The State contends that the jury, given that instruction, had ample evidence by which to find that the murder involved mutilation.

The record reveals that Vanisi smashed his hatchet into the head and face of Sergeant Sullivan at least 20 times. 22 ROA at 527. He used each part of the tool, including the nail puller. 22 ROA at 536. He used it to destroy every part of Sullivan's head, coming at him from every angle. 22 ROA 535. Every bone in his head was smashed. There was "massive fracturing that involved the orbits on both sides of the face, the mandible, the nasal bones, and both sides of the maxilla." 22 ROA at 531. Vanisi broke out most of Sergeant Sullivan's teeth, knocking some teeth completely outside of his body. 22 ROA 532. The autopsy revealed massive damage to the bones in the face, the soft tissue surrounding the eyes, and indeed, to the eye surface itself. One blow to Sullivan's forehead cut the skull itself very deeply and

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[6]The jury found other aggravating circumstances as well, but those are not at issue in this appeal. Even if this Court agreed that the mutilation factor was inappropriate, this Court should re-weigh the undisputed aggravating circumstances and affirm the sentence. See Canape v. State, 109 Nev. 864, 859 P.2d 1023 (1993).

lifted the top part of the skull off the rest of it. 22 ROA 536. In addition, there was evidence that after Vanisi reduced Sullivan's head to pulp, he felt the need to further kick his victim several times. 22 ROA 538; 25 ROA 980.

Vanisi slammed his hatchet into Sullivan's head, into his brain, some twenty times, any of which would have been fatal within moments of the blow. 22 ROA 539. Under less severe circumstances, this Court has found that the jury was entitled to find that the murder involved mutilation. Brown v. State, 113 Nev. 305, 933 P.2d 187 (1997); Parker v. State, 109 Nev. 383, 849 P.2d 1062 (1993). The Court should make the same ruling in this case.

Vanisi also makes much of the fact the verdict forms did not detail the mitigating circumstances considered by the jury. Jurors are properly instructed to list the aggravating circumstances that they find because such findings must be unanimous. Geary v. State, 114 Nev. 100, 952 P.2d 431 (1998). In contrast, mitigating circumstances are defined in a very personal way as any reason to spare the life of the defendant. Therefore, the jurors need not agree on what constitutes mitigating circumstances and what mitigating circumstances exist. Id. 114 Nev. at 105. Thus, the State contends that there is no inference to be drawn from the failure of the jury to list the mitigating circumstances, if any existed, that each juror personally found. A single juror may find it to be slightly mitigating that Vanisi did not completely decapitate Sergeant Sullivan. However, no instruction required or even implied to the jurors that each should

reveal such personal thoughts as what circumstance constituted a reason to consider sparing the life of the accused.

The remaining question is whether this Court should rule as a matter of law that the death penalty is excessive. No extensive comment is necessary on this subject. Considering all the circumstances, including the nature of the crime and Vanisi's violent and aggressive behavior in jail and in prison, Vanisi has demonstrated beyond any doubt that no segment of society is safe as long as he lives.

IV. CONCLUSION

While we will almost certainly see this case again when Vanisi ultimately agrees to waive the attorney-client privilege by asserting a claim of ineffective assistance of counsel, for the moment, this Court should rule that he has failed to demonstrate error in the trial. The judgment of the Second Judicial District Court should therefore be affirmed.

DATED: August 14, 2000.

RICHARD A. GAMMICK
District Attorney

By _____
TERRENCE P. McCARTHY
Appellate Deputy

CERTIFICATE OF COMPLIANCE

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

DATED this 14 day of August, 2000.

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CERTIFICATE OF SERVICE

Pursuant to NRAP Rule 25, I hereby certify that I am an employee of the Washoe County District Attorney's Office and that on this date, I forwarded a true copy of the foregoing document, through the Washoe County Interagency Mail, addressed to:

JOHN REESE PETTY
Chief Appellate Deputy
Washoe County Public Defender's Office
Reno, Nevada 89501

DATED: August 14, 2000

M. Kathleen Maddox